

Cash Collateral (as defined herein), (II) granting priming and other liens and providing super-priority administrative expense status, (III) granting "adequate protection" to the Prepetition Lenders (as defined herein), (IV) modifying the automatic stay, and (V) prescribing the form and manner of notice and scheduling hearings with respect to the relief requested herein. In support thereof, the Debtors respectfully represent:²

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. sections 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. section 157(b). Venue is proper pursuant to 28 U.S.C. sections 1408 and 1409.

RELIEF REQUESTED

2. By this Motion, the Debtors request that the Court grant the following relief as provided in the DIP Orders:

- a. Authorizing, pursuant to sections 105(a), 362, 363(c), and 364(c), (d), and (e) of the Bankruptcy Code (as defined herein) and Rules 2002, 4001, and 9014 of the Bankruptcy Rules (as defined herein), Building Materials Holding Corporation ("**BMHC**"), in its capacity as borrower (the "**Borrower**") to enter into the DIP Credit Agreement with the DIP Agent and the DIP Lenders, to obtain postpetition loans (the "**DIP Loans**") on the terms of the DIP Credit Agreement (together with any and all documents, agreements and instruments delivered pursuant thereto or executed or filed in connection therewith, as may be amended hereafter from time to time, collectively, the "**DIP Loan Documents**");
- b. Providing, pursuant to Bankruptcy Code sections 364(c)(1), (2), (3), and 364(d), that the obligations of the Debtors under the DIP Loan Documents (collectively, the "**DIP Obligations**") are, as more specifically set forth in the proposed Interim DIP Order:

² A description of the Debtors' business and the reasons for filing these Chapter 11 Cases is set forth in the Declaration of Paul S. Street in Support of Chapter 11 Petitions and First Day Relief (the "**Street Declaration**"), filed contemporaneously with this Motion. This Motion is supported by the Street Declaration.

- i. granted super-priority administrative claim status under section 364(c)(1) of the Bankruptcy Code; and
 - ii. secured by valid, enforceable, non-avoidable, and fully perfected liens pursuant to sections 364(c)(1) and 364(c)(2) of the Bankruptcy Code, and senior priming liens pursuant to section 364(d) of the Bankruptcy Code;
- c. Authorizing the Debtors' use of Cash Collateral pursuant to the terms and conditions set forth in the DIP Orders and the DIP Credit Agreement;
 - d. Authorizing the Debtors' use of the proceeds of the DIP Facility (as defined below) pursuant to the terms and conditions set forth in the DIP Orders and the DIP Credit Agreement;
 - e. Modifying the automatic stay under Bankruptcy Code section 362 to the extent set forth in the DIP Credit Agreement and the DIP Orders;
 - f. Approving, pursuant to Bankruptcy Code sections 361, 363, and 364, the form and manner of adequate protection set forth herein to be provided to the Prepetition Lenders (as defined herein);
 - g. Finding that notice of this Motion is proper under the circumstances pursuant to Bankruptcy Rules 2002 and 4000(c)(1) and the Local Rules; and
 - h. Scheduling, pursuant to Bankruptcy Rule 4001(c)(2), a hearing (the "*Final Hearing*") on the relief requested herein.

3. The statutory bases for relief requested herein are sections 105, 361, 362, 363, 364(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), and 507 of title 11 of the United States Code (the "*Bankruptcy Code*"); Rules 2002, 4001, 6003, and 9014 of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*"); and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "*Local Rules*").

BACKGROUND

4. On the date hereof (the "*Petition Date*"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "*Chapter 11 Cases*").

The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no official or statutory committee has been appointed or designated.

5. The Debtors are one of the largest providers of residential building products and construction services in the United States. The Debtors distribute building materials, manufacture building components (e.g., millwork, floor and roof trusses, and wall panels), and provide construction services to professional builders and contractors through a network of 31 distribution facilities, 43 manufacturing facilities, and five regional construction services facilities.

6. The Debtors operate under two brand names: BMC West® and SelectBuild®.



- Under the BMC West brand, the Debtors market and sell building products, manufacture building components, and provide construction services to professional builders and contractors. Products include structural lumber and building materials purchased from manufacturers, as well as manufactured building components such as millwork, trusses, and wall panels. Construction services include installation of various building products and framing. The Debtors currently offer these products and services in major metropolitan markets in Texas, Washington, Colorado, Idaho, Utah, Montana, North Carolina, California, and Oregon.



- Under the SelectBuild brand, the Debtors offer integrated construction services to production homebuilders, as well as commercial and multi-family builders. Services include wood framing, concrete services, managing labor and construction schedules, and sourcing materials. The Debtors currently offer these services in major metropolitan markets in California, Arizona, Nevada and Illinois.

7. The Debtors operate in metropolitan areas that have historically outpaced U.S. averages for residential building permit activity (largely in the Southern and Western

portions of the United States). Based on National Association of Home Builders building permit activity, the Debtors provide building products and construction services in 9 of the top 25 single-family construction markets.

8. In addition to their strategic geographic locations, the Debtors have many other competitive strengths that enable them to attract business. For example, the Debtors' full offering of building materials, manufactured products, and construction services allows the Debtors to help professional builders and contractors reduce costs and cycle time. Similarly, the Debtors' long-term relationships with their suppliers provide the Debtors with purchasing advantages – including volume rebate programs and preferred customer status when supplies or liquidity are limited – which are passed on to the Debtors' customers in the form of reduced costs and increased on-time reliability. The Debtors have also cultivated a reputation for providing superior quality building components and construction services by employing experienced, service-oriented individuals to procure, produce, and deliver these products and services.

9. The Debtors' principal executive offices are located in Boise, Idaho. As of the Petition Date, the Debtors employed approximately 5,500 people. Building Materials Holding Corporation is a public company that trades on the OTC Bulletin Board under the ticker symbol BLGM. For the 12 months ended March 31, 2009, the Debtors' revenue totaled approximately \$1,100,000,000. As of March 31, 2009, the book value of the Debtors' assets totaled approximately \$480,000,000 and its liabilities totaled approximately \$481,000,000.

THE DEBTORS' PREPETITION SECURED INDEBTEDNESS

10. As of the Petition Date, the Debtors' consolidated secured debt consisted of (a) a secured revolver with an outstanding principal balance of approximately \$20.0 million plus obligations of approximately \$112.5 million under issued and outstanding letters of credit

(including Prepetition Letters of Credit, as defined below), (b) a secured term loan with an outstanding principal balance of \$268.8 million, (c) secured swap obligations with approximately \$6.0 million of exposure, (d) accrued and unpaid interest on the foregoing, (e) prepetition payment-in-kind interest of approximately \$6.3 on the secured term loan, (f) other obligations for fees and expenses owing under the Prepetition Credit Agreement (as defined below) and (g) other secured indebtedness of approximately \$1.1 million (the "**Other Secured Debt**"). The Debtors' prepetition secured credit facilities affected by this Motion are described in summary terms below.

11. **The Prepetition Credit Agreement.** BMHC, as borrower, the other Debtors, as guarantors, WFB, as administrative agent (the "**Prepetition Administrative Agent**"), and the lenders party thereto (together with the Prepetition Administrative Agent, the "**Prepetition Credit Agreement Lenders**") are parties to the Second Amended and Restated Credit Agreement, dated as of November 10, 2006 (as amended, the "**Prepetition Credit Agreement**"). The Prepetition Credit Agreement provides for a \$340 million term loan facility maturing November 2011 (the "**Prepetition Term Loan**") and a \$200 million revolving credit facility maturing November 2011 (the "**Prepetition Revolving Credit Facility**"). The Debtors' ability to draw on the \$200 million Prepetition Revolving Credit Facility is subject to certain borrowing base limitations. The Prepetition Credit Agreement is secured pursuant to that certain Third Amended and Restated Security Agreement by and among the Debtors and the Prepetition Administrative Agent, dated as of November 10, 2006 (the "**Prepetition Security Agreement**"), which grants the Prepetition Lenders a security interest in substantially all of the Debtors' assets (the "**Prepetition Collateral**").

12. **The Letters of Credit.** The Debtors caused to be issued various letters of credit (the "***Prepetition Letters of Credit***") in favor of certain of the Debtors' creditors. The Prepetition Letters of Credit were issued primarily (a) in favor of insurers with respect to the self insured portion of automobile, general liability, and workers' compensation insurance obligations, (b) with respect to performance bonds for projects undertaken by the Debtors, and (c) with respect to obligations owed to certain of the Debtors' key material suppliers. WFB issued the Prepetition Letters of Credit under the terms of the Prepetition Credit Agreement, by which the outstanding Prepetition Letters of Credit reduce the \$200 million amount available to the Debtors under the Prepetition Revolving Credit Facility. The Prepetition Letters of Credit may renew automatically on their various anniversary dates or until released by their respective beneficiaries.

13. **The Swap Transactions.** The Debtors are party to two ISDA Master Agreements, (a) an ISDA Master agreement with BNP Paribas dated as of April 7, 2004 (along with all schedules and amendments to the same, the "***BNP Paribas Master Agreement***") and (b) an ISDA Master agreement with Suntrust Bank dated as October 10, 2006 (along with all schedules and amendments to the same, the "***Suntrust Bank Master Agreement***" and, together with the BNP Paribas Master Agreement, the "***Prepetition Master Agreements***"). The Prepetition Master Agreements govern multiple Transactions (as defined in the Prepetition Master Agreements) between the parties. Obligations arising from such Transactions, moreover, are secured by the Prepetition Collateral, and the resulting security interests are *pari passu* with that created under the Prepetition Security Agreement. Section 5(a)(vii) of each of the Prepetition Master Agreements gives BNP Paribas and Suntrust Bank the right to terminate such agreements on account of BMHC's filing for bankruptcy relief. For purposes of this Motion, the

term "***Prepetition Lenders***" shall mean the Prepetition Credit Agreement Lenders, in their capacities as lenders under the Prepetition Credit Agreement, and BNP Paribas, and Suntrust Bank, in each case, in their capacities as counterparties under the Prepetition Master Agreements.

14. **Other Secured Debt.** The Debtors' Other Secured Debt consists of (a) certain term notes, equipment notes, and capital leases for equipment and (b) the real property set forth on Part II of Schedule 1.01A of the DIP Credit Agreement, with an aggregate outstanding balance of approximately \$1 million. The interest rates on these borrowings vary and the dates of maturity are through March 2021. The collateral securing the Other Secured Debt is not sought to be included in the collateral subject to the DIP Credit Agreement (the "***DIP Collateral***").

THE EVENTS LEADING TO THE BANKRUPTCY FILINGS

15. As discussed above, the Debtors have approximately \$310.3 million of secured funded indebtedness, including accrued but unpaid interest. Unfortunately, a series of unforeseen events placed significant strain on the Debtors' ability to continue servicing such indebtedness and ultimately led to the Debtors' filing of the Chapter 11 Cases. Those events include (a) the unprecedented downturn in the United States housing and construction market, (b) the resulting deterioration in the Debtors' financial performance, (c) the Debtors' default under the Prepetition Credit Agreement, and (d) the Debtors' unsuccessful attempts to implement an out-of-court restructuring.

A. The Downturn in the U.S. Housing and Construction Markets

16. The residential building products and construction services industry is highly dependent upon demand for single-family homes. Various macroeconomic factors, including general economic conditions, interest rates, levels of unemployment, consumer

confidence, and the availability of credit influence the demand for single-family homes.

Historically, the new home construction sector has been cyclical. During 2006, however, a major housing downturn began in the United States. Indeed, single-family "housing starts" fell more than 14% from approximately 1.72 million in 2005 to approximately 1.47 million in 2006.³

17. The housing market downturn in the United States intensified during 2007, with single-family housing starts in 2007 falling almost 29% from the 2006 rate to approximately 1.05 million, and continued during 2008, with single-family housing starts falling over 40% from the 2007 rate to approximately 622,000. As of March 2009, single-family housing starts have fallen to an annualized rate of less than 400,000—the lowest level of single-family housing start activity since World War II.

18. The negative effect of the housing market downturn is compounded by recent turmoil in the general economy, mortgage market, and overall credit markets, which has caused increasing levels of unemployment, a severe decline in home prices, a dramatic tightening of consumer credit, and decreased consumer confidence.

B. The Debtors' Financial Performance Deteriorates

19. The adverse market conditions described above negatively affected the Debtors' financial position. Sales revenues declined from \$3.0 billion in 2006 to \$1.3 billion in 2008. As a result of this unanticipated and precipitous decline in sales revenues, the Debtors began experiencing losses from operations on a continuous basis in the fourth quarter of 2007.

³ "Housing starts" are considered a leading indicator in the United States housing market. The United States Census Bureau and the United States Department of Housing and Urban Development jointly publish a monthly report on housing starts which is available at <http://www.census.gov/const/www/newresconstindex.html>.

For the year ending December 31, 2008, the Debtors experienced a loss of \$192,456,000 from continuing operations.

C. The Debtors Default Under the Prepetition Credit Agreement

20. The Debtors' Prepetition Credit Agreement requires monthly compliance with financial covenants, including minimum liquidity and adjusted earnings before interest, taxes, depreciation, and amortization ("*EBITDA*"). Ultimately, decreased demand and corresponding sales declines caused the Debtors to fall out of compliance with certain of these financial covenants as of December 31, 2007. As a result of these covenant defaults, the Lenders were entitled to seek immediate repayment of the amounts owed under the Prepetition Credit Agreement. Accordingly, the Debtors engaged the Administrative Agent in discussions for a waiver of the financial covenant defaults and an amendment to the covenants in the Prepetition Credit Agreement that would enable the Debtors to meet the covenants on a going-forward basis given the depressed state of the housing market.

D. The Debtors' Out-of-Court Restructuring Initiatives

I. Operational Restructuring

21. In response to challenging economic and industry conditions, in May 2008, the Debtors initiated a comprehensive analysis of their business operations to rationalize their operations for the current conditions of the homebuilding industry and improve cash flow and profitability. As a result, the Debtors formulated a restructuring plan to right-size their operations, consolidate their administrative services, reorganize their operations structure, and close or consolidate their underperforming business units.

22. To implement this restructuring plan, the Debtors have reduced overall headcount from a high of 22,824 in June 2006 to approximately 5,500 as of the Petition Date.

The Debtors have also created a shared services organization at their headquarters in Boise, Idaho to provide key administrative services such as information technology, human resources, accounting, marketing, and purchasing. Previously, some individual business locations had maintained their own administrative services. In addition, the Debtors have engaged in a comprehensive reorganization of their operations structure in order to eliminate unnecessary overhead expenditures, reduce redundancy, and enhance corporate oversight and control over the business.

23. Finally, the Debtors have taken significant actions to close or consolidate their underperforming business units. To date, the Debtors have sold, wound down, or consolidated 78 business units.

II. Financial Restructuring

24. Throughout February 2008, the Debtors continued negotiating with the Administrative Agent for a waiver of the financial covenant defaults and an amendment to the covenants in the Prepetition Credit Agreement that would enable them to meet the covenants on a going-forward basis given the depressed state of the housing market. To provide the parties with additional time to continue negotiations and avert a possible chapter 11 filing, the parties agreed to a temporary waiver of the financial covenants under the Prepetition Credit Agreement.

25. On February 29, 2008, the Debtors were able to enter successfully into the First Amendment to the Prepetition Credit Agreement, which, among other provisions, modified the financial covenants to account for the downturn in the housing market by, among other things, lowering the Debtors' consolidated net worth requirement and the minimum EBITDA-to-interest expense ratio and setting new minimum EBITDA default-trigger thresholds. In

accordance with the First Amendment, Debtor Building Materials Holding Corporation suspended its quarterly cash dividend to shareholders.

26. Nonetheless, as the housing market continued to decline, the Debtors fell out of compliance with these new financial covenants after the fiscal period ended June 30, 2008. As a result, the Debtors engaged in further discussions with the Prepetition Administrative Agent and sought another waiver of their financial covenant and other related defaults and another amendment to the covenants in the Prepetition Credit Agreement. The Debtors were able to obtain a waiver of the existing defaults and, on September 30, 2008, were successful in entering into the Second Amendment to the Prepetition Credit Agreement which, among other things, reset the minimum EBITDA default-trigger thresholds and added minimum liquidity default-trigger thresholds.

27. Despite these extensive good-faith renegotiations of the Prepetition Credit Agreement, the unprecedented decline in the housing industry and the concomitant decline in sales of the Debtors' products and services caused the Debtors to fall out of compliance with the minimum monthly adjusted EBITDA required by the Second Amendment for the fiscal period ended February 28, 2009. As part of their continued good-faith negotiations with the Lenders, the Debtors were able to obtain a temporary waiver of this and other anticipated defaults through the earlier of (a) April 15, 2009, which was extended through June 29, 2009, and (b) the occurrence of another default.

**THE DEBTORS' MARKETING AND NEGOTIATION
PROCESS FOR POSTPETITION FINANCING**

28. Prior to agreeing to any proposal with respect to debtor in possession financing, the Debtors and their professionals engaged in an extensive search process. The initial stage of this search, as detailed in the Street Declaration, was the retention of Peter J. Solomon as

financial advisor. Peter J. Solomon is a well-qualified advisory firm with substantial experience in negotiating and structuring debtor in possession facilities. Together, the Debtors and Peter J. Solomon evaluated all realistic financing alternatives.

29. Prior to the Petition Date, the Debtors and Peter J. Solomon approached approximately 34 banks and other financial institutions to provide financing, with a logical focus on the Debtors' largest Prepetition Credit Agreement Lenders. In particular, Peter J. Solomon solicited these parties' interest in providing funding on either a priming or junior basis to the Prepetition Credit Agreement. Each prospective lender, moreover, was informed (a) of the Debtors' need for an expedited negotiation and closing process as a result of the Debtors' immediate financing needs and (b) that they could receive additional information upon signing a customary confidentiality agreement. Five outside parties indicated an interest in providing financing to the Debtors and were willing to sign confidentiality agreements to receive additional information. Those five parties were given access to and, in fact, took advantage of an electronic information data room established by the Debtors to facilitate potential lenders' due diligence. As a result of these efforts, the Debtors received three offers for postpetition financing in addition to a proposal by the Prepetition Credit Agreement Lenders.

30. After negotiating improved terms versus the DIP Lenders' initial proposal, the Debtors together with their advisors determined that the DIP Lenders' financing proposal provided the most advantageous terms to the Debtors and their estates under the circumstances and in light of the Debtors' immediate liquidity needs. The first aspect of the Debtors' decision making concerned pricing. Simply put, the DIP Lenders offered a lower interest rate and fewer fees than their competitors. For example, the DIP Lenders were the only bidding group which

did not request a work fee and/or a termination fee. In aggregate, the cost of borrowing from the DIP Lenders was a fraction of that from alternate sources of capital.

31. In addition, because the DIP Lenders hold a significant portion of the Debtors' prepetition secured debt, accepting the DIP Lenders' financing proposal reduces the likelihood of a priming fight with its associated costs and operational risks. Any attempt to bring in third-party financing providers to prime all of the Prepetition Lenders risks prolonged litigation.

32. Prior to the Petition Date, the Debtors, with the assistance of their professionals and advisors, pursued many avenues to try to maximize the value of the Debtors' business, including conducting a process to sell all or a portion of the Debtors' business. The Debtors' prepetition sale process did not, however, yield offers that reflected, in the Debtors' business judgment, the true value of the Debtors' business operations.

33. Contemporaneously with this prepetition marketing and sale effort, the Debtors engaged in good faith, arm's-length negotiations with significant holders of the Debtors' prepetition secured indebtedness under the Prepetition Credit Agreement to develop a way to de-lever the Debtors' business, while at the same time providing the Debtors' unsecured creditor constituency with a substantial recovery. These negotiations culminated in the proposed chapter 11 plan (the "*Plan*") and accompanying disclosure statement (the "*Disclosure Statement*"), filed contemporaneously with this Motion. As set forth in greater detail in the Plan and Disclosure Statement, the Plan contemplates a restructuring of the Debtors' balance sheet and ownership structure, as well as an immediate cash distribution to unsecured creditors and an opportunity for such creditors to receive full payment from the reorganized Debtors, depending on business performance. The Plan also provides for the repayment in full in cash of the noncontingent

obligations under the DIP Facility, and the replacement of the contingent obligations, with an exit financing facility. The Debtors believe that the restructuring proposal embodied in the Plan provides the Debtors' creditors with the best means of maximizing value of the Debtors and their businesses.

34. The DIP Facility will be underwritten by WFB, the largest single Prepetition Lender. Participation in the DIP Facility will be open to all Prepetition Credit Agreement Lenders on a pro rata basis.

**CONCISE STATEMENT OF MATERIAL TERMS
OF THE INTERIM DIP ORDER**

35. Subject to the Court's approval, the Debtors' proposed debtor in possession financing consists of a \$80 million senior secured, superpriority debtor in possession revolving credit facility (the "*DIP Facility*"), including financing provided pursuant to a \$20 million letter of credit subfacility (the "*Letter of Credit Subfacility*").

36. Pursuant to the terms of the DIP Facility, the DIP Lenders have consented to the use of their Cash Collateral under the Prepetition Credit Agreement and the granting of priming liens as provided herein, subject to the terms and conditions of the DIP Facility. The Prepetition Lenders that are not DIP Lenders are adequately protected by the provision of replacement liens and superpriority administrative claims junior only to the Carve-Out and the liens and administrative claims of the DIP Lenders. In effect, the DIP Facility will be layered onto the Prepetition Credit Agreement, subject to appropriate modifications.

37. Pursuant to and in accordance with Bankruptcy Rule 4001(b)(1)(B) and Local Rule 4001-2(a)(ii), the material provisions of the Interim DIP Order and the location of such provisions in the Interim DIP Order or the DIP Credit Agreement are as follows:⁴

Material Term	Summary of Material Term	Provision
<u>Borrower</u>	Building Materials Holding Corporation.	DIP Credit Agreement; Preamble.
<u>Guarantors</u>	Each direct or indirect United States wholly-owned subsidiary of BMHC that currently exists or is hereafter acquired or created and which is a party to a Guaranty (as defined in the DIP Credit Agreement).	DIP Credit Agreement; Article I.
<u>Agent</u>	WFB.	DIP Credit Agreement; Preamble.
<u>DIP Lenders</u>	WFB and other lenders party to the DIP Facility.	DIP Credit Agreement; Preamble.
<u>Committed Facilities</u>	Aggregate and maximum of \$80 million senior secured debtor in possession revolving credit facility, as follows: <ul style="list-style-type: none"> ➤ <u>Interim Commitment Amount</u>: The lesser of (a) \$40 million and (b) the maximum amount approved by the Bankruptcy Court in the Interim DIP Order. ➤ <u>Final Commitment Amount</u>: The lesser of (a) \$80 million (subject to a borrowing base restriction, as defined in Article I of the DIP Credit Agreement, and other restrictions as set forth in the DIP Credit Agreement) and (b) the maximum amount approved by the Bankruptcy Court in the Final DIP Order. 	DIP Credit Agreement; Article I.
<u>Term</u>	The earliest of (a) January 2, 2010, or, upon the effectiveness of the Extension Option (as defined in the DIP Credit Agreement), March 31, 2010; (b) the date on which the Interim DIP Order expires unless the Final DIP Order has been entered and has become effective; (c) the earlier of the effectiveness or effective date of the Plan that is confirmed pursuant to an order entered by the Court; (d) the date of the closing of a sale of all or substantially all of the Borrower's assets pursuant to section 363 of the Bankruptcy Code; (e) a dismissal of the Chapter 11 Cases or a conversion of the Chapter 11 Cases to chapter 7 cases under the Bankruptcy Code; and (f) the date of termination of the commitments under the DIP Facility in accordance with the terms of the definitive documentation.	DIP Credit Agreement; Article I.

⁴ This summary is qualified in its entirety by the provisions of the DIP Credit Agreement and the Interim DIP Order. The DIP Credit Agreement will control in the event of any inconsistency between this Motion and the DIP Credit Agreement. To the extent that there is a conflict between the terms and conditions of the DIP Credit Agreement and the Interim DIP Order, the terms and conditions of the Interim Order shall govern. Each capitalized term used herein but not otherwise defined herein shall have the meaning ascribed to it in the Interim DIP Order.

Material Term	Summary of Material Term	Provision
<u>Interest</u>	<p>Base Rate <i>plus</i> 4.50%.</p> <p>Base Rate, for any day, is a fluctuating rate equal to the highest of (a) the Prime Rate in effect on such day, (b) 1.00% above the Daily One Month LIBOR in effect on such day, (c) the Federal Funds Rate plus 1.00%, and (d) 3.00%.</p>	DIP Credit Agreement; Article I.
<u>Default Rate of Interest</u>	The applicable interest rate plus 4% per annum payable upon demand.	DIP Credit Agreement; Section 2.08(c).
<u>Fees</u>	<ul style="list-style-type: none"> ➤ <u>Agency Fee</u>. The greater of (i) \$50,000 and (ii) \$10,000 per DIP Lender, per annum, under the fee specified in that certain letter agreement between BHMC and WFB dated on or about June 16, 2009. ➤ <u>Underwriting Fee</u>: \$1,000,000 under that certain letter agreement between BHMC and WFB dated on or about June 16, 2009. ➤ <u>Commitment Fees</u>. With respect to the revolver, 0.50%, and, with respect to the letter of credit fees, 4.50%. ➤ <u>Servicing Fee</u>. \$2,500 per month. ➤ <u>Closing Fee</u>. 2.00% of the Maximum Commitment Amount (as defined in the DIP Credit Agreement). ➤ <u>Audit, Appraisal and Examination Fees</u>. (i) \$1,000 per day, per auditor, plus reasonable out-of-pocket expenses for each financial audit of BHMC or any guarantor performed by personnel, employed by the Agent, (ii) if implemented, a fee equal to \$1,000 per day, per applicable individual, plus reasonable out-of-pocket expenses for the establishment of electronic collateral reporting, and (iii) the actual charges paid or incurred by the Agent if it elects to employ the services of one or more third persons to perform financial audits or quality of the earnings analyses of BHMC or any guarantor, to establish electronic collateral reporting systems, to appraise the DIP Collateral, or any portion thereof, or to assess BHMC or any guarantor's business valuation. 	DIP Credit Agreement; Section 2.09(a)-(e).
<u>Use</u>	<p>The proceeds of the DIP Facility shall be used to:</p> <ul style="list-style-type: none"> ➤ Pay fees, interest, and expenses associated with the DIP Facility; ➤ Fund the Carve-Out; ➤ Provide ongoing working capital and satisfy capital expenditure needs of the Debtors during the pendency of the Chapter 11 Cases and for the purposes set forth in the DIP Budget (as defined below), including, without limitation, the payment of fees and expenses of Professional Persons (as defined below) approved by the Bankruptcy Court during the pendency of the Chapter 11 Cases; ➤ Provide for other general corporate purposes of the Debtors during the pendency of the Chapter 11 Cases and for the purposes set forth in the DIP Budget; and ➤ Repay \$4.0 million of the \$20 million owed under the Prepetition Revolving Credit Facility. <p>For avoidance of doubt, no DIP Facility proceeds or any Cash Collateral shall be available for any fees or expenses incurred in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings, or other</p>	DIP Credit Agreement; Section 7.12. Interim DIP Order ¶ 15(j).

Material Term	Summary of Material Term	Provision
	litigation against (i) the DIP Agent or the DIP Lenders or (ii) in connection with challenging, invalidating, disallowing, recharacterizing, setting aside, avoiding, subordinating, in whole or in part, or taking or attempting to take any other action to render unenforceable, the DIP Liens (as defined herein), claims, interests and adequate protection of the DIP Agent and the DIP Lenders or the Prepetition Administrative Agent and Prepetition Credit Agreement Lenders under the Prepetition Credit Agreement as of the Petition Date; <u>provided</u> up to \$50,000 in the aggregate may be used by any statutory committee appointed in the Chapter 11 Cases for purposes of investigating the Prepetition Liens (as defined herein), claims and interests under the Prepetition Credit Agreement.	
<u>Incremental Availability</u>	Subject to approval by the Court, the full amounts available under the DIP Facility will be available upon entry of the Final DIP Order.	DIP Credit Agreement; Article I.
<u>DIP Budget</u>	A rolling 13-week consolidated operating budget (the " <i>DIP Budget</i> ") attached hereto as <i>Exhibit C</i> , updated monthly, for BMHC and its subsidiaries.	DIP Credit Agreement; Section 7.01(b).
<u>Superpriority Claims</u>	Claims arising from the DIP Facility will be entitled to superpriority administrative expense claim status in the Chapter 11 Cases, subject and subordinate to the Carve-Out.	DIP Credit Agreement; Section 6.24(c).
<u>DIP Facility Priority and Liens</u>	<p><u>Pursuant to section 364(c)(2) of the Bankruptcy Code,</u></p> <p>First priority liens on all DIP Collateral (including, without limitation, all real property) that is not subject to valid and perfected liens existing on the Petition Date, pursuant to section 364(c)(2) of the Bankruptcy Code, subject and junior to the Carve Out.</p> <p><u>Pursuant to section 364(d)(1) of the Bankruptcy Code,</u></p> <p>First priority, senior "priming" liens on all DIP Collateral that is subject to valid and perfected liens existing on the Petition Date in favor of the Prepetition Administrative Agent or under the Prepetition Master Agreements pursuant to Section 364(d)(1) of the Bankruptcy Code, subject and junior to the Carve Out and the Permitted Priority Liens (as defined in the DIP Credit Agreement).</p>	DIP Credit Agreement; Section 6.24(b). Interim DIP Order ¶ 5.
<u>Parties with Interest in the Collateral</u>	Prepetition Lenders.	Interim DIP Order ¶ H.
<u>Adequate Protection</u>	<p>The Debtors will provide the Prepetition Lenders with the following adequate protection, only to the extent of diminution of value in their Prepetition Collateral:</p> <ul style="list-style-type: none"> ➤ replacement liens, junior and subordinate to (i) the Permitted Priority Liens, (ii) the Carve-Out, (iii) the liens securing the DIP Facility (the "<i>DIP Liens</i>") and (iv) the Prepetition Liens on the Prepetition Collateral; ➤ administrative priority claims junior and subordinate to the Superpriority Claim and the Carve-Out; ➤ payment of professional fees and expenses, including attorneys' fees, financial advisor fees and other professionals and consultants (to the extent such other professionals and consultants are provided for under the Prepetition Credit Agreement), of the Prepetition Administrative Agent 	Interim DIP Order ¶ 7.

Material Term	Summary of Material Term	Provision
	<p>during the Chapter 11 Cases, whether incurred before or after the Petition Date;</p> <ul style="list-style-type: none"> ➤ to the extent allowable under section 506(b) of the Bankruptcy Code, the accrual of interest under the Prepetition Credit Agreement at the default rate specified therein; ➤ the Debtors' acknowledgement of the validity and amount of the obligations under the Prepetition Credit Agreement and the Prepetition Liens. 	
<u>Carve-Out</u>	<p>The "Carve-Out" shall be (a) any unpaid fees due to the United States Trustee pursuant to 28 U.S.C. Section 1930 of the United States Code or otherwise and any fees due to the clerk of the Bankruptcy Court, (b) the reasonable fees and expenses approved by the Bankruptcy Court incurred by a trustee under Section 726(b) or 1104 of the Bankruptcy Code in an aggregate amount not to exceed \$100,000, (c) the reasonable expenses of members of any statutory committee appointed in the Bankruptcy Cases in an amount not to exceed \$50,000, (d) to the extent allowed at any time, all unpaid fees and expenses allowed by the Bankruptcy Court of professionals or professional firms retained pursuant to section 327, 330, 363, or 1103 of the Bankruptcy Code (the "Professional Persons") that were incurred or accrued through the date upon which BMHC receives from the Agent a notice of an Event of Default, and (e) after the date upon which BMHC receives from such notice, to the extent allowed at any time, the payment of the fees and expenses of Professional Persons in an aggregate amount not to exceed \$500,000.</p>	DIP Credit Agreement; Article I.
<u>Conditions Precedent</u>	<p>The obligations of each DIP Lender under the DIP Credit Agreement shall be subject to conditions precedent consistent with a debtor in possession loan facility of this nature, including the execution of the DIP Credit Agreement and the payment of all related fees.</p>	DIP Credit Agreement; Article V.
<u>Representation, Warranties, and Covenants</u>	<p>The DIP Credit Agreement includes customary representations and warranties, affirmative covenants, and negative covenants consistent with a debtor in possession loan facility of this nature and the Prepetition Credit Agreement, including, without limitation, a quarterly minimum EBITDAR and capital expenditures covenants.</p>	DIP Credit Agreement; Articles VI, VII and VIII.
<u>Events of Default</u>	<p>The DIP Credit Agreement includes customary events of default consistent with a debtor in possession loan facility of this nature and the Prepetition Credit Agreement, including, without limitation, events of default relating to events in the Chapter 11 Cases (including, without limitation, dismissal of the Chapter 11 Cases, appointment of a trustee or an examiner with expanded powers, and conversion of the Chapter 11 Cases to chapter 7 cases) and a cross-default, in part, concerning the occurrence of an event of default or early termination date under any Swap Contract (as defined in the DIP Credit Agreement) entered into after the Petition Date.</p>	DIP Credit Agreement Section 9.01.
<u>Remedies</u>	<p>Upon the occurrence and continuation of an event of default under the DIP Facility, the DIP Agent may or shall, upon instructions from the Majority Lenders (as defined in the DIP Credit Agreement), by written notice to BMHC, terminate all commitments under the DIP Facility, require BMHC to cash collateralize amounts outstanding under the Letter of Credit Subfacility, declare all obligations due and payable and, upon three (3) business days' written notice to BMHC, the United States Trustee and any statutory committee, exercise all rights and remedies under the DIP Loan Documents and applicable law.</p>	DIP Credit Agreement Section 9.02.

Material Term	Summary of Material Term	Provision
<u>The Debtors' Stipulations</u>	<p>As of the Petition Date, (i)the aggregate unpaid principal amount of the Prepetition Lender Debt is approximately \$310.3 million; and (ii) all of the Prepetition Lender Debt under the Prepetition Credit Agreement is unconditionally due and owing by the Debtors to the Prepetition Credit Agreement Lenders.</p> <p>Additional stipulations include:</p> <ul style="list-style-type: none"> ➤ as of the Petition Date, the Prepetition Credit Agreement Lenders held security interests in and liens on, among other things, substantially all of the Debtors' assets; and ➤ stipulations regarding the perfection, priority, and seniority of liens arising under the Prepetition Credit Agreement. 	Interim DIP Order ¶ I.
<u>Waivers</u>	The Debtors waive their right to challenge the DIP Liens or the Prepetition Liens under the Prepetition Credit Agreement and to bring avoidance actions against the DIP Agent, the DIP Lenders, the Prepetition Credit Agreement Lenders, and the Prepetition Administrative Agent.	Interim DIP Order ¶ I.
<u>Challenge Period</u>	Any statutory committee and any other non-Debtor party have ninety days from the Petition Date (the " Challenge Period Deadline ") to bring claims and actions against the Prepetition Credit Agreement Lenders and the Prepetition Administrative Agent.	Interim DIP Order ¶ 6.
<u>Expense Repayment</u>	The Debtors shall use proceeds of the DIP Facility to repay \$4.0 million of the amount owing under the Prepetition Revolving Credit Facility	DIP Credit Agreement Section 7.12.
<u>Automatic Stay</u>	The automatic stay under section 362 of the Bankruptcy Code is modified to effectuate all terms and provisions of the Interim DIP Order upon three (3) business day's written notice to BMHC, the U.S. Trustee and any statutory committee appointed in these Chapter 11 Cases.	Interim DIP Order ¶ 15(b).
<u>Section 506</u>	Each of the DIP Agent, the DIP Lenders, the Prepetition Administrative Agent, and the Prepetition Lenders shall be entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code	Interim DIP Order ¶ 15(e).
<u>Section 552</u>	Each of the DIP Agent, the DIP Lenders, the Prepetition Administrative Agent, and the Prepetition Lenders shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Agent, the DIP Lenders, the Prepetition Administrative Agent, and the Prepetition Lenders with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral or the DIP Collateral.	Interim DIP Order ¶ 15(f).

PROVISIONS TO BE HIGHLIGHTED PURSUANT TO LOCAL RULE 4001-2

38. Local Rule 4001-2 requires the Debtors to highlight certain provisions included in the DIP Credit Agreement and DIP Orders. The provisions identified by Local Rule 4001-2 included in the DIP Orders and the DIP Credit Agreement are as follows:

39. **Repayment of Prepetition Debt (Local Rule 4001-2(a)(i)(E))**. Local Rule 4001-2(a)(i)(E) requires a description of provisions which contemplate the use of postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt. *See* Del. Bankr. L. R. 4001-2(a)(i)(E). The Debtors propose to borrow or obtain cash advances under the DIP Loan Documents to repay a limited portion, \$4.0 million, of the amount owing under the Prepetition Revolving Credit Facility (the "*Expense Repayment*"). The Expense Repayment relates to funds advanced under the Prepetition Revolving Credit Facility prior to the Petition Date to pay restructuring and bankruptcy planning and preparation fees, costs, and expenses (including the funding of retainers) incurred by the Debtors prior to the Petition Date. *See* Interim DIP Order ¶ 15(j).

40. The Debtors submit that the Expense Repayment is justified because (a) it truly represents the reimbursement of costs associated with the Chapter 11 Cases which, to prepare for the Chapter 11 Cases, had to be incurred before the Petition Date and (b) the Debtors would not have been able to secure the postpetition financing on such advantageous terms without the Expense Repayment. All of the Debtors' assets are encumbered by the liens and security interests (the "*Prepetition Liens*") securing the obligations under the Prepetition Credit Agreement. No potential postpetition lender was willing to extend credit on a junior priority basis or on a senior basis with as generous terms as the DIP Lenders. Thus, without Expense Repayment, the Debtors would have been forced to pursue alternate, more expensive postpetition financing and engage in expensive, time-consuming, and uncertain litigation.

41. The Final DIP Order provides that the approval of the DIP Facility is without prejudice to the right of any statutory committee, or other party-in-interest, to contest or challenge the validity of debt under the Prepetition Credit Agreement, the Prepetition Master

Agreements, or the Prepetition Liens until the Challenge Period Deadline. *See* Interim DIP Order ¶ 6. For the foregoing reasons, the Expense Repayment under the Interim DIP Order, as an initial advance by the DIP Agent and DIP Lenders under the DIP Facility, is justified in light of the circumstances of these Chapter 11 Cases.⁵

42. **506(c) Waiver (Local Rule 4001-2(a)(i)(C))**: Pursuant to Local Rule 4001-2(a)(i)(c), a movant must describe any provision which constitutes a waiver by the Debtors of the provisions of section 506(c) of the Bankruptcy Code. *See, e.g.*, Interim DIP Order ¶ 15(e). This provision is justified because it was a condition to receiving the financing provided by the DIP Facility and the Debtors' use of Cash Collateral, which liquidity is essential for the Debtors to continue operations in the ordinary course of business and avoid immediate and irreparable harm to their estates. Nor will the proposed 506(c) waiver take effect until entry of the Final DIP Order, thereby providing parties-in-interest an opportunity to object and be heard on matters with respect thereto.

43. **Priming Liens (Local Rule 4001-2(a)(i)(G))**. Pursuant to Local Rule 4001-2(a)(i)(G), a movant must describe provisions of the proposed debtor in possession facility which contemplate a priming of any secured lien without the consent of that lienor. *See* Del. Bankr. L.R. 4001-2(a)(i)(G).

44. The DIP Facility is a "priming" facility inasmuch as the DIP Liens will be senior to the Prepetition Liens of the Prepetition Lenders on the Prepetition Collateral, subject to

⁵ Courts have approved debtor-in-possession financing facilities that provided for the immediate repayment in full of prepetition indebtedness owed pursuant to secured prepetition credit facilities. *See e.g., In re Radnor Holdings Corp.*, Case No 06-10894 (PJW) (Bankr. D. Del. September 22, 2006); *In re Ultimate Electronics, Inc.*, Case No. 05-10104 (PJW) (Bankr. D. Del. Feb. 14, 2005); *In re Comdial Corp.*, Case No. 05-11492 (MFW) (Bankr. D. Del. June 29, 2005); *In re Hoop Holdings*, Case No. 08-10544 (BLJ) (Bankr. D. Del. April 16, 2008); *In re Linen 'n Things*, Case No. 08-10832 (CSS) (Bankr. D. Del. May 28, 2008).

the terms and conditions of the Interim DIP Order and the DIP Loan Documents. *See, e.g.*, Interim DIP Order ¶ 5(a). The DIP Lenders have consented to the terms of the DIP Facility, including the priming of the Prepetition Liens securing any remaining obligations to them under the Prepetition Credit Agreement, subject to the terms and conditions of the Interim DIP Order and the DIP Loan Documents. Any Prepetition Lenders who choose not to participate in the DIP Facility, moreover, will receive adequate protection, among other things, in the form of replacement liens and super-priority administrative expense claims that are junior only to the Carve-Out and the liens and administrative claims of the DIP Lenders. Any equipment or other collateral subject to the Other Secured Debt is not included in the DIP Collateral.

45. The aforementioned circumstances demonstrate that the above-described provisions are justified and should be authorized as necessary and appropriate.

BASIS FOR EXPEDITED RELIEF

46. The Debtors bring this Motion on an expedited basis due to the immediate and irreparable harm that would be suffered by the Debtors' estates if the Debtors cannot enter into the DIP Loans and use Cash Collateral needed to sustain their businesses as a going concern. The Debtors have an immediate need to obtain the financing under the DIP Facility and use Cash Collateral to permit them to, among other things, continue (a) to operate their businesses, (b) to maintain business relationships with vendors, suppliers, and customers, (c) to pay employee wages in the ordinary course of business, (d) to make necessary capital expenditures, and (e) to satisfy other working capital and operational needs, all of which are necessary to preserve the Debtors' going-concern value.

47. Without access to the DIP Facility and the use of Cash Collateral as provided herein, the Debtors may have to curtail or eventually terminate their business

operations, to the material detriment of creditors, employees, and other parties-in-interest, and the Debtors' ability to implement any pre-packaged plan of reorganization could be materially delayed or entirely disrupted. The Debtors must ensure that working capital is available now, and the Debtors anticipate accessing the DIP Facility almost immediately. The Debtors must demonstrate to their customers, suppliers, and vendors that they have sufficient capital to ensure ongoing operations in the ordinary course during the prosecution of these Chapter 11 Cases. Important estate stakeholders must believe that they Debtors will maintain "business as usual" during their hopefully brief stay in bankruptcy.

BASIS FOR RELIEF REQUESTED

A. The Debtors Should Be Authorized to Use the Cash Collateral on an Interim Basis

48. The Debtors' use of property of their estate is governed by section 363 of the Bankruptcy Code, which provides in pertinent part that:

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

11 U.S.C. § 363(c)(1).

49. Pursuant to section 363(c)(2) of the Bankruptcy Code, the Court may authorize the Debtors to use Cash Collateral as long as the applicable secured creditor consents or is adequately protected. *See In re McCormick*, 354 B.R. 246, 251 (Bankr. C.D. Ill. 2006) (to use the Cash Collateral of a secured creditor, the debtor must have the consent of the secured creditor or must establish to the bankruptcy court that the secured creditor's interest in the Cash Collateral is adequately protected). "***Cash Collateral***" is defined as "cash, negotiable

instruments, documents of title, securities, deposit accounts or other cash equivalents in which the estate and an entity other than the estate have an interest." 11 U.S.C. § 363(a).

50. The Debtors have an urgent need for the immediate use of the Cash Collateral pending the final hearing on this Motion and seek to use all Cash Collateral existing on or after the Petition Date. The Debtors require the use of the Cash Collateral to, among other things, pay present operating expenses, including payroll and vendors, and ensure a continued supply of goods and services essential to the Debtors' continued viability. Without the use of the Cash Collateral, the Debtors will not be able to meet their cash requirements for working capital needs. The DIP Lenders do not object to the Debtors' use of the Cash Collateral, subject to the terms and conditions set forth in the Interim DIP Order and the DIP Loan Documents.

51. To the extent any Prepetition Lender does not consent to the Debtors' use of Case Collateral, such lender will be adequately protected. What constitutes sufficient adequate protection is decided on a case-by-case basis. *See In re Columbia Gas Sys., Inc.*, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *see also In re Realty Southwest Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725 (Bankr. S.D.N.Y.). By adequate protection, the Bankruptcy Code seeks to shield a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re Continental Airlines, Inc.*, 154 B.R. 176, 180-181 (Bankr. D. Del. 1993); *In re 495 Central Park Avenue Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992). Adequate protection is not expressly defined by the Bankruptcy Code except through examples provided by section 361 of the Bankruptcy Code. The flexibility provided by section 361(3), in particular, provides the Court with discretion in fashioning the protection provided to a secured party. *See In re Swedeland Dev.*

Group, Inc., 16 F.3d 552, 564 (3d Cir. 1994). Thus, adequate protection can come in various forms, including replacement liens and priority claims.

52. To the extent of any diminution in value of the Prepetition Lenders' Prepetition Collateral, the Prepetition Lenders are entitled to adequate protection of their interests in the Collateral pursuant to Bankruptcy Code sections 361, 363(e), and 364(d)(1). As adequate protection, the Interim DIP Order contemplates the following:

- a. the Prepetition Lenders will receive replacement liens, junior to (i) the Permitted Priority Liens, (ii) the Carve-Out, (iii) the DIP Liens and (iv) the Prepetition Liens on the Prepetition Collateral;
- b. the Prepetition Lenders will receive administrative priority claims junior to the Carve-Out and the Superpriority Claim;
- c. payment of professional fees and expenses, including attorneys' fees, financial advisor fees and other professionals and consultants (to the extent such other professionals and consultants are provided for in the Prepetition Credit Agreement), of the Prepetition Administrative Agent during the Chapter 11 Cases, whether incurred before or after the Petition Date;
- d. to the extent allowable under section 506(b) of the Bankruptcy Code, the accrual of interest under the Prepetition Credit Agreement at the default rate specified therein; and
- e. the Debtors' acknowledgement of the validity and amount of the obligations under the Prepetition Credit Agreement and Prepetition Liens securing such obligations, subject to right of any statutory committee (for a limited time period) and other non-debtor Persons to challenge such obligations and liens.

53. By virtue of their participation in the DIP Facility, the DIP Lenders have consented that the adequate protection provided by the DIP Orders is sufficient under the facts and circumstances of the Chapter 11 Cases. And, although other Prepetition Lenders have not so expressly consented to the use of Cash Collateral or the financing provided herein, the notice and adequate protection provided to such parties is sufficient under the facts and circumstances of the Chapter 11 Cases.

54. Thus, the Debtors seek authority to provide the Prepetition Lenders with replacement liens junior to the DIP Facility to the extent of any diminution in the value of their Prepetition Collateral. These liens will be junior to the DIP Liens. The Debtors have also provided all Prepetition Lenders with notice of this Motion. Moreover, the Debtors respectfully submit that their continued performance in the ordinary course of business with respect to the obligations owed to the Prepetition Lenders will allow those parties to hold at least as favorable a position as existed prior to the Petition Date. *See Swedeland Dev. Group*, 16 F.3d at 564 (noting that adequate protection exists where "the proposal . . . provide[s] the pre-petition secured creditor with the same level of protection it would have had if there had not been post-petition superpriority financing"). In fact, however, the Prepetition Lenders' position is actually substantially enhanced by approval of the DIP Facility. Absent the DIP Facility, the Debtors would have insufficient cash to operate and no alternative to a liquidation. In such liquidation, the Prepetition Lenders would receive only approximately 23.2% to 33.6% of the amount owed to them (the "**Liquidation Distribution**"). With the DIP Facility, the Debtors are able to finance their business operations until the Plan can be confirmed. The distribution to the Prepetition Lenders under the Plan, even after taking into consideration the full repayment of the DIP Facility, far exceeds the Liquidation Distribution.

55. Accordingly, the Debtors believe that the adequate protection described above is sufficient to protect against any diminution in the value of any party's interest in the Prepetition Collateral during the brief period such collateral is used by the Debtors during these Chapter 11 Cases.

56. Courts in this district have granted similar relief in other recent chapter 11 cases.⁶ See, e.g., *In re Sharper Image Corp.*, No. 08-10322 (KG) (Bankr. D. Del. March 7, 2008); *In re Buffets Holdings, Inc.*, No. 08-10141 (MFW) (Bankr. D. Del. Feb. 22, 2008); *In re Pope & Talbot, Inc.*, No. 07-11738 (CSS) (Bankr. D. Del. Dec. 7, 2007); *In re HomeBanc Mortgage Corp.*, No. 07-11079 (KJC) (Bankr. D. Del. Sept. 13, 2007).

B. The Debtors Should Be Authorized To Enter into the DIP Facility on the Terms Provided Herein

57. As set forth above, the Debtors' ability to maximize the value of their estates hinges upon being able to access postpetition financing. Section 364 of the Bankruptcy Code distinguishes among (a) obtaining unsecured credit in the ordinary course of business, (b) obtaining unsecured credit outside the ordinary course of business, and (c) obtaining credit with specialized priority or on a secured basis. Pursuant to section 364(c), if a debtor cannot obtain postpetition credit on an unsecured basis, a court may authorize such debtor to obtain credit or incur debt that is entitled to super-priority administrative expense status, secured by a senior lien on unencumbered property or secured by a junior lien on encumbered property. 11 U.S.C. § 364(c); *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990) (debtor must show that it made reasonable efforts to seek other sources of financing under sections 364(a) and (b)); *In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (debtor seeking unsecured credit under section 364(c) of the Bankruptcy Code must prove that it cannot obtain unsecured credit pursuant to section 364(b)).

⁶ The Debtors have not annexed copies of the unreported orders cited herein because of their size. Copies of these orders, however, are available upon request of the Debtors' counsel, including at the hearing to consider the Motion.

58. The Court is also permitted to authorize the incurrence of debt secured by a senior or equal lien on all property of the estate where the Debtors cannot otherwise obtain credit and there is adequate protection for junior or equal lienholders. *See* 11 U.S.C. § 364(d); *see also In re Phoenix Steel Corp.*, 39 B.R. 218, 222 n.9 (D. Del. 1984) (noting that debtor must show "it is unable to obtain credit otherwise" in order to obtain debt secured by liens provided under section 364(d) of the Bankruptcy Code).

59. Specifically, section 364(d)(1) provides, in relevant part, that a court may, after notice and a hearing:

authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if

- (A) the [debtor] is unable to obtain credit otherwise; and
- (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1).

60. Despite the foregoing, a debtor seeking financing under section 364(c) or (d) of the Bankruptcy Code is not required to seek credit from every possible source. *See, e.g., In re Ames Dep't Stores, Inc.*, 115 B.R. at 40 (holding that debtor made reasonable efforts to satisfy the standards of section 364(c) to obtain less onerous terms where debtor approached four lending institutions, was rejected by two and selected the least onerous financing option from the remaining two lenders); *see also Bray v. Shenandoah Fed. Sav. & Loan Assoc. (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) ("[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable"). Moreover, where few lenders likely can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *In re*

Sky Valley, Inc., 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom., Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Garland Corp.*, 6 B.R. 456, 461 (B.A.P. 1st Cir. 1980) (secured credit under section 364(c)(2) authorized, after notice and a hearing, upon showing that unsecured credit unobtainable); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court's finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); *Ames*, 115 B.R. at 37-39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

61. The focus of a bankruptcy court's approval of a financing agreement pursuant to section 364 should be whether the transaction would enhance the value of the debtor's assets. Courts advocate using a "holistic approach" to evaluate super-priority postpetition financing agreements that focuses on the transaction as a whole, not just on the priming of liens. *See In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991) ("Obtaining credit should be permitted not only because it is not available elsewhere, which could suggest the unsoundness of the basis for use of the funds generated by credit, but also because the credit acquired is of significant benefit to the debtor's estate and that the terms of the proposed loan are within the bounds of reason, irrespective of the inability of the debtor to obtain comparable credit elsewhere").

62. In furtherance of this approach, courts consider a number of factors, including, without limitation: (a) whether alternative financing is available on any other basis (*e.g.*, whether any better offers, bids, or timely proposals are before the court); (b) whether the proposed financing is necessary to preserve estate assets and is necessary, essential, and appropriate for continued operation of the debtor's business; (c) whether the terms of the

proposed financing are reasonable and adequate given the circumstances of both the debtor and proposed lender(s); (d) whether the proposed financing agreement adequately protects prepetition secured creditors; and (e) whether the proposed financing agreement was negotiated in good faith and at arm's length and entry thereto is an exercise of sound and reasonable business judgment and in the best interest of the debtors' estate and its creditors. *See Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003). Each of these considerations has been met here.

i. The DIP Facility Represents the Best Financing Available

63. As set forth above, the Debtors selected the financing proposal provided by the DIP Lenders only after approaching approximately 34 potential sources of financing. Peter J. Solomon, on the Debtors' behalf, made numerous inquiries regarding potential lenders' level of interest and willingness to enter into a confidentiality agreement with the Debtors. In the end, the DIP Lenders' proposal offered the greatest economic benefits and allowed the Debtors to potentially avoid the expensive and time-consuming process of pressing for the approval of the DIP Credit Agreement over the objections of a majority of the Prepetition Lenders.

64. The Debtors believe it is imperative that they obtain postpetition financing with the consent of a majority of their Prepetition Lenders. A contested proceeding to use Cash Collateral or obtain a priming debtor-in-possession loan at the inception of the Chapter 11 Cases where the objecting parties include a majority of the Debtors' Prepetition Lenders could delay the Debtors' restructuring, incur significant costs, and erode the confidence of employees, vendors, and other creditor constituencies, endangering the long-term viability of the Debtors, regardless of the trial outcome. Accordingly, the Debtors' efforts to obtain postpetition financing satisfy the statutory requirements of section 364 of the Bankruptcy Code.

ii. *The DIP Facility Is Necessary to Preserve the Assets of the Debtors' Estates*

65. As debtors in possession, the Debtors have a fiduciary duty to protect and maximize the estate's assets. See *In re Mushroom Transp. Co., Inc.*, 382 F.3d 325, 339 (3d Cir. 2004); *Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003). The DIP Facility, if approved, will first be used to complete the Expense Repayment and will thereafter provide essential working capital, allowing the Debtors to continue funding their day-to-day operations until the Plan is confirmed. Without the DIP Facility, the Debtors will be unable to preserve the going-concern value of their estates, thereby endangering the success of these Chapter 11 Cases.

66. The initial success of the Chapter 11 Cases and the stabilization of the Debtors' operations at the outset thereof depend on the confidence of the Debtors' employees, vendors, service providers, and customers, which in turn depends upon the Debtors' ability to minimize the disruption inherent to any bankruptcy filing. The Debtors are suffering severe liquidity constraints and cannot continue to operate without additional financing. If the relief sought in this Motion is delayed or denied, an immediate liquidation could ensue or, at the very least, the resulting business disruption could severely damage the Debtors' ability to reorganize. In contrast, approval of the DIP Facility will assure the Debtors' continued operations and smooth transition into bankruptcy, allowing the Debtors to preserve the going concern value of their estates.

iii. *The Terms of the DIP Credit Agreement Are Reasonable and Adequate Under the Circumstances*

67. The DIP Credit Agreement was negotiated in good faith and at arm's length among the parties, culminating in a carefully crafted agreement designed to maintain the Debtors' business as a going concern and preserve value for all parties-in-interest. Given the

urgent needs of the Debtors to obtain financial and operational stability for the benefit of all parties in interest, the terms of the proposed DIP Credit Agreement are the best available. Indeed, when viewed in their totality, the DIP Credit Agreement reflects the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and supported by fair consideration.

iv. The Debtor's Proposed Adequate Protection Is Appropriate

68. The proposed adequate protection is comprised of the "customary package" of the payment of fees and expenses of the Prepetition Administrative Agent's professionals, and the granting of liens and super-priority claims in respect of any diminution in value during the Chapter 11 Cases. This adequate protection, subject to the other terms and conditions set forth in the Interim DIP Order, has been consented to by the DIP Lenders.

v. The Debtors Have Exercised their Business Judgment in Entering into the DIP Credit Agreement

69. Bankruptcy courts routinely accept a debtor's business judgment on many business decisions, including the decision to borrow money. *See, e.g., Group of Inst. Investors v. Chicago, Mil., St. P. & Pac. Ry.*, 318 U.S. 523, 550 (1943) (holding that decisions regarding assumption or rejection of leases are left to the business judgment of the debtor); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985) ("[b]usiness judgments should be left to the board room and not to this Court"). Further, one court has noted that "[m]ore exacting scrutiny [of the debtors' business decisions] would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

70. Bankruptcy courts generally will defer to a debtor-in-possession's business judgment regarding the need for and the proposed use of funds, unless such decision is arbitrary and capricious, *In re Curlew Valley Assocs.*, 14 B.R. 506, 511-13 (Bankr. D. Utah 1981); *see also In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving interim loan, receivables facility, and asset-based facility based upon prudent business judgment of the debtor), and generally will not second-guess a debtor-in-possession's business decisions involving "a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the [Bankruptcy] Code." *Curlew Valley*, 14 B.R. at 513-14 (footnotes omitted).

71. As described above, the Debtors have exercised sound business judgment in determining the appropriateness of the DIP Facility and have satisfied the legal prerequisites to incur debt on the terms and conditions set forth in the DIP Credit Agreement. The DIP Credit Agreement contains terms that are the best available under the circumstances.

72. The funds provided by the DIP Facility are essential to enable the Debtors to retain the confidence of vendors and customers and ensure the continued supply of goods and services they need to sustain their operations and maintain a competitive position in the marketplace through the pendency of these Chapter 11 Cases. Indeed, failure to obtain approval of the DIP Facility will irreparably harm the going-concern value of the Debtors' business which, in turn, will adversely affect the value ultimately received by their stakeholders.

73. Accordingly, pursuant to sections 364(c) and (d), the Debtors respectfully submit that they should be granted authority to enter into the DIP Credit Agreement and obtain funds from the DIP Lenders on the secured and administrative super-priority basis described herein.

vi. *Modification of the Automatic Stay is Warranted*

74. The proposed Interim DIP Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code are, to the extent applicable, vacated and modified to allow the DIP Agent and the DIP Lenders to, among other things, upon an event of default under the DIP Loan Documents or the proposed Interim DIP Order, and subject to three (3) business days prior written notice to the Borrower, its counsel, and the U.S. Trustee, exercise all rights and remedies provided for in the DIP Loan Documents, the Interim DIP Order or under other applicable bankruptcy and non-bankruptcy law. *See* Interim DIP Order, ¶ 15(b).

75. Stay modification provisions of this sort are ordinary and usual features of postpetition financing facilities and, in the Debtors' business judgment, are reasonable under the present circumstances. Accordingly, the Court should modify the automatic stay to the extent contemplated by the DIP Credit Agreement and the DIP Orders.

INTERIM APPROVAL OF THE DIP FACILITY SHOULD BE GRANTED

76. The Debtors respectfully submit that interim approval of their use of the DIP Facility as provided by the Interim DIP Order is appropriate under the circumstances of these Chapter 11 Cases. As set forth above, Bankruptcy Rule 4001(c) permits a court to approve a debtor's request for financing during the 15-day period following the filing of a motion requesting authorization to obtain postpetition financing "only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(c)(2).

77. A key element of the Debtors' prosecution of these Chapter 11 Cases and performance under any pre-packaged plan of reorganization requires the Debtors to continue operations in the ordinary course of business. Accordingly, and given the immediate and irreparable harm to be suffered by the Debtors absent interim relief, the Debtors respectfully

request that the Court schedule and conduct a preliminary hearing on this Motion and authorize the Debtors, from the entry of the Interim DIP Order until the final hearing, to obtain credit under the terms contained in the DIP Credit Agreement and to utilize Cash Collateral. The interim authority will allow the Debtors to maintain ongoing operations and avoid immediate and irreparable harm and prejudice to their estates and all parties in interest pending a final hearing on the DIP Facility. The Debtors believe \$40 million is absolutely necessary on an interim basis. The Debtors are dependent on suppliers and builder customers that make business decisions to transact with the Debtors based, in part, on the financial ability of the Debtors to perform.

- Customers depend on the Debtors to supply materials and services over a period of time. For example, a customer may obtain a quote from the Debtors and then issue purchase orders for different phases in a subdivision. If the full \$40 million is not approved on an interim basis, the customers may doubt if the Debtors can meet their commitment to perform in the future and either use another supplier or split the job with another supplier.
- Vendors track the Debtors' credit status carefully. Accordingly, interim advances under DIP Facility of less than \$40 million could result in shortened payment terms and risk adjusted pricing.

REQUEST FOR WAIVER OF STAY

78. To implement the foregoing, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), any order authorizing the use, sale, or lease of property other than Cash Collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise. As set forth above, the DIP Credit Agreement and use of Cash Collateral are essential to prevent potentially irreparable damage to the Debtors' operations. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 10-day stay imposed by Bankruptcy Rule 6004(h).

NOTICE

79. No trustee, examiner, or creditors' committee has been appointed in these chapter 11 cases. The Debtors have provided notice of filing of the Motion either by electronic mail or facsimile and/or by overnight mail to: (a) the Office of the United States Trustee for the District of Delaware; (b) the 50 largest unsecured creditors of the Debtors on a consolidated basis as identified in the Debtors' chapter 11 petitions; and (c) counsel to WFB, as agent for both of the Prepetition Lenders and DIP Lenders (collectively, the "*Notice Parties*"). As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). Due to the nature of the relief requested, the Debtors respectfully submit that no further notice of the hearing on interim financing is required.

80. The Debtors further respectfully request that the Court schedule the Final Hearing and authorize them to mail copies of the signed Interim DIP Order, which fixes the time, date, and manner for the filing of objections, to the Notice Parties and (a) any party that has filed prior to such date a request for notices with this Court; and (b) counsel for any official committee(s). The Debtors request that the Court consider such notice of the Final Hearing, including without limitation, notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under Bankruptcy Code Section 506(c) to be sufficient notice under Bankruptcy Rule 4001 and Local Rule 2002-1.⁷

⁷ Local Rule 2002-1(b) provides that "[i]n chapter 11 cases, all motions . . . shall be served only upon counsel for the debtor, the United States Trustee, counsel for all official committees, all parties who file a request for service of notices under Bankruptcy Rule 2002 and all parties whose rights are affected by the motion. If an official unsecured creditors' committee has not been appointed, service shall be made on the twenty (20) largest unsecured creditors in the case in lieu of the creditors' committee."

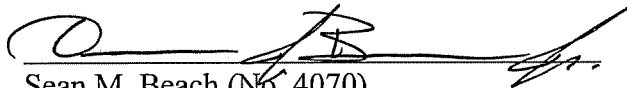
NO PRIOR REQUEST

81. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware
June 16, 2009

YOUNG CONAWAY STARGATT &
TAYLOR, LLP



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PROPOSED ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:)	
)	Chapter 11
BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i> , ¹)	Case No. 09-12074 ()
Debtors.)	Jointly Administered
)	
)	

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO
(A) OBTAIN POSTPETITION SECURED FINANCING
AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING LIENS AND
SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING
ADEQUATE PROTECTION TO PREPETITION LENDERS, (IV) MODIFYING
THE AUTOMATIC STAY AND (V) SCHEDULING A FINAL HEARING**

Upon the motion (the "**DIP Motion**"), dated June 16, 2009, of Building Materials Holding Company ("**BMHC**" or the "**Borrower**") and its debtor affiliates, as debtors and debtors in possession (the "**Debtors**") for entry of an order authorizing the Debtors to, among other things:

(i) enter into (a) a Debtor in Possession Credit Agreement (the "**DIP Credit Agreement**"), attached hereto as **Exhibit 1** (as such agreement may be amended or modified from time to time),² by and among, BMHC, the guarantors party thereto (collectively, the "**Guarantors**"), and the other lenders from time to time party thereto (collectively, the "**Lenders**") and Wells Fargo Bank, National Association ("**WFB**"), as the Agent for the

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792).

² Each capitalized term used in this Order, but not defined herein, shall have the meaning ascribed to it in the DIP Credit Agreement.

Lenders (the "Agent"); and (b) all other loan documents (together with the DIP Credit Agreement, the "DIP Loan Documents");

(ii) borrow, on an interim basis, pursuant to the DIP Loan Documents, postpetition financing in an aggregate principal amount of up to \$40,000,000 (the "Interim Commitment Amount") and seek other financial accommodations from the Lenders pursuant to the DIP Credit Agreement, the other DIP Loan Documents, and this Order;

(iii) borrow, on a final basis, pursuant to the DIP Loan Documents, postpetition financing in an aggregate principal amount of up to \$80,000,000 (subject to certain borrowing base and other restrictions as set forth in the DIP Credit Agreement) and seek other financial accommodations from the Lenders pursuant to the DIP Credit Agreement, the other DIP Loan Documents, and this Order;

(iv) grant priming liens, security interests, and mortgages in substantially all of the Debtors' assets (subject to certain exceptions more fully set forth in the DIP Loan Documents and this Order) to secure repayment of the borrowings made under the DIP Loan Documents by, and financial accommodations made to, the Debtors;

(v) grant superpriority administrative expense status to the claims of the Agent and the Lenders under the DIP Loan Documents;

(vi) use the proceeds arising from the DIP Loan Documents in a manner consistent with the terms and conditions of the DIP Loan Documents and this Order;

(vii) use "Cash Collateral" (the "Cash Collateral") as such term is defined in section 363(a) of title 11 of the United States Code (the "Bankruptcy Code");

(viii) grant, as set forth more fully below, replacement liens and superpriority claims to the Prepetition Lenders (as defined below) only to the extent of any diminution in value

of such Prepetition Lenders' respective interests in property of the Debtors or their estates, as adequate protection for the use of Cash Collateral;

(ix) vacate and modify the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Order;

(x) pay all amounts contemplated to be paid under the DIP Documents (as defined below), including all fees and expenses set forth therein;

(xi) schedule a hearing (the "**Final Hearing**") to consider entry of a final order (the "**Final Order**") which, among other things, approves, on a final basis, the DIP Documents; and

(xii) waive any applicable stay of the effectiveness of this Order and provide for the immediate effectiveness of this Order.

The Court having considered the DIP Motion, examined the exhibits attached thereto, and having completed an interim hearing (the "**Interim Hearing**") as provided for under section 364 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and finding the Debtors provided adequate notice to all necessary parties and that no further notice is required:

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. **Petition Date.** Commencing on June 16, 2009 (the "**Petition Date**"), the Debtors each filed voluntary petitions under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**") with the United States Bankruptcy Court for the District of Delaware (the "**Court**"). The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee

or examiner has been appointed in the Chapter 11 Cases.

B. **Jurisdiction and Venue.** This Court has jurisdiction over these proceedings pursuant to sections 157(b) and 1334 of title 28 of the United States Code and over the persons and property affected hereby. This Court's consideration of the DIP Motion constitutes a core proceeding under section 157(b)(2) of title 28 of the United States Code. Venue for these cases and the proceedings regarding the DIP Motion is proper in this district under sections 1408 and 1409 of title 28 of the United States Code.

C. **Committee Formation.** As of the date hereof, the United States Trustee for the District of Delaware (the "**United States Trustee**") has not yet appointed an official committee of unsecured creditors in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (a "**Creditors' Committee**").

D. **The Prepetition Credit Agreement.** BMHC, as borrower, the other Debtors, as guarantors, WFB, as administrative agent (the "**Prepetition Administrative Agent**"), and the lenders party thereto (together with the Prepetition Administrative Agent, the "**Prepetition Credit Agreement Lenders**") are parties to the Second Amended and Restated Credit Agreement, dated as of November 10, 2006 (as amended, the "**Prepetition Credit Agreement**"). The Prepetition Credit Agreement provides for a \$340 million term loan facility maturing November 2011 (the "**Prepetition Term Loan**") and a \$200 million revolving credit facility maturing November 2011 (the "**Prepetition Revolving Credit Facility**"). In addition, the Debtors caused to be issued various letters of credit (the "**Prepetition Letters of Credit**") in favor of certain of the Debtors' creditors. WFB issued the Prepetition Letters of Credit under the terms of the Prepetition Credit Agreement, by which the outstanding Prepetition Letters of Credit reduce the \$200 million amount available to the Debtors under the Prepetition Revolving Credit

Facility.

E. **The Swap Transactions.** The Debtors are party to two ISDA Master Agreements, (a) an ISDA Master agreement with BNP Paribas dated as of April 7, 2004 (along with all schedules, confirmations, and amendments to the same, the "**BNP Paribas Master Agreement**") and (b) an ISDA Master agreement with Suntrust Bank dated as October 10, 2006 (along with all schedules, confirmations, and amendments to the same, the "**Suntrust Bank Master Agreement**" and, together with the BNP Paribas Master Agreement, the "**Prepetition Master Agreements**"). The Prepetition Master Agreements govern multiple Transactions (as defined in the Prepetition Master Agreements) between the parties. For purposes of this Order, the term "**Prepetition Lenders**" shall mean the Prepetition Credit Agreement Lenders, BNP Paribas, and Suntrust Bank, in each case, in their capacities under the Prepetition Master Agreements.

F. **Other Secured Debt.** The Debtors' other long-term secured debt ("**Other Secured Debt**") consists of term notes, equipment notes, and capital leases for equipment that total approximately \$1.3 million. The interest rates on these borrowings vary and the dates of maturity extend through March 2021.

G. **Prepetition Indebtedness and Documents.** For purposes of this Order: (i) the term "**Prepetition Lender Debt**" shall mean all indebtedness and other amounts owed under the Prepetition Credit Agreement and the Prepetition Master Agreements and (ii) the term "**Prepetition Documents**" shall mean the Prepetition Credit Agreement, the Prepetition Security Agreement (as defined below), and the Prepetition Master Agreements, and all other agreements, documents, notes, instruments, and any other agreements delivered pursuant thereto or in connection therewith.

H. **Prepetition Liens.** To secure the Prepetition Lender Debt, the Debtors granted the Prepetition Lenders valid liens and senior security interests (the "**Prepetition Liens**") upon and in substantially all of the Debtors' property and assets (the "**Prepetition Collateral**"). The Prepetition Credit Agreement is secured pursuant to that certain Third Amended and Restated Security Agreement by and among the Debtors and the Prepetition Administrative Agent, dated as of November 10, 2006 (the "**Prepetition Security Agreement**"), which grants the Prepetition Credit Agreement Lenders a security interest in substantially all of the Debtors' assets. Obligations under the Prepetition Master Agreements, moreover, are secured by the Prepetition Collateral, and the resulting security interests are *pari passu* with that created under the Prepetition Security Agreement.

I. **Debtors' Stipulations.**

i. In requesting postpetition financing under the DIP Loan Documents, the Debtors acknowledge, represent, stipulate, and agree that in entering into the DIP Loan Documents, and as consideration therefor, that until such time as all non-contingent obligations under the DIP Credit Agreement (the "**DIP Obligations**") are paid in full and the commitments related thereto are terminated in accordance with the terms of the DIP Loan Documents, the Debtors shall not in any way grant, seek to grant, or cause to be granted any lien and/or claim that is senior to or *pari passu* with any of the liens, security interests, and claims provided under this Order to the Agent or the Lenders, including, without limitation, by offering a subsequent lender or any other party a superior or *pari passu* lien or claim pursuant to Bankruptcy Code section 364(d), or otherwise, except with respect to the Permitted Priority Liens³ and the Carve-Out (as defined herein).

³ For the purposes of this Order, "**Permitted Priority Liens**" shall mean, among others, certain prepetition liens for taxes, fees, assessments or other governmental charges which are not delinquent or remain

ii. The Debtors acknowledge, represent, stipulate, and agree that as of the Petition Date (A) the aggregate unpaid principal amount of the Prepetition Lender Debt is approximately \$310.3 million and the outstanding face amount of all undrawn letters of credit under the Prepetition Credit Agreement of approximately \$112.5 million, exclusive of accrued but unpaid interest, fees, costs, and expenses incurred, or anticipated to be incurred, in connection therewith, as provided under the Prepetition Credit Agreement and/or the Prepetition Master Agreements; (B) all of the Prepetition Lender Debt under the Prepetition Credit Agreement is unconditionally due and owing by the Debtors to the Prepetition Credit Agreement Lenders; (C) all claims in respect of the Prepetition Lender Debt are not subject to any avoidance, reductions, disallowance, set off, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, or any other challenges under the Bankruptcy Code or any other applicable law or regulation; and (D) the Debtors have waived, discharged, and released any right they may have to challenge any of the Prepetition Lender Debt and the security for those obligations and to assert any offsets, defenses, claims, objections, challenges, causes of action, and/or choses of action against the Prepetition Administrative Agent and the Prepetition Lenders and any of their respective affiliates, parents, subsidiaries, agents, attorneys, advisors, professionals, officers, directors, and employees;

(continued...)

payable without penalty, or which are being contested in good faith and by appropriate proceedings, if adequate reserves in accordance with GAAP are maintained by BMHC or such subsidiary, which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto; carriers', warehousemen's, mechanics', landlords', materialmen's, repairmen's or other similar liens arising in the ordinary course of business which are not delinquent or which are being contested in good faith and by appropriate proceedings, if adequate reserves in accordance with GAAP are maintained by BMHC or such subsidiary, which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto; liens (other than any lien imposed by ERISA and other than on the Collateral) consisting of pledges or deposits required in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation; and easements, rights of way, restrictions and other similar encumbrances incurred in the ordinary course of business which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the businesses of BMC and its subsidiaries.

provided, however, that the Debtors' waiver, discharge, and release under this paragraph shall only relate to claims and security arising under or related to the Prepetition Documents.

iii. The Debtors acknowledge, represent, stipulate, and agree that as of the Petition Date and immediately prior to giving effect of this Order, the Prepetition Documents are valid and binding agreements and obligations of the Debtors and the Prepetition Liens (A) constitute valid, binding, enforceable, and first-priority properly perfected security interests and liens on the Prepetition Collateral; and (B) are not be subject to avoidance, reductions, disallowance, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, or any other challenges under the Bankruptcy Code or any other applicable law or regulation by any person or entity.

J. **Notice.** The Interim Hearing was held in accordance with Bankruptcy Rule 4001 and Local Rule 4001-2. Notice of the Interim Hearing and the relief requested in the DIP Motion was provided by the Debtors on June 16, 2009, whether by telecopy, email, overnight courier, or hand delivery, to parties-in-interest, including: (i) the Office of the United States Trustee; (ii) the Securities and Exchange Commission; (iii) the Internal Revenue Service; (iv) WFB, as Agent and Prepetition Administrative Agent; (v) BNP Paribas; (vi) Suntrust Bank; (vii) the parties listed on the Debtors' list of thirty (30) largest unsecured creditors; and (viii) counsel to the Agent and Prepetition Administrative Agent. Such notice of the Interim Hearing and the relief requested in the DIP Motion is due and sufficient notice and complies with sections 102(1) and 364 of the Bankruptcy Code; Bankruptcy Rules 2002, 4001(c), 4001(d); and the Local Rules.

K. **Need for Postpetition Financing.** Entry of this Order is necessary to prevent substantial harm to the Debtors' estates that would otherwise result if the Debtors fail to

obtain the financing contemplated herein to preserve the Debtors' assets and continue their operations. The Debtors' businesses have an immediate need to obtain the postpetition financing under the DIP Loan Documents in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers, and customers, to make payroll, to make capital expenditures and to satisfy other working capital and operational, financial, and general corporate needs. The Debtors will suffer substantial harm unless this Court immediately authorizes the Debtors to obtain loans and other financial accommodations from the Lenders in accordance with the terms of this Order, the DIP Loan Documents, and any other documents, instruments, or agreements related thereto or delivered or executed in connection therewith (the DIP Loan Documents, together with such documents, instruments, and agreements, the "**DIP Documents**").

L. **No Comparable Credit Available on More Favorable Terms.** The Debtors have made reasonable efforts, under the circumstances, to locate financing of the type contemplated by this Order, and the Court expressly finds that the Debtors are unable to obtain, in the ordinary course of business or otherwise, financing of the type contemplated herein on an unsecured basis. Specifically, the Debtors have been unable to obtain unsecured credit allowable under sections 364(a), 364(b), 364(c)(1), and 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit, allowable under Bankruptcy Code sections 364(c) and 364(d), on more favorable terms and conditions than those provided in the DIP Documents and this Order.

M. **Lenders' Requirements.** The Lenders are willing to lend money and provide other financial accommodations to the Debtors only on the terms and conditions and with the protections provided herein and in the DIP Documents and are relying on such terms,

conditions, and protections in agreeing to lend money and provide financial accommodations to the Debtors hereunder.

N. **Use of Cash Collateral.** The Debtors also require the use of Cash Collateral to operate their business. Without the use of Cash Collateral, the Debtors will not be able to meet their cash requirements for working capital needs. The Agent and the Lenders consent to the use of their Cash Collateral under the Prepetition Credit Agreement on the terms and conditions, and for the purposes, specified herein and in the DIP Loan Documents. The adequate protection provided herein and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code and are necessary in order to obtain such consent or non-objection of such parties and to adequately protect non-consenting parties' interests in the Prepetition Collateral.

O. **Good Cause.** The ability of the Debtors to obtain sufficient working capital and liquidity and use of Cash Collateral under this Order and the DIP Loan Documents is vital to the Debtors' estate and creditors. The liquidity to be provided pursuant to the receipt of the Interim Commitment Amount and through the use of Cash Collateral will enable the Debtors to continue to operate their businesses in the ordinary course and preserve the value of the Debtors' businesses. The Debtors' estate will be immediately and irreparably harmed if this Order is not entered. Good Cause has, therefore, been shown for the relief sought in the DIP Motion, as modified herein.

P. **Good Faith.** The terms and conditions of the use of Cash Collateral and the DIP Documents have been negotiated in good faith and at arms' length by all parties involved and reflect the Debtors' exercise of prudent business judgment, and the Agent and the Lenders and the Debtors have offered sufficient proof thereof. Accordingly, the Court expressly finds

that the terms of this Order and the DIP Documents have been extended in good faith and that any credit extended, loans to be made, or other financial accommodations granted to the Debtors pursuant to this Order and the DIP Documents shall, in each case, be deemed to be extended in good faith, as that term is used in section 364(e) of the Bankruptcy Code.

Q. **506(c) and 552(b) Waivers.** In light of the Lenders' agreement to subordinate their liens and superpriority claims to the Carve-Out and the Permitted Priority Liens, as applicable, subject to entry of a Final DIP Order, the Lenders and the Prepetition Lenders are entitled to a waiver of (i) the provisions of section 506(c) of the Bankruptcy Code and (ii) any "equities of the case" claims under section 552(b) of the Bankruptcy Code, in each case, in respect of the DIP Documents.

R. **Immediate Entry of the Order.** The Debtors have requested that this Order become immediately effective and enforceable upon entry pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). The DIP Motion and this Order comply with Local Rule 4001-2. The Debtors have demonstrated good cause for the entry of this Order and for this Order to become immediately effective and enforceable upon entry. Among other things, entry of this Order and the immediate effectiveness and enforceability of this Order upon entry will minimize the disruption of the Debtors' business operations and permit the Debtors to satisfy their operating expenses, will increase the potential for confirmation of a successful chapter 11 plan for the Debtors, and are in the best interests of the Debtors, their creditors, and the Debtors' estates. The terms of the borrowings and other financial accommodations authorized hereby are fair and reasonable under the circumstances and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

S. **Entitlement to Adequate Protection.** As a result of the grant of the DIP

Liens, subordination to the DIP Liens, the Permitted Priority Liens, and the Carve-Out, the use of the Prepetition Collateral authorized herein, and the imposition of the automatic stay under section 362 of the Bankruptcy Code, the Prepetition Lenders are entitled to adequate protection only to the extent of the diminution of the value of the Prepetition Collateral, pursuant to sections 361, 362, and 363 as set forth herein. The Debtors have agreed, in the exercise of their sound business judgment, to provide adequate protection to the Prepetition Lenders on the terms and conditions set forth in this Order, which terms and conditions are fair and reasonable and were negotiated in good faith and at arms' length.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. **Motion Granted.** The DIP Motion is granted on an interim basis in accordance with the terms and conditions set forth in this Order and the DIP Documents. Any objections and reservations of rights included therein, to the extent not withdrawn with prejudice, settled, or resolved are hereby overruled on the merits. This Order shall be valid, binding on all parties in interest, and fully effective immediately upon entry notwithstanding the possible application of Bankruptcy Rules 6004(h), 7062, and 9014.

2. **Authorization.**

(a) Upon execution and delivery of the DIP Credit Agreement and the other DIP Documents and provided that the Debtors are not in default under the terms of this Order, the Debtors shall be and hereby are authorized to borrow money and seek other financial accommodations on an interim basis, in the aggregate principal amount of up to the Interim Commitment Amount, from the Lenders on the terms and conditions contained in this Order and the DIP Documents. The DIP Documents, including, without limitation, the DIP Credit Agreement, are expressly approved by this Court. To effectuate and evidence the terms and

conditions of the borrowings and extensions of credit and other financial accommodations to be made to the Debtors by the Lenders pursuant to the terms of this Order, the Debtors are hereby authorized and directed to enter into the DIP Credit Agreement substantially in the form appended as **Exhibit 1** hereto and any other DIP Documents that may be entered into in connection with the DIP Credit Agreement, which agreements are hereby expressly approved by this Court and, subject to entry of the Final Order by the Court, to repay a limited portion, \$4.0 million, of the amount owing under the Prepetition Revolving Credit Facility (as described in greater detail below).

(b) Subject to the terms of this Order and the DIP Documents, the Debtors are authorized and directed to use Cash Collateral in which the Prepetition Administrative Agent and/or the Prepetition Lenders may have an interest, in accordance with the terms, conditions, and limitations set forth in this Order and/or the DIP Loan Documents, without further approval by this Court. Any dispute in connection with the use of Cash Collateral in accordance with the DIP Loan Documents and this Order shall be heard by this Court.

3. **Enforceable Obligations.** Upon execution and delivery of the DIP Credit Agreement and the other DIP Documents, such agreements and documents shall constitute valid and binding obligations of the Debtors, enforceable against the Debtors, their estates, and any successors thereto and their creditors in accordance with their terms.

4. **Superpriority Administrative Claim Status.** The Agent, for the benefit of itself and the Lenders, is hereby granted an allowed superpriority expense claim (the "**Superpriority Claim**") against the Borrower and each Guarantor pursuant to section 364(c)(1) of the Bankruptcy Code, with priority over all other costs and expenses of the kinds specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 363, 364, 503(b), 506(c),

507(a), 507(b), 546, 726, 1113, and 1114 of the Bankruptcy Code, subject and subordinate only to the Carve-Out, and at all times, senior to the rights of the Debtors or any successor trustee, examiner, or responsible person, and not subject to subordination, impairment, or avoidance, in the Chapter 11 cases and in any successor case or proceeding under the Bankruptcy Code or otherwise.

5. **Post-Petition Liens.** Upon entry of this Order, the Agent and the Lenders shall be and hereby is granted, as of the date hereof, valid, perfected, enforceable, and non-avoidable first priority priming liens on and senior security interests (the "**DIP Liens**") in all of the property, assets, or interests in property or assets of BMHC and each Guarantor, of any kind or nature whatsoever, real or personal, now existing or hereafter acquired or created (including all property of the estate (within the meaning of the Bankruptcy Code), all accounts, deposit accounts, money, letter of credit rights, commercial tort claims, inventory, contract rights, instruments, documents, chattel paper, general intangibles, machinery and equipment, real property, leases, capital stock or other equity interests in any subsidiary, intercompany claims, and investment property, and all other causes of action arising under the Bankruptcy Code or otherwise, and all proceeds, rents, products, and profits of any of the foregoing) (the "**Collateral**"), which DIP Liens shall not be subject to subordination, impairment, or avoidance, for all purposes in the Chapter 11 Cases and any successor case or proceeding under the Bankruptcy Code or otherwise; provided, however, that "Collateral" shall not include: (i) any agreements, contracts, permits, or licenses only if and to the extent that the granting of a lien as contemplated hereby would (A) constitute a violation of a restriction in favor of a third party on such grant, (B) give any other party to such contract, instrument, license, license agreement, or other document the right to terminate its obligations thereunder, or (C) violate any law (other

than (but only in respect of agreements or contracts not constituting a document evidencing a Capital Lease or purchase money obligation) to the extent that any such term described in the preceding clauses (A), (B) or (C) would be rendered ineffective pursuant to Section 9-406, 9-407 or 9-408 of the UCC (or any successor provision or provisions)) ("**Excluded Contracts and Leases**"); provided, further, that any agreement, contract, permit or license that does not constitute "Collateral" pursuant to this sentence shall immediately become "Collateral," and the Loan Parties, as applicable, shall be deemed to have granted a lien therein, from and after such time as the other party to such agreement, contract, permit or license consents to the grant of a Lien in such agreement, contract, permit or license in favor of the Collateral Agent or the prohibition against granting a lien therein otherwise ceases to be effective; and provided, further, that with respect to Excluded Contracts and Leases, Collateral shall include the proceeds from the disposition of Excluded Contracts and Leases whether now or hereafter arising, whether tangible or intangible, and wherever located; (ii) any equipment subject to certain long-term secured debt consisting of the term notes, equipment notes and capital leases set forth on Part I of Schedule 1.01A of the DIP Credit Agreement and any other equipment in which any Loan Party has rights if and for so long as the grant of a security interest therein shall constitute or result in a breach or termination pursuant to the terms of, or a default under, any capital lease or purchase money agreement entered into in connection with the acquisition or financing of such equipment; provided, however, that such security interest shall attach immediately at such time as the term restricting the attachment of a security interest in such equipment is no longer operative or the attachment of a security interest in such equipment would not constitute or result in a breach or termination pursuant to the terms of, or a default under, the capital lease or purchase money agreement governing such equipment; (iii) any trademark applications filed in the United States

Patent and Trademark Office on the basis of a Loan Party's "intent-to-use" such trademark to the extent that granting a security interest in such trademark application prior to such filing would adversely affect the enforceability or validity or result in the voiding of such trademark application, unless and until acceptable evidence of use of the Trademark has been filed with and accepted by the United States Patent and Trademark Office pursuant to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C. 1051, et seq.), whereupon such Trademark application will be deemed automatically included in the Collateral; (iv) any Avoidance Actions; (v) the insurance-related cash collateral accounts set forth on Schedule 1.01B of the DIP Credit Agreement, the aggregate balances of which shall not exceed \$4,000,000 at any point in time without the prior written consent of the Administrative Agent; or (vi) the real property set forth on Part II of Schedule 1.01A of the DIP Credit Agreement:⁴

(a) Senior Lien Priority. The DIP Liens shall not at any time be (i) made subject or subordinate to, or made *pari passu* with any other lien, security interest, or claim existing as of the Petition Date, or created under Bankruptcy Code sections 363 or 364(d) or otherwise other than the Permitted Priority Liens and the Carve-Out or (ii) made subject to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estate under Bankruptcy Code section 551.

(b) Perfection of Postpetition Liens. The Agent and the Lenders shall not be required to file or record financing statements, mortgages, notices of liens, or other documents in any jurisdiction or take any other action in order to validate, perfect, or establish the priority of the DIP Liens granted to them by this Order or the DIP Loan Documents. The DIP Liens granted in this Order and in the DIP Loan Documents to secure repayment of any of

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For the avoidance of doubt, the Collateral shall not include equipment and other assets pledged as collateral with respect to the Other Secured Debt.

the DIP Obligations are deemed perfected hereby and no further notice, filing, or other act shall be required to effect such perfection. If the Agent and the Lenders shall, in their sole discretion, choose to file (in accordance with the terms and conditions set forth in the DIP Loan Documents) financing statements, mortgages, or other documents or otherwise confirm perfection of such security interests, liens, and mortgages, the Agent and the Lenders are authorized (to the extent not prohibited by the DIP Loan Documents) to effect such filings and recordings and all such financing statements, mortgages, or similar documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Order. The automatic stay imposed by section 362(a) of the Bankruptcy Code shall not limit the right of the Agent or the Lenders to take such steps as it determines in its discretion are necessary or desirable to perfect any of the DIP Liens, even absent an event of default under the DIP Facility. A photocopy of this Order may, in the discretion of the Lenders and the Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, notices of lien, or similar instruments, and all filing offices are directed hereby to accept such copy of this Order for filing and recording.

(c) Term. The DIP Liens, Superpriority Claim, and other rights and remedies granted under this Order to the Agent and the Lenders shall continue in the Chapter 11 Cases and any successor case or proceeding under the Bankruptcy Code or otherwise, and such liens and security interests shall maintain their first priority as provided in this Order until all the DIP Obligations have been paid in full and the Lenders' commitments have been terminated in accordance with the DIP Loan Documents.

6. **Challenge Period.**

(a) **Challenge Period Deadline.** Any non-Debtor party-in-interest with standing (including any Creditors' Committee) shall have until ninety (90) days from the Petition Date (the "**Challenge Period Deadline**") to file an adversary complaint with this Court

(i) challenging the validity, enforceability, extent, or priority of the Prepetition Lender Debt or the Prepetition Liens or (ii) otherwise asserting any other claims or causes of action against the Prepetition Lenders (and their successors and assigns, if applicable) (a "**Challenge**") arising out of the Prepetition Master Agreements or the Prepetition Credit Agreement, and/or the prepetition activities of the Prepetition Administrative Agent or any of the Prepetition Lenders (and/or its and/or their successors and assigns, if applicable). Any Challenge may be filed in the name of the Debtors without leave of the Court, upon three (3) days prior written notice to the Debtors and the Prepetition Administrative Agent.

(b) **Failure to File or Successfully Prosecute a Challenge.** To the extent that (i) a Challenge is not filed by the Challenge Period Deadline (or such other later date as may be extended by the written consent of the Prepetition Administrative Agent, acting on the instruction of the Majority Lenders, with respect to the Prepetition Credit Agreement, or BNP Paribas or Sun Trust, with respect to their respective Prepetition Master Agreements) by any statutory committee or such other non-Debtor party or (ii) if a Challenge is so filed and the Prepetition Administrative Agent or any of the Prepetition Lenders (and/or its and/or their successors and assigns, if applicable) ultimately prevails in its defense thereof pursuant to a non-appealable order: (A) the Prepetition Lender Debt shall constitute allowed claims for all purposes in the Debtors' bankruptcy proceedings and shall not be subject to avoidance, reduction, recovery, set off, offset, recharacterization, subordination (whether equitable, contractual, or

otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any other applicable federal, state, or local law or regulation by any person or entity (including, without limitation, any receiver, administrator, trustee, successor trustee, examiner, or responsible person in the Chapter 11 Cases and any successor case or proceeding under the Bankruptcy Code or otherwise); (B) the Prepetition Liens shall be deemed legal, valid, binding, enforceable, perfected, and otherwise unavoidable first priority liens and security interests, as of the Petition Date, and, except as set forth in this Order, shall not be subject to any claim (as such term is defined in the Bankruptcy Code), counterclaim, cross-claim, defense, avoidance, reduction, recovery, set off, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), or any other challenge under the Bankruptcy Code or any other applicable federal, state, or local law or regulation, by any person or entity (including, without limitation, any receiver, administrator, trustee, successor trustee, examiner, or responsible person in the Chapter 11 Cases and any successor case or proceeding under the Bankruptcy Code or otherwise); (C) each Debtor shall be deemed to have irrevocably waived and released any and all "claims" (as such term is defined in the Bankruptcy Code), counterclaim, cross-claims, causes of action, defenses, offsets, and set off rights against the Prepetition Administrative Agent and each of the Prepetition Lenders, in their respective capacities as Prepetition Administrative Agent and/or Prepetition Lender, and not in any other capacity or in respect of any other relationship it or they may have, or have had, with the Debtors, whether arising at law or in equity, including, without limitation, those asserting avoidance, reduction, recovery, set off, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), or any other challenge arising under or pursuant to the Bankruptcy Code or any other applicable federal, state, or local law or regulation.

(c) To the extent a Challenge is timely filed on or before the Challenge Period Deadline (or any amendment to such Challenge, as may be allowed thereafter), all claims and actions respecting the Prepetition Lender Debt or the Prepetition Liens or against the Prepetition Lenders shall be deemed, immediately and without further notice, motion or application to, order of, or hearing before, this Court, to have been forever relinquished, discharged, released, and waived as to (i) each such party filing such Challenge, except with respect to claims and actions that are expressly asserted in the Challenge (or any amendment to such Challenge as may be allowed thereafter) and (ii) all other parties that failed to file such Challenge.

7. **Adequate Protection Parties**. The Debtors acknowledge and stipulate that the Prepetition Lenders are entitled, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, to adequate protection of their interests in their Prepetition Collateral, including the Cash Collateral, only for and equal in amount to the aggregate diminution in the value of the Prepetition Lenders' interest in the Prepetition Collateral. Pursuant to the terms and conditions of this Order and the DIP Loan Documents, upon the execution and delivery of the DIP Credit Agreement and the other DIP Loan Documents, and provided that no Debtor is in default of the terms and conditions of this Order and the DIP Loan Documents, each Debtor is authorized to use all Cash Collateral for the operation of their respective businesses in accordance with the DIP Loan Documents. As adequate protection, the applicable Prepetition Lenders are hereby granted the following (collectively, the "**Adequate Protection Obligations**"):

(a) **Adequate Protection Liens**. Pursuant to Bankruptcy Code section 361, 363(e), and 364(d), as adequate protection of the interests of the Prepetition Lenders in the

Prepetition Collateral against any diminution in value of such interests in the Prepetition Collateral on account of (i) depreciation, physical deterioration, use, sale, loss, or decline in market value, (ii) the granting of the DIP Liens, (iii) the Debtors' use of Cash Collateral and other Prepetition Collateral, and (iv) the imposition of the automatic stay, the Debtors hereby grant to the Prepetition Lenders, continuing valid, binding, enforceable, and perfected postpetition security interests in and liens on the Collateral (the "**Replacement Liens**") and not subject to subordination, impairment, or avoidance in the Chapter 11 Cases and any successor case or proceeding under the Bankruptcy Code or otherwise. The Replacement Liens shall be junior in priority only to: (i) Permitted Priority Liens; (ii) the DIP Liens; (iii) the Carve-Out; and (iv) the Prepetition Liens on the Prepetition Collateral. The Replacement Liens shall be senior to all other security interests in, liens on, or claims against any of the Prepetition Collateral.

(b) Adequate Protection Claim. As further adequate protection of the interests of the Prepetition Lenders in the Prepetition Collateral against any diminution in value of such interests in the Prepetition Collateral on account of (i) depreciation, physical deterioration, use, sale, loss, or decline in market value, (ii) the granting of the DIP Liens, (iii) the Debtors' use of Cash Collateral and other Prepetition Collateral, and (iv) the imposition of the automatic stay, the Prepetition Lenders are hereby granted as and to the extent provided by Bankruptcy Code section 507(b) an allowed superpriority administrative expense claim in the Chapter 11 Cases (the "**Adequate Protection Priority Claims**") not subject to subordination, impairment, or avoidance in the Chapter 11 Cases and any successor case or proceeding under the Bankruptcy Code or otherwise. Except as set forth herein, the Adequate Protection Priority Claims shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever,

including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of a Final Order), 507(a), 507(b) 546(c), 546(d), 726 (to the extent permitted by law), 1113, and 1114; provided, however, that the Adequate Protection Priority Claims shall be junior in priority to the Superpriority Claim and the Carve-Out.

(c) As further adequate protection for the use of the Prepetition Collateral (including Cash Collateral) by the Debtors, and in accordance with Bankruptcy Code sections 361, 363(e), and 364(d), the Prepetition Lenders shall receive, as applicable, from the Debtors:

(i) Fees and Expenses. The Debtors are authorized and directed to pay the reasonable fees and expenses incurred by counsel, financial advisors and other professionals and consultants (to the extent that such other professionals and consultants are provided for under the Prepetition Credit Agreement) retained by the Prepetition Administrative Agent in connection with the Chapter 11 Case (the "**Prepetition Administrative Agent's Professional Costs**"), subject to the same invoice and objection procedures set forth in paragraph 15(j) below for the payment of the professional fees of the Agent and the Lenders; provided, however, that (subject to entry of a Final Order) upon the Debtors' payment of the Prepetition Lender Debt in full, the Debtors shall no longer be obligated under this paragraph 7(c)(i) to reimburse the Prepetition Administrative Agent for the Prepetition Administrative Agent Professional Costs.

(ii) Accrual of Interest and Other Amounts. To the extent allowable under section 506(b) of the Bankruptcy Code, the Debtors shall accrue interest on the Prepetition Lender Debt at the default contractual rate until such time as the Prepetition Lender Debt is paid in full.

(iii) Continuation of Liens. The Prepetition Lender shall retain continuing liens on all of the Prepetition Collateral until repayment in full of the Prepetition Lender Debt.

(d) Consent to Priming and Adequate Protection. The Agent and Lenders, acting as the Prepetition Administrative Agent and Prepetition Lenders under the Prepetition Credit Agreement, consent to the adequate protection and the priming provided for herein; provided, however, that the consent of the Agent and the Lenders to the priming, the use of Cash Collateral, and the sufficiency of the adequate protection provided for herein is expressly conditioned upon the entry of this Order, and such consent shall not be deemed to extend to any other replacement financing or debtor in possession financing other than such provided under the DIP Loan Documents; and provided, further, that such consent shall be of no force and effect in the event this Order is not entered and the DIP Loan Documents are not approved.

8. Carve-Out. The Lenders agree that the DIP Liens, the Adequate Protection Liens, and the Superpriority Claim shall be subject to: (i) any unpaid fees due to the United States Trustee pursuant to 28 U.S.C. Section 1930 of the United States Code or otherwise and any fees due to the clerk of the Bankruptcy Court, (ii) the reasonable fees and expenses approved by the Bankruptcy Court incurred by a trustee under section 726(b) or 1104 of the Bankruptcy Code in an aggregate amount not to exceed \$100,000, (iii) the reasonable expenses of members of any statutory committee appointed in the Bankruptcy Cases (excluding fees and expenses of professional persons employed by such committee members individually) in an amount not to exceed \$50,000, (iv) to the extent allowed at any time, all unpaid fees and expenses allowed by the Bankruptcy Court of professionals or professional firms retained pursuant to section 327, 330, 363, or 1103 of the Bankruptcy Code (the "Professional Persons")

that were incurred or accrued through the date upon which BMHC receives from the Agent a notice of an Event of Default, and (v) after the date upon which BMHC receives from the Agent notice of an Event of Default, to the extent allowed at any time, the payment of the fees and expenses of Professional Persons in an aggregate amount not to exceed \$500,000; provided, however, that: (1) the dollar limitations in clause (v) above on fees and expenses shall not be reduced by the amount of any compensation or reimbursement of expenses incurred by or paid to any Professional Person prior to the notifications of BMHC by the Agent of the occurrence of an Event of Default in respect of which the Carve-Out is invoked or by any fees, expenses, indemnities, or other amounts paid to any Agent, the Lenders, or their respective attorneys or agents under the DIP Credit Agreement or otherwise, and (2) to the extent the dollar limitation in clause (v) on fees and expenses is reduced by an amount as a result of payment of such fees and expenses during the continuation of an Event of Default, and such Event of Default is subsequently cured or waived, such dollar limitation shall be increased by an amount equal to the amount by which it has been so reduced (the amount of all such permitted uses being defined herein as the "Carve-Out").

9. **Authorization to Use Proceeds of DIP Loan Documents and Cash Collateral.** To the extent that the Lenders make advances or extend credit on an interim basis, under this Order and the DIP Credit Agreement, the Debtors shall use such loans, and shall otherwise use their Cash Collateral and other assets, solely in a manner that is consistent with the terms of this Order and the DIP Loan Documents, including, without limitation, to repay \$4,000,000 owed under the Prepetition Revolving Credit Facility.

10. **Limitations on the Use of Proceeds.** No proceeds of loans or other financial accommodations made by the Lenders hereunder, and no Cash Collateral, may be used

to compensate services rendered or expenses incurred in connection with, directly or indirectly, (i) the filing and prosecution of a Challenge; provided, however, up to \$50,000 in the aggregate of Cash Collateral and advances under the DIP Facility may be used by any statutory committee respecting an investigation of the validity, enforceability, extent, or priority of the Prepetition Lender Debt or the Prepetition Liens; (ii) the modification, stay, or amendment of this Order without the consent of the Agent; or (iii) a violation, breach, or default of this Order or any of the DIP Documents, including, without limitation, any claim or action the purpose of which is to seek or the result of which would be to obtain any relief (a) objecting to or contesting the validity, extent, amount, perfection, priority, or enforceability, in whole or in part, any of the DIP Obligations or the DIP Liens in the Collateral or (b) preventing, hindering, or otherwise delaying, whether directly or indirectly, the Lenders' or the Agent's assertion, enforcement, or realization upon any Collateral as permitted by this Order or such documents.

11. **Sale of the Collateral and Resulting Proceeds.** Any proceeds of the sale, lease, or other disposition of the Collateral shall be applied in the manner consistent with this Order and the terms of the DIP Loan Documents, and the Debtors hereby irrevocably waive any right to direct the manner or application of any payments to the Lenders or any other receipts by the Lenders of proceeds of the Collateral contrary to the provisions of the DIP Loan Documents. Without the consent of the Agent (acting upon the instruction of the Majority Lenders), the Debtors may not sell any Collateral unless the proceeds of the sale of the Collateral are applied in accordance with the terms of the DIP Credit Agreement.

12. **Enforcement of Remedies.** At any time after the occurrence and during the continuance of any Event of Default, without further order of, application to, or action by this Court, the Agent may or shall, upon instructions from the Majority Lenders as defined in the DIP

Credit Agreement, by written notice to BMHC (i) terminate all commitments under the DIP Credit Agreement and Debtors' authorization to use Cash Collateral, (ii) require that BMHC cash collateralize the L/C Obligations in an amount equal to the then effective amount of the L/C Obligations; (iii) declare all or a portion of the outstanding DIP Obligations owed to the Lenders and payable by BMHC to be immediately due and payable without presentment, demand, protest, or any other notice of any kind, all of which are hereby expressly waived; and/or (iv) subject to the giving of three business days notice to Borrower, the United States Trustee and any statutory committee, the automatic stay under section 362 of the Bankruptcy Code shall be deemed automatically vacated and the Agent and the Lenders shall be entitled to exercise all of their respective rights and remedies under the DIP Loan Documents.

13. **Reliance by Lender.** The Debtors shall not seek to modify, vacate, or amend this Order without the written consent of the Agent (acting at the direction of the Majority Lenders). If any or all of the provisions of this Order are hereafter modified, vacated, or stayed by subsequent order of this or any other Court, such stay, modification, or vacation shall not affect the validity of any debt to the Lenders incurred pursuant to this Order or the DIP Documents prior to the later of (i) the effective date of such stay, modification, or vacation and (ii) receipt of written notice thereof by counsel to the Agent at the addresses set forth in section 11.2 of the DIP Credit Agreement (the "**Effective Time**"), or otherwise affect the validity and enforceability of any DIP Lien or priority authorized hereby. Notwithstanding any such stay, modification, or vacation, any advances of funds made pursuant to this Order by the Lenders to or for the benefit of the Debtors prior to the Effective Time shall be governed in all respects by the original provisions of this Order.

14. **Good Faith.** The Court has considered and determined the matters addressed in this Order pursuant to its power under section 364(c) of the Bankruptcy Code. Subject to entry of a Final Order, each of the terms and conditions of the DIP Documents, as part of an authorization under such section, is subject to the protections contained in section 364(e) of the Bankruptcy Code.

15. **Miscellaneous.**

(a) **Section 364 Waiver.** In consideration of the financing and other accommodations made available pursuant hereto, the Debtors irrevocably waive any right to: (i) grant or impose, or request that the Court grant or impose, under section 364 of the Bankruptcy Code or otherwise, liens, security interests, or mortgages on any property, equal or superior to the priority of the DIP Liens, except as provided under the Permitted Priority Liens, the Carve-Out, and the DIP Loan Documents (including the Adequate Protection Obligations); and (ii) seek authority to use Cash Collateral as defined in section 363 of the Bankruptcy Code other than as permitted by this Order, the DIP Credit Agreement, and the other DIP Loan Documents. Such waiver shall be binding upon any successor trustee, examiner, or responsible person in the Chapter 11 Cases or any successor case or proceeding under the Bankruptcy Code or otherwise.

(b) **Modification of the Automatic Stay.** Subject solely to any requirement of the giving of notice by the terms of this Order or the Final Order, the automatic stay provided in section 362 of the Bankruptcy Code shall be deemed automatically vacated without further action or order of the Court, and the Administrative Agent and the Lenders, upon three (3) Business Days' written notice to BMHC, the United States Trustee, and the any statutory committee appointed in the Chapter 11 Cases, shall be entitled to exercise all of their respective

rights and remedies under the DIP Loan Documents, including all rights and remedies with respect to the Collateral and the Guarantors. The Debtors and/or the Creditors' Committee shall have the initial burden of proof at any hearing on any request by the Debtors and/or the Creditors' Committee to re-impose or continue the automatic stay as provided herein. This Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this paragraph and relating to the application, re-imposition or continuance of the automatic stay as provided hereunder.

(c) Prohibitions In the Event of Dismissal of Any of the Cases. Except to the extent provided in the DIP Loan Documents, the Debtors shall not seek dismissal of any of the Chapter 11 Cases unless and until all of the DIP Obligations shall have been finally paid in full. If an order dismissing any of the Chapter 11 Cases of the Debtors under section 1112 of the Bankruptcy Code or otherwise is at any time entered: (i) the priority claims and DIP Liens granted to the Agent pursuant to this Order and the DIP Loan Documents in the Collateral of such Debtor shall continue in full force and effect and shall maintain their priorities as provided in this Order until the DIP Obligations shall have been finally paid in full; (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for purposes of interpreting this Order; and (iii) such order shall not modify the rights granted to the Agent and Lenders pursuant to this paragraph.

(d) Section 552(b) Waiver. Subject to Final Hearing and entry of Final DIP Order, the Agent, the Lenders, the Prepetition Administrative Agent, and the Prepetition Lenders shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply

to the Agent and the Lenders with respect to proceeds, product, offspring, or profits of any of the Collateral.

(e) Section 506(c) Waiver. Subject to Final Hearing and entry of Final Order, no costs or expenses of administration shall be imposed against the Agent, the Lenders, the Prepetition Administrative Agent, the Prepetition Lenders, the DIP Obligations, the Prepetition Indebtedness, the Collateral, or the Prepetition Collateral under section 506(c) of the Bankruptcy Code or otherwise, and no action or inaction on the part of the Agent, the Lenders, the Prepetition Administrative Agent, or the Prepetition Lenders shall be deemed to constitute a consent to such surcharge.

(f) No Marshaling. The Agent, the Lenders, the Prepetition Administrative Agent, and the Prepetition Lenders shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Collateral.

(g) No Waiver. The failure of the Lenders and the Prepetition Lenders to seek relief or otherwise exercise their rights and remedies under the DIP Documents, the DIP Facility, the Prepetition Documents or this Order, as applicable, shall not constitute a waiver of any of the Lenders' or the Prepetition Lenders' rights hereunder, thereunder or otherwise.

(h) Amendment. The Debtors and the Agent may amend or waive any provision of the DIP Documents without the need for further approval from this Court provided that: (i) the DIP Documents, as so modified, are not materially different from the DIP Documents approved in this Order; (ii) notice of all amendments to the DIP Documents are filed with the Court; and (iii) notice of all amendments to the DIP Documents is provided to all parties requesting notice in these cases, and the United States Trustee.

(i) Amendment of Organic Documents. Each Debtor shall, and shall cause each applicable entity that it controls to, implement any necessary amendment to its certificate of incorporation, bylaws, or comparable governing documents such that the relief requested herein shall not have any adverse consequences under any provisions in such governing documents or any shareholder rights plan or similar arrangements.

(j) Reimbursement of Costs and Expenses. All fees, costs, and/or expenses payable or reimbursable by the Debtors as set forth in the DIP Loan Documents are hereby approved. The Agent and Lenders shall be promptly reimbursed by the Debtors, without further motion to, hearing by, or order of this Court and without conforming with applicable guidelines of the United States Trustee, for all reasonable out-of-pocket costs and expenses (including, without limitation, all filing and recording fees, attorneys' and paralegals' fees and expenses, and out-of-pocket expenses) (the "**Expense Reimbursement**"), in each case, only as provided for in the DIP Documents; provided, however, that the Agent and the Lenders, as applicable, shall serve, by facsimile or electronic mail, each Expense Reimbursement on the United States Trustee, counsel to the Debtors, and counsel to the Creditors' Committee (the "**Expense Reimbursement Notice Parties**"). If, after ten (10) Business Days after receipt by the Expense Reimbursement Notice Parties of notice of any Expense Reimbursement, the Expense Reimbursement Notice Parties do not deliver to the Agent or a Lenders, as applicable, an objection to the reasonableness of such Expense Reimbursement, then the Debtors shall promptly pay the Agent or the Lender, as applicable, such Expense Reimbursement. If an Expense Reimbursement Notice Party objects to any portion of an Expense Reimbursement, then the Expense Reimbursement Notice Party shall, within ten (10) Business Days after receipt of notice of the objectionable Expense Reimbursement, deliver to the Agent or a Lender a written

objection outlining the amounts to which the Expense Reimbursement Notice Party objects and the reasons therefore. In such case, the Debtors shall promptly pay the Agent or the Lender, as applicable, the undisputed amount of the Expense Reimbursement and the disputed amount shall not be paid absent agreement of the objecting Expense Reimbursement Notice Party or further order of this Court.

(k) Prepetition Expense Reimbursement. The Debtors shall borrow or obtain cash advances under the DIP Loan Documents to repay a limited portion, \$4.0 million, of the amount owing under the Prepetition Revolving Credit Facility (the "Prepetition Expense Repayment").

(l) Releases. BMHC and the Guarantors shall release (for themselves and their respective bankruptcy estates) (i) the Lenders and the Agent from any and all claims, liens, priority, actions, or inactions arising hereunder or in any other manner, and (ii) the Prepetition Credit Agreement Lenders and the Prepetition Administrative Agent under the Prepetition Credit Agreement from any and all claims, liens, priority, actions, or inactions arising under the Prepetition Credit Agreement or in any other manner (the releases set forth in this clause (ii) being subject only to the right of the any statutory committee appointed in the Chapter 11 Cases or any party in interest, to the extent provided herein, to investigate and bring claims within 90 days of the filing of the Chapter 11 Cases), with such releases being satisfactory to such Lenders and Prepetition Credit Agreement Lenders, as applicable, in their discretion.

(m) Indemnification. BMHC shall indemnify and hold harmless the Agent, each Lender, affiliates of the Agent and each Lender and each of their respective partners, directors, officers, employees, advisors and agents (each an "Indemnified Party") from and against any and all losses, claims, damages, liabilities and related expenses (including the fees,

charges and disbursements of any counsel for any Indemnified Party), and shall indemnify and hold harmless each Indemnified Party from all fees and time charges and disbursements for attorneys who may be employees of any Indemnified Party, incurred by any Indemnified Party or asserted against any Indemnified Party by any third party or by BMHC or any other Debtor arising out of, in connection with, or as a result of (i) the execution or delivery of the DIP Credit Agreement, any other Loan Document, the performance by the parties hereto of their respective obligations thereunder, the consummation of the transactions contemplated thereby, or, in the case of the Agent (and any sub-agent thereof) and its related parties only, the administration of the DIP Credit Agreement and the other Loan Documents, (ii) any loan or letter of credit or the use or proposed use of the proceeds therefrom, (iii) certain environmental claims related in any way to BMHC or any of its subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing; provided that such indemnity shall not, as to any Indemnified Party, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Party or (y) result from a claim brought by BMHC or any other Debtor against an Indemnified Party for breach in bad faith of such Indemnified Party's obligations under any Loan Document, if BMHC or such other Debtor has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(n) No Third Party Beneficiary. No party not referenced in this Order is intended to be or shall be deemed to be a third party beneficiary of the provisions of this Order or any of the DIP Documents.

(o) Action by Lenders. Any action authorized to be taken on behalf of the Lenders as a whole by less than all of the Lenders or by the Agent pursuant the terms of any of the DIP Documents shall be deemed to be the action of the Lenders under this Order.

(p) Amendment of Order. The Debtors shall, with the consent of the Agent, be entitled to amend this Order so as to make any non-substantive, non-material changes. Notice of any amendment of the Order shall be provided to all parties entitled to receive notice of such amended Order.

(q) Order Controlling. To the extent any terms of this Order are inconsistent with the terms set forth in the DIP Documents, the terms of this Order shall control.

16. **Limitations on Liens.** Notwithstanding anything in this Order to the contrary, nothing herein or in the DIP Documents shall be deemed to authorize or grant a lien or security interest in favor of the Agent or the Lenders in or on the collateral securing the Other Secured Debt.

17. **Immediate Effectiveness.** Notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062, or 9014 or any other Bankruptcy Rule, this Order shall be valid and fully effective immediately upon its entry, and, upon such entry, shall be binding upon and inure to the benefit of the Agent, the Lenders, the Debtors, their estates, and their respective successors and assigns (including, without limitation, any trustee, examiner, or responsible person hereinafter appointed as a representative of any of the estates in these or any subsequent proceedings under the Bankruptcy Code), and the terms and provisions of this Order as well as the liens, security interests, and mortgages and other terms of the DIP Credit Agreement and the other DIP Documents shall continue in these proceedings and any superseding proceedings under the Bankruptcy Code or otherwise, and such liens, security interests, and mortgages shall maintain

their priority as provided by this Order, until satisfied and discharged. This Order likewise shall be immediately binding and effective on the terms set forth above with respect to any other debtor that shall become part of the Chapter 11 Cases upon the filing of a bankruptcy petition or entry of the order for relief for such debtor, and, at such time, such debtor shall be deemed party to all of the DIP Documents.

18. **Final Hearing Date.** The Final Hearing to consider entry of the Final Order approving the relief sought in the DIP Motion shall be held on _____, 2009 at _____ (prevailing Eastern Time) (as the same may be adjourned or continued by this Court) before the Honorable _____, at the United States Bankruptcy Court for the District of Delaware.

19. **Notice.** The Debtors shall, within three (3) Business Days, serve by mail a copy of this Order on the Notice Parties and any other persons which the Debtors know are entitled to notice under Bankruptcy Rule 4001(c). Any party-in-interest objecting to the relief sought in the Final Order shall submit any such objection in writing and file same with this Court (with a courtesy copy to chambers) and serve (so as to be received) such objection no later than on _____, 2009 at _____ (prevailing Eastern Time) on the following:

(a) Young, Conaway, Stargatt & Taylor, LLP, The Brandywine Building, 1000 West St., 17th Floor, Wilmington, Delaware, DE 19801 (Attn: Sean M. Beach, Esq. and Robert F. Poppiti, Jr., Esq. (Tel. (302) 571-6600; Facsimile (302) 571-1253) and Gibson, Dunn & Crutcher LLP, 200 Park Ave., 47th Floor, New York, New York 10166-0193 (Attn: Michael A. Rosenthal, Esq. and Matthew K. Kelsey, Esq. (Tel. (212) 351-4000 and Facsimile (212) 351-4035), proposed counsel to Debtors;

(b) Richards, Layton & Finger, P.A., One Rodney Square, 920 King Street, Wilmington, DE 19801 (Attn: Paul N. Heath, Esq. (Tel. (302) 651-7590, Facsimile (302) 498-

7590)) and Paul, Hastings, Janofsky & Walker, LLP, 55 Second Street, San Francisco, CA 94105-3441 (Attn: Kevin B. Fisher, Esq. (Tel. (415) 856-7219, Facsimile ((415) 856-7200) and 75 East 55th Street, New York, New York 10022 (Attn: Thomas L. Kent, Esq. (Tel. (212) 318-6060 and Facsimile (212) 230-7899), counsel to the Prepetition Administrative Agent and Agent; and

(c) Office of the United States Trustee for the District of Delaware, 844 King street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: _____ (Tel. (____)_____, Facsimile (____)_____).

Dated: Wilmington, Delaware
June ____, 2009

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

EXHIBIT B

\$80,000,000

**SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION
CREDIT AGREEMENT**

Dated as of June 16, 2009

among

**BUILDING MATERIALS HOLDING CORPORATION,
as Borrower,**

**BMC WEST CORPORATION
AND OTHER SUBSIDIARIES,
as Guarantors,**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent and L/C Issuer**

and

**THE FINANCIAL INSTITUTIONS PARTY HERETO,
as Lenders**

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**SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION
CREDIT AGREEMENT**

This Senior Secured Super-Priority Debtor-in-Possession Credit Agreement (“Agreement”), dated as of June 16, 2009, is made and entered into by and among (i) BUILDING MATERIALS HOLDING CORPORATION, a Delaware corporation, as borrower (“Holdings”), (ii) BMC WEST CORPORATION, a Delaware corporation (the “Company”), and certain other subsidiaries of Holdings, as Guarantors (as defined herein), (iii) WELLS FARGO BANK, NATIONAL ASSOCIATION, as administrative agent for the Lenders (the “Administrative Agent”), and (iv) the various financial institutions from time to time party to this Agreement (individually, a “Lender” and, collectively, the “Lenders”).

RECITALS

A. On June 16, 2009 (the “Petition Date”), Holdings and Guarantors filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) voluntary petitions for relief (the “Bankruptcy Cases”) under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. Sections 101 et seq., and remain in possession of their assets pursuant to Sections 1107 and 1108 thereof. Each Guarantor is a subsidiary of Holdings.

B. Holdings has requested that the Lenders make postpetition loans to Holdings pursuant to a debtor-in-possession credit facility consisting of a revolving credit facility in an aggregate principal amount not to exceed \$80,000,000, including a \$20,000,000 letter of credit subfacility, subject to the terms of this Agreement and, if and when entered, the Financing Orders (as defined herein).

C. The Lenders are severally, and not jointly, willing to extend such credit to Holdings under this Agreement upon the terms and conditions set forth in this Agreement and the Financing Orders.

AGREEMENT

NOW, THEREFORE, in consideration of the above Recitals and the mutual agreements, provisions and covenants contained herein, the parties hereto hereby agree as follows:

ARTICLE I.

DEFINITIONS

1.01 Certain Defined Terms. The following terms have the following meanings when used herein (including in the Recitals hereof):

“Account” means an account (as that term is defined in the UCC).

“Account Debtor” means any Person who is obligated on an Account.

“Acquisition” means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (i) the acquisition of all or substantially all of the

assets of a Person, or of any business or division of a Person, (ii) the acquisition of in excess of 50% of the capital stock, partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary, or (iii) a merger or consolidation or any other combination with another Person (other than a Person that is a Subsidiary).

“Additional Guarantor Accession Date” has the meaning specified in Section 7.13.

“Additional Guarantor Assumption Agreement” has the meaning specified in Section 7.13.

“Adequate Protection” means the adequate protection ordered by the Bankruptcy Court pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code, and in the case of the lenders under the Prepetition Credit Agreement, shall include (i) an administrative priority claim junior and subordinate only to the Carve-Out and the Obligations, (ii) replacement Liens on the Collateral junior and subordinate only to the Carve-Out and the Liens securing the Obligations, (iii) new Liens on previously unencumbered Collateral junior and subordinate only to the Carve-Out and the Liens securing the Obligations, (iv) payment of professional fees and expenses, including attorneys’ fees and financial advisor fees, of the Prepetition Credit Agreement’s administrative agent during the Bankruptcy Cases, whether incurred prepetition or postpetition, (v) to the extent of the value of the collateral securing the obligations under the Prepetition Credit Agreement, the accrual of interest under the Prepetition Credit Agreement at the default rate specified therein, and (vi) the Loan Parties’ acknowledgement of the validity and amount of the obligations under the Prepetition Credit Agreement and Liens securing such obligations, subject to the right of the statutory committee of unsecured creditors’ (for a limited time period) and other non-debtor Persons to challenge such obligations and Liens.

“Administrative Agent” has the meaning specified in the preamble, and any successor Administrative Agent arising under Section 10.06.

“Administrative Agent Related Persons” means Wells Fargo and any successor Administrative Agent arising under Section 10.06 and any L/C Issuer hereunder, together with their respective Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

“Administrative Agent’s Payment Office” means the address for payments set forth on Schedule 11.02 or such other address as the Administrative Agent may from time to time specify.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agency Fee” has the meaning specified in Section 2.09(a).

“Agency Fee Letter” has the meaning specified in Section 2.09(a).

“Aggregate Revolving Commitment” means the combined Revolving Commitments of the Lenders, which combined Revolving Commitments shall not exceed (i) the Interim Commitment Amount from and after the date upon which the Bankruptcy Court issues the Interim Financing Order, and (ii) the Final Commitment Amount from and after the date upon which the Bankruptcy Court issues the Final Financing Order. The Aggregate Revolving Commitment includes the L/C Commitment.

“Agreement” has the meaning specified in the preamble.

“Applicable Fee Amount” means, with respect to the Commitment Fees, 0.50%, and, with respect to the Standby Letter of Credit fees payable hereunder, 4.50%.

“Applicable Margin” means 4.50%.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06), and accepted by the Administrative Agent, in substantially the form of Exhibit D or any other form approved by the Administrative Agent.

“Attorney Costs” means and includes all fees and disbursements of any law firm or other external counsel, the allocated cost of internal legal services and all disbursements of internal counsel.

“Available Commitment” has the meaning specified in Section 2.09(b).

“Avoidance Actions” means all causes of action arising under Sections 502(d), 542, 544, 545, 547, 548, 550, 551, 553(b) or 724(a) of the Bankruptcy Code and any proceeds therefrom and property received thereby, whether by judgment, settlement or otherwise.

“Bankruptcy Cases” has the meaning specified in Recital A.

“Bankruptcy Code” means the Bankruptcy Code of the United States (11 U.S.C. §101, et seq.).

“Bankruptcy Court” has the meaning specified in Recital A.

“Base Rate” means, for any day, a fluctuating rate equal to the highest of: (i) the Prime Rate in effect on such day, (ii) a rate determined by Administrative Agent to be 1.00% above Daily One Month LIBOR in effect on such day, (iii) the Federal Funds Rate plus 1.00%, and (iv) 3.00%.

“Borrowing” means a borrowing hereunder consisting of (i) Revolving Loans made to Holdings on the same day by the Lenders under Article II, or (ii) an L/C Borrowing.

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

(a) 70% of the (A) amount of Eligible Accounts less the (B) Warranty Reserve less (C) the Gift Certificate Reserve, plus

(b) 50% of (A) the value of Eligible Inventory (other than Truss and Millwork Inventory) less (B) the Inventory Vendor Discount Reserve less (C) the Inventory Volume Rebate Reserve, plus

(c) 25% of (A) the value of Eligible Truss and Millwork Inventory less (B) the Truss and Millwork Vendor Discount Reserve less (C) the Truss and Millwork Volume Rebate Reserve, plus

(d) 75% of the Fixed Assets Orderly Liquidation Value, minus

(e) the Rent Reserve plus the aggregate amount of other reserves, if any, including with respect to the Carve-Out, established by the Administrative Agent in the exercise of its Permitted Discretion.

“Borrowing Base Certificate” means a certificate, in substantially the form of Exhibit I, by which Holdings certifies calculation of the Borrowing Base.

“Borrowing Date” means any date on which a Borrowing occurs.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City or San Francisco are authorized or required by law to close.

“Capital Expenditures” means, for any period, the aggregate of all expenditures of Holdings and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in “purchase of property and equipment” or similar items reflected in the consolidated statement of cash flows of Holdings and its Subsidiaries.

“Capital Lease” means, for any Person, any lease of property (whether real, personal or mixed) which, in accordance with GAAP, would, at the time a determination is made, be required to be recorded as a capital lease in respect of which such Person is liable as lessee.

“Carve-Out” means (i) any unpaid fees due to the U.S. Trustee pursuant to 28 U.S.C. Section 1930 of the United States Code or otherwise and any fees due to the clerk of the Bankruptcy Court, (ii) the reasonable fees and expenses approved by the Bankruptcy Court incurred by a trustee under Section 726(b) or 1104 of the Bankruptcy Code in an aggregate amount not to exceed \$100,000, (iii) the reasonable expenses of members of any statutory committee appointed in the Bankruptcy Cases (excluding fees and expenses of professional persons employed by such committee members individually) in an aggregate amount not to

exceed \$50,000, (iv) to the extent allowed at any time, all unpaid fees and expenses allowed by the Bankruptcy Court of professionals or professional firms retained pursuant to Section 327, 330, 363, or 1103 of the Bankruptcy Code (the “Professional Persons”) that were incurred or accrued on or after the Petition Date through the date upon which Holdings receives from the Administrative Agent a notice of an Event of Default, and (v) after the date upon which Holdings receives from the Administrative Agent notice of an Event of Default, to the extent allowed at any time, the payment of the fees and expenses of Professional Persons in an aggregate amount not to exceed \$500,000; provided, however, that: (1) the dollar limitations in clause (v) above on fees and expenses shall not be reduced by the amount of any compensation or reimbursement of expenses incurred by or paid to any Professional Person prior to the notifications of Holdings by the Administrative Agent of the occurrence of an Event of Default in respect of which the Carve-Out is invoked or by any fees, expenses, indemnities or other amounts paid to the Administrative Agent, the Lenders or their respective attorneys or agents under this Agreement or otherwise, and (2) to the extent the dollar limitation in clause (v) on fees and expenses is reduced by an amount as a result of payment of such fees and expenses during the continuation of an Event of Default, and such Event of Default is subsequently cured or waived, such dollar limitation shall be increased by an amount equal to the amount by which it has been so reduced.

“Cash Balance” means, at any time, the aggregate Dollar amount of all cash and cash equivalents of Holdings and its Subsidiaries held in deposit accounts, securities accounts or otherwise, as determined in accordance with GAAP, but including, without limitation, any cash or cash equivalents held in a Cash Collateral Account without regard to how the account balance is accounted for on Holdings’ financial statements.

“Cash Collateral Account” means that certain deposit account with account number 4121914204 held at Wells Fargo Bank, N.A. (or such other interest-bearing deposit accounts held at Wells Fargo Bank, N.A. or its Affiliates satisfactory to the Administrative Agent) in the name of Holdings, in which cash shall from time to time be deposited pursuant to the Loan Documents as additional collateral for the Obligations, and on which the Administrative Agent shall have a first priority Lien, subject and subordinate only to the Carve-Out and Permitted Priority Liens, and over which the Administrative Agent shall have dominion and control. The Prepetition Administrative Agent shall have a second priority lien on the Cash Collateral Account, subject and subordinate only to the Liens securing the Obligations, the Carve-Out and Permitted Priority Liens.

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, as additional collateral for the L/C Obligations or the Obligations, as the case may be, pursuant to the Loan Documents, cash or deposit account balances. Derivatives of such term shall have corresponding meaning.

“Cash Management Order” means that certain order entered by the Bankruptcy Court in the Bankruptcy Cases in form and substance reasonably acceptable to the Administrative Agent and the Majority Lenders, which, among other things, authorizes the continued use of the Loan Parties’ existing cash management system.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any

change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

“Closing Fee” has the meaning specified in Section 2.09(d).

“Code” means the Internal Revenue Code of 1986.

“Collateral” means all of the property, assets or interests in property or assets of Holdings and each Guarantor, of any kind or nature whatsoever, real or personal, now existing or hereafter acquired or created (including all property of the estate (within the meaning of the Bankruptcy Code), all accounts, deposit accounts, money, letter of credit rights, commercial tort claims, inventory, contract rights, instruments, documents, chattel paper, general intangibles, machinery and equipment, real property, leases, capital stock or other equity interests in any Subsidiary, intercompany claims, and investment property, and all other causes of action arising under the Bankruptcy Code or otherwise, and all proceeds, rents, products and profits of any of the foregoing); provided, however, that “Collateral” shall not include: (i) any agreements, contracts, permits or licenses only if and to the extent that the granting of a Lien as contemplated hereby would (A) constitute a violation of a restriction in favor of a third party on such grant, (B) give any other party to such contract, instrument, license, license agreement or other document the right to terminate its obligations thereunder, or (C) violate any law (other than (but only in respect of agreements or contracts not constituting a document evidencing a Capital Lease or purchase money obligation) to the extent that any such term described in the preceding clauses (A), (B) or (C) would be rendered ineffective pursuant to Section 9-406, 9-407 or 9-408 of the UCC (or any successor provision or provisions)) (“Excluded Contracts and Leases”); provided, further, that any agreement, contract, permit or license that does not constitute “Collateral” pursuant to this sentence shall immediately become “Collateral,” and the Loan Parties, as applicable, shall be deemed to have granted a Lien therein, from and after such time as the other party to such agreement, contract, permit or license consents to the grant of a Lien in such agreement, contract, permit or license in favor of the Collateral Agent or the prohibition against granting a Lien therein otherwise ceases to be effective; and provided, further, that with respect to Excluded Contracts and Leases, Collateral shall include the proceeds from the disposition of Excluded Contracts and Leases whether now or hereafter arising, whether tangible or intangible, and wherever located; (ii) any equipment subject to certain long-term secured debt consisting of the term notes, equipment notes and capital leases set forth on Part I of Schedule 1.01A and any other equipment in which any Loan Party has rights if and for so long as the grant of a security interest therein shall constitute or result in a breach or termination pursuant to the terms of, or a default under, any capital lease or purchase money agreement entered into in connection with the acquisition or financing of such equipment; provided, however, that such security interest shall attach immediately at such time as the term restricting the attachment of a security interest in such equipment is no longer operative or the attachment of a security interest in such equipment would not constitute or result in a breach or termination pursuant to the terms of, or a default under, the capital lease or purchase money agreement governing such equipment; (iii) any trademark applications filed in the United States Patent and Trademark Office on the basis of a Loan Party’s “intent-to-use” such trademark to the extent that granting a security interest in such trademark application prior to such filing would adversely affect the enforceability or validity or result in the voiding of such trademark application, unless and until

acceptable evidence of use of the Trademark has been filed with and accepted by the United States Patent and Trademark Office pursuant to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C. 1051, et seq.), whereupon such Trademark application will be deemed automatically included in the Collateral; (iv) any Avoidance Actions; (v) the insurance-related cash collateral accounts set forth on Schedule 1.01B, the aggregate balances of which shall not exceed \$4,000,000 at any point in time without the prior written consent of the Administrative Agent; or (vi) or the real property set forth on Part II of Schedule 1.01A.

“Collateral Access Agreement” means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in Holdings’ or its Subsidiaries’ books and records, Inventory or equipment, in each case, in form and substance reasonably satisfactory to Administrative Agent.

“Collateral Documents” mean, collectively, (i) the Security Agreement, the Intellectual Property Security Agreements, the Mortgages and all other mortgages, deeds of trust, security agreements, patent and trademark assignments, lease assignments, control agreements and other similar agreements between Holdings or any Guarantor and the Lenders, or the Administrative Agent for the benefit of the Lenders and the other Secured Parties (as defined in the Security Agreement), now or hereafter delivered to the Lenders or the Administrative Agent pursuant to or in connection with the transactions contemplated hereby, and all financing statements (or comparable documents now or hereafter filed in accordance with the Uniform Commercial Code or comparable law) against Holdings or any Guarantor as debtor in favor of the Lenders, or the Administrative Agent for the benefit of the Lenders and the other Secured Parties (as defined in the Security Agreement), as secured party, and (ii) any amendments, supplements, modifications, renewals, replacements, consolidations, substitutions and extensions of any of the foregoing.

“Collected and Available Cash” means, at any time, the aggregate Dollar amount of all cash and cash equivalents constituting good and available funds of Holdings and its Subsidiaries, deposited into deposit accounts and concentrated into concentration accounts of Holdings and its Subsidiaries.

“Commercial Letter of Credit” means a commercial Letter of Credit Issued for the account of Holdings in respect of the purchase of inventory or other goods and services by Holdings or any of its Subsidiaries in the Ordinary Course of Business.

“Commitment Fees” has the meaning specified in Section 2.09(b).

“Company” has the meaning specified in the preamble.

“Compliance Certificate” means a certificate substantially in the form of Exhibit B.

“Contingent Obligation” means (without duplication), as to any Person, any direct or indirect liability of that Person, whether or not contingent, with or without recourse, (i) with respect to any Indebtedness, lease, dividend, letter of credit or other obligation (the “primary obligations”) of another Person (the “primary obligor”), including any obligation of that Person

(a) to purchase, repurchase or otherwise acquire such primary obligations or any security therefor, (b) to advance or provide funds for the payment or discharge of any such primary obligation, or to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (d) in connection with any synthetic lease or other similar off balance sheet lease transaction, or (e) otherwise to assure or hold harmless the holder of any such primary obligation against loss in respect thereof (each a “Guaranty Obligation”); (ii) with respect to any Surety Instrument issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings or payments; (iii) to purchase any materials, supplies or other property from, or to obtain the services of, another Person if the relevant contract or other related document or obligation requires that payment for such materials, supplies or other property, or for such services, shall be made regardless of whether delivery of such materials, supplies or other property is ever made or tendered, or such services are ever performed or tendered; (iv) in respect of Earn-Out Obligations; (v) in respect of any Swap Contract; and (vi) in respect of Stock Price Guaranties. The amount of any Contingent Obligation shall, in the case of Guaranty Obligations, be deemed equal to the stated or determinable amount of the primary obligation in respect of which such Guaranty Obligation is made or, if not stated or if indeterminable, the maximum reasonably anticipated liability in respect thereof, and in the case of other Contingent Obligations other than in respect of Swap Contracts, shall be equal to the maximum reasonably anticipated liability in respect thereof and, in the case of Contingent Obligations in respect of Swap Contracts, shall be equal to the Swap Termination Value.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, undertaking, contract, indenture, mortgage, deed of trust or other instrument, document or agreement to which such Person is a party or by which it or any of its property is bound.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Costs of Goods Sold From Continuing Operations” means, for any period, costs of goods sold of Holdings and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but exclusive of costs of goods sold attributable to the Wind-Down Business Units.

“Credit Extension” means and includes (i) the making of any Revolving Loans hereunder, and (ii) the Issuance of any Letters of Credit hereunder.

“Daily One Month LIBOR” means, for any day, the rate of interest equal to LIBOR then in effect for delivery for a one (1) month period.

“Default” means any Event of Default and any event or circumstance which, with the giving of notice, the lapse of time, or both, would constitute an Event of Default.

“Defaulting Lender” means a Lender that has failed to fund its portion of any Borrowing that it is required to fund under this Agreement and has continued in such failure for three (3) Business Days after written notice from the Administrative Agent.

“DIP Budget” has the meaning specified in Section 7.01(b).

“Disposition” means the sale, lease, conveyance or other disposition of property, including the sale, spinoff or other disposition of any division, business unit, business line, captive insurer or cell captive insurer, other than sales or other dispositions expressly permitted under Sections 8.02(a) through 8.02(e).

“Dollars,” “dollars” and “\$” each mean lawful money of the United States.

“Earn-out Obligations” means any obligations, whether contingent or matured, to pay additional consideration in connection with the Acquisition by Holdings or any Subsidiary of any capital stock or assets of any Person.

“EBITDAR From Continuing Operations” means, for any period, the sum of Gross Profit From Continuing Operations for such period minus Selling, General and Administrative Expenses From Continuing Operations for such period plus (to the extent deducted in determining Gross Profit From Continuing Operations pursuant to clause (b) of the definition thereof or to the extent included in Selling, General and Administrative Expenses From Continuing Operations, and without duplication) (i) depreciation expense and amortization expense for such period, (ii) restructuring charges relating to the shutdown or relocation of facilities and other like charges as may from time to time be agreed to by the Administrative Agent in its reasonable discretion, (iii) professional fees and costs attributable to the restructuring of Holdings’ consolidated operations or the administration of the Bankruptcy Cases; provided, however, that such charges shall not exceed \$15,000,000 per quarter, except with approval by the Administrative Agent, such approval not to be unreasonably withheld or delayed, (iv) other nonrecurring items attributable to the restructuring of Holdings’ consolidated operations as may from time to time be agreed to by the Administrative Agent in its reasonable discretion, (v) non-cash impairment charges of goodwill and other intangibles, (vi) non-cash share based compensation costs; provided, however, that such costs shall not exceed \$2,250,000 per quarter, (vii) severance and early retirement costs attributable to the restructuring of Holdings’ consolidated operations; provided, however, that such costs shall not exceed \$1,500,000 per quarter except with approval by the Administrative Agent, such approval not to be unreasonably withheld or delayed, (viii) the write-off or write-down of fixed assets attributable to the restructuring of Holdings’ consolidated operations; and (ix) the write-off or write-down of operating leases attributable to the restructuring of Holdings’ consolidated operations; all calculated for Holdings and its Subsidiaries on a consolidated basis for such period in accordance with GAAP.

“Effective Amount” means (i) with respect to any Revolving Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and

prepayments or repayments of Revolving Loans occurring on such date; and (ii) with respect to any outstanding L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any Issuances of Letters of Credit occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date; provided that for purposes of Section 2.06, the Effective Amount shall be determined without giving effect to any mandatory prepayments to be made under Section 2.06.

“Effective Date” means the date on which all conditions precedent set forth in Section 5.01 are satisfied or waived by all of the Lenders (or, in the case of Section 5.01(f), waived by the Person entitled to receive such payment).

“Eligible Accounts” means those Accounts created by Holdings or any Guarantor in the ordinary course of its business, that arise out of such Person’s sale of goods or rendition of services, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Administrative Agent in Administrative Agent’s Permitted Discretion to address the results of any audit performed by Administrative Agent from time to time after the Effective Date. Eligible Accounts shall not include the following (unless the Administrative Agent has imposed a reserve in the respect of the relevant Accounts), without duplication:

- (a) Accounts that the Account Debtor has failed to pay within 60 days of original due date or Accounts with selling terms of more than 30 days,
- (b) Accounts owed by an Account Debtor (or its Affiliates) where 20% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,
- (c) Accounts with respect to which the Account Debtor is owed a credit by Holdings or any Guarantor, to the extent of such credit,
- (d) Accounts consisting of late fees or similar finance charges with respect to Accounts deemed ineligible under clause (a) above,
- (e) Accounts subject to a contra account or with respect to which the Account Debtor is otherwise a creditor of Holdings or any Guarantor, has or has asserted a right of setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such contra account, claim, right of setoff, or dispute,
- (f) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which Holdings or any Guarantor has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

- (g) Accounts with respect to which the Account Debtor has made a deposit or other advance payment, to the extent of such deposit or advance payment,
- (h) Accounts with respect to which the Account Debtor is owed premiums by Holdings or any Guarantor for WRAP insurance, to the extent of such premiums,
- (i) Accounts arising from services subject to a performance bond or other Surety Instrument,
- (j) Accounts with respect to which the Account Debtor is an Affiliate of Holdings or an employee or agent of Holdings or any Affiliate of Holdings,
- (k) Accounts with cash-on-delivery, cash-in-advance or similar selling terms,
- (l) Accounts with respect to which the Account Debtor is a school, school district or other similar payor,
- (m) Accounts with respect to which the Account Debtor is either (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which Holdings has complied, to the reasonable satisfaction of Administrative Agent, with the Assignment of Claims Act, 31 USC §3727), or (ii) any state of the United States,
- (n) Accounts with respect to which the Account Debtor has earned an allowance or rebate, to the extent of such allowance or rebate,
- (o) Accounts evidenced by a promissory note or other instrument,
- (p) Accounts evidencing billings in excess of costs, to the extent of such excess,
- (q) Accounts arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional,
- (r) Accounts that are not payable in Dollars,
- (s) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in the United States, or (ii) is not organized under the laws of the United States or any state thereof, or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (y) the Account is supported by an irrevocable letter of credit reasonably satisfactory to Administrative Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Administrative Agent and is directly drawable by Administrative Agent, or (z) the Account is

covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to Administrative Agent,

(t) Accounts with respect to an Account Debtor whose total obligations owing to Holdings and the Guarantors exceed 20% (such percentage, as applied to a particular Account Debtor, being subject to reduction by Administrative Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, however, that, in each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined by Administrative Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,

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

(v) Accounts that are not subject to a valid and perfected first priority Lien in favor of the Administrative Agent,

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

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

"Eligible Assignee" means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person (other than a natural person) approved by (i) the Administrative Agent and (ii) in the case of any assignment of a Revolving Commitment, the L/C Issuer (each such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, "Eligible Assignee" shall not include (x) Holdings or any of Holdings' Affiliates or Subsidiaries or (y) a Defaulting Lender.

"Eligible Fixed Assets" means the fixed assets (other than real estate) of Holdings and the Guarantors that comply with each of the representations and warranties respecting Eligible Fixed Assets made in the Loan Documents and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Administrative Agent in Administrative Agent's Permitted Discretion to address the results of any audit or appraisal performed by Administrative Agent from time to time after the Effective Date. An item of fixed assets shall not be included in Eligible Fixed Assets (unless the Administrative Agent has imposed a reserve in the respect of the relevant fixed assets), without duplication, if:

(a) Holdings or any Guarantor does not have good, valid, and marketable title thereto,

(b) it is not located at one of the locations in the continental United States set forth on Schedule 1.01C, as such Schedule may be amended from time to time (or in-transit from one such location to another such location),

(c) it is located on real property leased by Holdings or any Guarantor or in a contract warehouse, in each case, unless either (1) it is subject to a Collateral Access Agreement executed by the lessor or warehouseman, as the case may be, and unless it is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises, or (2) a Rent Reserve has been imposed in respect of the Fixed Assets located at such location, or

(d) it is not subject to a valid and perfected first priority Lien in favor of the Administrative Agent.

“Eligible Inventory” means Inventory consisting of first quality finished goods held for sale in the ordinary course of Holdings’ or any Guarantor’s business, that complies with each of the representations and warranties respecting Eligible Inventory made in the Loan Documents, and that is not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Administrative Agent in Administrative Agent’s Permitted Discretion to address the results of any audit or appraisal performed by Administrative Agent from time to time after the Effective Date. In determining the amount to be so included, Inventory shall be valued at the lower of cost or market on a basis consistent with Holdings’ historical accounting practices. An item of Inventory shall not be included in Eligible Inventory if (unless the Administrative Agent has imposed a reserve in the respect of the relevant Inventory), without duplication:

(a) Holdings or any Guarantor does not have good, valid, and marketable title thereto,

(b) it is not located at one of the locations in the continental United States set forth on Schedule 1.01C, as such Schedule may be amended from time to time (or in-transit from one such location to another such location),

(c) it is located on real property leased by Holdings or any Guarantor or in a contract warehouse, in each case, unless (1) it is subject to a Collateral Access Agreement executed by the lessor or warehouseman, as the case may be, and unless it is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises, or (2) a Rent Reserve has been imposed in respect of the Inventory located at such location,

(d) it is not subject to a valid and perfected first priority Lien in favor of the Administrative Agent,

(e) it consists of goods returned or rejected by Holdings’ or any Guarantor’s customers,

(f) it consists of goods that are obsolete or slow moving, restrictive or custom items, work-in-process (other than Truss and Millwork Inventory), raw materials, or goods that constitute spare parts, packaging and shipping materials, supplies used or consumed

in Holdings' or any Guarantor's business, bill and hold goods, defective goods, "seconds," or Inventory acquired on consignment,

- (g) it consists of non-perpetual Inventory,
- (h) it consists of special order Inventory, or
- (i) it consists of racks and pallets Inventory.

"Eligible Truss and Millwork Inventory" means Eligible Inventory consisting of Truss and Millwork Inventory.

"Environmental Claims" means all claims, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the environment or threat to public health, personal injury (including sickness, disease or death), property damage, natural resources damage, or otherwise alleging liability or responsibility for damages (punitive or otherwise), cleanup, removal, remedial or response costs, restitution, civil or criminal penalties, injunctive relief, or other type of relief, resulting from or based upon the presence, placement, discharge, emission or release (including intentional and unintentional, negligent and non-negligent, sudden or non-sudden, accidental or non-accidental, placement, spills, leaks, discharges, emissions or releases) of any Hazardous Material at, in, or from any property, whether or not owned by Holdings or any Subsidiary.

"Environmental Laws" means all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authorities, in each case relating to environmental, health, safety and land use matters; including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Solid Waste Disposal Act, the Federal Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Emergency Planning and Community Right-to-Know Act, the California Hazardous Waste Control Law, the California Solid Waste Management, Resource, Recovery and Recycling Act, the California Water Code and the California Health and Safety Code.

"Equity Securities" of any Person shall mean (a) all common stock, preferred stock, participations, shares, partnership interests, limited liability company interests or other equity interests in and of such Person (regardless of how designated and whether or not voting or non-voting) and (b) all warrants, options and other rights to acquire any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with Holdings or the Company within the meaning of section 414(b) or (c) of the Code (and sections 414(m) and (o) of the Code for purposes of provisions relating to section 412 of the Code).

“ERISA Event” means (i) a Reportable Event with respect to a Pension Plan; (ii) a withdrawal by Holdings, the Company or any ERISA Affiliate from a Pension Plan subject to section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in section 4001(a)(2) of ERISA) or a cessation of operations which is treated as such a withdrawal under section 4062(e) of ERISA; (iii) a complete or partial withdrawal by Holdings, the Company or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (iv) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (v) an event or condition which might reasonably be expected to constitute grounds under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (vi) the imposition of any liability under Title IV of ERISA, other than PBGC premiums due but not delinquent under section 4007 of ERISA, upon Holdings, the Company or any ERISA Affiliate.

“Event of Default” means any of the events or circumstances specified in Section 9.01.

“Event of Loss” means, with respect to any property, any of the following: (i) any loss, destruction or damage of such property; (ii) any pending or threatened institution of any proceedings for the condemnation or seizure of such property or for the exercise of any right of eminent domain; or (iii) any actual condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, of such property, or confiscation of such property or the requisition of the use of such property.

“Excess Real Estate” means the real property assets set forth on Schedule 1.01D.

“Exchange Act” means the Securities Exchange Act of 1934.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of Holdings hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which Holdings is located and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by Holdings under Section 4.07), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with Section 4.01(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from Holdings with respect to such withholding tax pursuant to Section 4.01(a).

“Extension Option” has the meaning specified in Section 2.15.

“Fair Market Value” means, in respect of any asset, the price at which the asset would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers for the immediately preceding day, as published by the Federal Reserve Bank of New York; provided that if no such rate is so published on any day, then the Federal Funds Rate for such day shall be the rate most recently published.

“Final Commitment Amount” means the lesser of (i) \$80,000,000 and (ii) the maximum amount approved by the Bankruptcy Court in the Final Financing Order to be made available to Holdings pursuant to this Agreement.

“Final Financing Order” means the final order of the Bankruptcy Court substantially in the form of the Interim Financing Order (except as may otherwise be agreed by the Administrative Agent and the Majority Lenders in writing or on the record at the final hearing with respect to such order in the Bankruptcy Cases) entered in the Bankruptcy Cases after notice and any hearing pursuant to the Bankruptcy Rules and applicable local rules which, among other matters, authorizes the transactions contemplated by this Agreement (including Liens securing the Obligations) and provides for the superpriority of the Administrative Agent’s and the Lenders’ claims; which order shall be in full force and effect and not vacated, modified, amended, renewed, overturned, subject to a pending appeal or stayed in any respect (except in each case with the written consent of the Administrative Agent or as otherwise permitted under Section 8.21); and, in the event such order is the subject of a pending appeal, the performance of any Obligation of any Loan Party shall not be stayed during such appeal.

“Financing Orders” means the Interim Financing Order and the Final Financing Order.

“First Day Orders” means the Cash Management Order, the Interim Financing Order and all other orders entered by the Bankruptcy Court on the Petition Date or within five Business Days of the Petition Date or based on motions filed by Holdings or any Guarantor on the Petition Date.

“Fixed Assets Orderly Liquidation Value” means the Dollar amount that is estimated to be recoverable in an orderly liquidation of the Eligible Fixed Assets net of all associated costs and expenses of such liquidation, such Dollar amount to be as determined from time to time by an appraisal company selected by the Administrative Agent.

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than that in which Holdings is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“FRB” means the Board of Governors of the Federal Reserve System, and any Governmental Authority succeeding to any of its principal functions.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“GAAP” means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination, subject to Section 1.03.

“Gift Certificate Reserve” means, as of any date of determination, a Dollar amount equal to Holdings’ and its Subsidiaries’ accrued liabilities for outstanding gift certificates as of such date.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Gross Profit From Continuing Operations” means, for any period, (a) Total Sales From Continuing Operations for such period minus (b) Costs of Goods Sold From Continuing Operations for such period.

“Guarantor” means each direct or indirect U.S. Wholly-Owned Subsidiary of Holdings that currently exists or is hereafter acquired or created and which is a party to a Guaranty in its capacity as a guarantor of any of the Obligations, and shall include the Company and each U.S. Wholly-Owned Subsidiary of Holdings party hereto; provided, however, that in no event shall any Guarantor be released of its obligations under any Guaranty in the event such Guarantor ceases to be a U.S. Wholly-Owned Subsidiary, by operation of any disposition of the equity thereof or otherwise, except as permitted under this Agreement.

“Guaranty” means the guaranty of each Guarantor made pursuant to Section 11.10 and any other guaranty under any separate agreement executed by any Guarantor pursuant to which it guarantees any of the Obligations.

“Guaranty Obligation” has the meaning specified in the definition of “Contingent Obligation.”

“Hazardous Materials” means all those substances that are regulated by, or which may form the basis of liability under, any Environmental Law, including any substance identified under any Environmental Law as a pollutant, contaminant, hazardous waste, hazardous constituent, special waste, hazardous substance, hazardous material, or toxic substance, or petroleum or petroleum derived substance or waste.

“Holdings” has the meaning specified in the preamble.

“Honor Date” has the meaning specified in Section 3.03(b).

“Indebtedness” of any Person means, without duplication, (i) all indebtedness for borrowed money; (ii) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than trade payables entered into in the Ordinary Course of Business on ordinary terms and (x) not past due for more than 120 days or (y) if past due for more than 120 days, are being contested in good faith with any reserves as may be required by GAAP made therefor, but including all non-contingent Earn-Out Obligations); (iii) all reimbursement or payment obligations with respect to Surety Instruments (contingent or otherwise); (iv) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses; (v) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to property acquired by the Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (vi) all obligations with respect to Capital Leases; (vii) all indebtedness referred to in clauses (i) through (vi) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness; (viii) all Guaranty Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (i) through (vii) above; and (ix) all Stock Price Guaranties. For all purposes of this Agreement, the Indebtedness of any Person shall include all recourse Indebtedness of any partnership or joint venture or limited liability company in which such Person is a general partner or a joint venturer or a member.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Insolvency Proceeding” means, with respect to any Person, (i) any case, action or proceeding with respect to such Person before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in either case undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

“Intellectual Property Security Agreement” has the meaning specified in the Security Agreement.

“Interest Payment Date” means the last Business Day of each calendar month and the Revolving Loan Maturity Date.

“Interim Commitment Amount” means the lesser of (i) \$40,000,000 and (ii) the maximum amount approved by the Bankruptcy Court in the Interim Financing Order to be made available to Holdings prior to the issuance of the Final Financing Order pursuant to this Agreement.

“Interim Financing Order” means that certain order issued by the Bankruptcy Court in substantially the form of Exhibit J, as the same may be amended, modified or supplemented from time to time with the express written consent of Holdings, the Administrative Agent and the Majority Lenders or as otherwise permitted under Section 8.21.

“Inventory” means inventory (as that term is defined in the UCC).

“Inventory Vendor Discount Reserve” means, as of any date of determination, (i) 100% minus the Truss and Millwork Inventory Percentage multiplied by (ii) the amount of reserves that Holdings has recorded in its books as of such date, in accordance with GAAP, in respect of vendor discounts earned on Holdings’ and its Subsidiaries’ Inventory.

“Inventory Volume Rebate Reserve” means, as of any date of determination, (i) 100% minus the Truss and Millwork Inventory Percentage multiplied by (ii) the amount of reserves that Holdings has recorded in its books as of such date, in accordance with GAAP, in respect of rebates earned by vendors relating to volume purchases of Holdings’ and its Subsidiaries’ Inventory.

“Investment” has the meaning specified in Section 8.04.

“IRS” means the Internal Revenue Service, and any Governmental Authority succeeding to any of its principal functions under the Code.

“Issuance Date” has the meaning specified in Section 3.01(a).

“Issue” means, with respect to any Letter of Credit, to issue or to extend the expiry of, or to renew or increase the amount of or otherwise amend, such Letter of Credit; and the terms “Issued,” “Issuing” and “Issuance” have corresponding meanings.

“L/C Advance” means each Lender’s participation in any L/C Borrowing in accordance with its Proportionate Share.

“L/C Amendment Application” means an application form for amendment of outstanding Standby or Commercial Letters of Credit as shall at any time be in use at the L/C Issuer, as the L/C Issuer shall request.

“L/C Application” means an application form for issuances of Standby or Commercial Letters of Credit as shall at any time be in use at the L/C Issuer, as the L/C Issuer shall request.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which shall not have been reimbursed on the date when made nor converted into a Borrowing of Revolving Loans under Section 3.03(c).

“L/C Cash Collateral Account” means that certain deposit account with account number 4121914212 held at Wells Fargo Bank, N.A. (or such other interest-bearing deposit accounts held at Wells Fargo Bank, N.A. or its Affiliates satisfactory to the Administrative Agent) in the name of Holdings, in which cash shall from time to time be deposited pursuant to

the Loan Documents as additional collateral for the L/C Obligations, and on which the Administrative Agent shall have a first priority Lien, subject and subordinate only to the Carve-Out and Permitted Priority Liens, and over which the Administrative Agent shall have dominion and control. The Prepetition Administrative Agent shall have a second priority lien on the L/C Cash Collateral Account, subject and subordinate only to the Liens securing the Obligations, the Carve-Out and Permitted Priority Liens.

“L/C Commitment” means the commitment of the L/C Issuer to Issue, and the commitment of the Lenders severally to participate in, Letters of Credit from time to time Issued or outstanding under Article III, in an aggregate amount not to exceed on any date the amount of \$20,000,000, as the same shall be reduced as a result of a reduction in the L/C Commitment pursuant to Section 2.04 or Section 2.06; provided that the L/C Commitment is a part of the Aggregate Revolving Commitment rather than a separate, independent commitment; and provided further that if as a result of any Revolving Commitment reductions hereunder the L/C Commitment shall exceed the Aggregate Revolving Commitment, the L/C Commitment shall automatically reduce by the amount of such excess.

“L/C Issuer” means Wells Fargo in its capacity as issuer of one or more Letters of Credit hereunder, together with any replacement letter of credit issuer arising under Section 10.06 or Section 11.06.

“L/C Obligations” means at any time the sum of (i) the aggregate undrawn amount of all Letters of Credit then outstanding, plus (ii) the amount of all unreimbursed drawings under all Letters of Credit, including all outstanding L/C Borrowings.

“L/C-Related Documents” means the Letters of Credit, the L/C Applications, the L/C Amendment Applications and any other documents relating to any Letter of Credit, including any of the L/C Issuer’s standard form documents for letter of credit issuances.

“Lender” has the meaning specified in the preamble. References to the “Lenders” shall include Wells Fargo, including in its capacity as L/C Issuer; for purposes of clarification only, to the extent that Wells Fargo may have any rights or obligations in addition to those of the Lenders due to its status as L/C Issuer, its status as such will be specifically referenced.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify Holdings and the Administrative Agent.

“Letters of Credit” means any letters of credit Issued by the L/C Issuer pursuant to Article III (which may be Commercial Letters of Credit or Standby Letters of Credit).

“LIBOR” means the rate per annum (rounded upward, if necessary, to the nearest whole 1/8 of 1%) and determined pursuant to the following formula:

$$\text{LIBOR} = \frac{\text{Base LIBOR}}{100\% - \text{LIBOR Reserve Percentage}}$$

“Base LIBOR” means the rate per annum for United States dollar deposits quoted by Wells Fargo, for the purpose of calculating effective rates of interest for loans making reference to the Daily One Month LIBOR Rate, as the Inter-Bank Market Offered Rate in effect from time to time for delivery of funds for one (1) month in amounts approximately equal to the principal amount of such loans. Holdings understands and agrees that Wells Fargo may base its quotation of the Inter-Bank Market Offered Rate upon such offers or other market indicators of the Inter-Bank Market as Wells Fargo in its discretion deems appropriate including, but not limited to, the rate offered for U.S. dollar deposits on the London Inter-Bank Market.

“LIBOR Reserve Percentage” means the reserve percentage prescribed by the FRB (or any successor) for “Eurocurrency Liabilities” (as defined in Regulation D of the Federal Reserve Board, as amended), adjusted by Wells Fargo for expected changes in such reserve percentage during the applicable term of this Agreement.

“Lien” means any security interest, mortgage, deed of trust, pledge, hypothecation, assignment, charge or deposit arrangement, encumbrance, lien (statutory or other) or preferential arrangement of any kind or nature whatsoever in respect of any property (including those created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a Capital Lease, any financing lease having substantially the same economic effect as any of the foregoing, or the authorized filing of any financing statement naming the owner of the asset to which such lien relates as debtor, under the Uniform Commercial Code or any comparable law) and any contingent or other agreement to provide any of the foregoing.

“Loan” means an extension of credit by a Lender to Holdings (i) under Article II, in the form of a Revolving Loan, or (ii) under Article III in the form of an L/C Advance.

“Loan Documents” means this Agreement, the Notes, each Guaranty, the Collateral Documents, the Agency Fee Letter, the L/C Related Documents and all other documents delivered to the Administrative Agent or any Lender in connection herewith.

“Loan Party” means Holdings, the Company and each other Guarantor.

“Majority Lenders” means two or more Lenders (or if there is only one Lender, such Lender) whose Revolving Commitments (or, if all Revolving Commitments have been terminated, whose outstanding Revolving Loans plus Proportionate Share, if any, of the Effective Amount of all L/C Obligations) exceed 50% of the Aggregate Revolving Commitment (or, if all Revolving Commitments have been terminated, the Effective Amount of all Revolving Loans plus the Effective Amount of all L/C Obligations); provided, however, that at any time any Lender is a Defaulting Lender, all Defaulting Lenders shall be excluded in determining “Majority Lenders” and such Defaulting Lenders’ Revolving Commitments (or Revolving Loans and Proportionate Share of L/C Obligations, as the case may be) shall be excluded in such determination, and “Majority Lenders” shall mean two or more non-Defaulting Lenders (or if

there is only one non-Defaulting Lender, such Lender) otherwise meeting the criteria set forth in this definition.

“Margin Stock” means “margin stock” as such term is defined in Regulation T, U or X of the FRB.

“Material Adverse Effect” means (i) a material adverse change in, or a material adverse effect upon, the operations, business, properties or condition (financial or otherwise) of Holdings or Holdings and its Subsidiaries taken as a whole; (ii) a material impairment of the ability of the Loan Parties to perform under the Loan Documents; or (iii) a material adverse effect upon (a) the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document or (b) the perfection or priority of any Lien granted under the Collateral Documents; provided, however, that the filing of the Bankruptcy Cases and/or the events leading thereto or resulting therefrom shall not constitute a Material Adverse Effect.

“Maximum Commitment Amount” means \$80,000,000.

“Minimum Amount” means (i) in respect of any Borrowing of Loans, (a) in the case of Revolving Loans, an aggregate minimum amount of \$250,000 or any integral multiple of \$100,000 in excess thereof, (ii) in the case of any reduction of the Revolving Commitments under Section 2.04, \$250,000 or any multiple of \$100,000 in excess thereof, and (iii) in the case of any optional prepayment of Loans under Section 2.05, \$250,000 or any multiple of \$100,000 in excess thereof.

“Minority Investment” means the direct or indirect Investment by Holdings in the equity interests of any Person, provided in each case that such Person is not a Subsidiary at the time of such Investment and after giving effect thereto.

“Mortgage” means any deed of trust, mortgage, assignment of rents or other document, in each case as amended, creating a Lien on real property or any interest in real property owned by any Loan Party.

“Mortgaged Property” means all real property set forth on Schedule 6.20 hereto, as such Schedule may be amended from time to time in accordance with Section 7.15.

“Multiemployer Plan” means a “multiemployer plan,” within the meaning of section 4001(a)(3) of ERISA, to which Holdings, the Company or any ERISA Affiliate makes, is making, or is obligated to make contributions or, during the preceding three calendar years, has made, or been obligated to make, contributions.

“Net Issuance Proceeds” means, as to any issuance of debt or equity by any Person, cash proceeds received or receivable by such Person in connection therewith, net of costs and expenses paid or incurred in connection therewith in favor of any Person not an Affiliate of such Person.

“Net Proceeds” means, as to any Disposition by a Person, proceeds in cash, checks or other cash equivalent financial instruments as and when received by such Person, net of: (i) the direct costs relating to such Disposition excluding amounts payable to such Person or

any Affiliate of such Person, (ii) sale, use or other transaction taxes and capital gains taxes paid or payable by such Person as a direct result thereof, and (iii) amounts required to be applied to repay principal, interest and prepayment premiums and penalties on Indebtedness secured by a purchase money security interest on any asset which is the subject of such Disposition. “Net Proceeds” shall also include proceeds paid on account of any Event of Loss, net of (a) all money actually applied to repair or reconstruct the damaged property or property affected by the condemnation or taking, (b) all of the direct costs and expenses incurred in connection with the collection of such proceeds, award or other payments, and (c) any amounts retained by or paid to parties having superior rights to such proceeds, awards or other payments.

“Non-Wholly-Owned Subsidiaries” means all direct and indirect Subsidiaries of Holdings which are not Wholly-Owned Subsidiaries.

“Note” means a promissory note executed by Holdings in favor of a Lender pursuant to Section 2.02(b), in substantially the form of Exhibit E.

“Notice of Revolving Loan Borrowing” means a notice in substantially the form of Exhibit A.

“Obligations” means all advances to, and debts and liabilities of, any Loan Party arising under any Loan Document, or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising.

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

“Operating Lease” means, for any Person, any lease of property (whether real, personal or mixed) which, in accordance with GAAP, would, at the time a determination is made, be required to be recorded as an operating lease in respect of which such Person is liable as lessee.

“Ordinary Course of Business” means, in respect of any transaction involving a Loan Party, the ordinary course of such Loan Party’s business, and undertaken by such Loan Party in good faith and not for purposes of evading any covenant or restriction in any Loan Document.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Participant” has the meaning specified in Section 11.06(d).

“PBGC” means the Pension Benefit Guaranty Corporation, or any Governmental Authority succeeding to any of its principal functions under ERISA.

“PCAOB” means the Public Company Accounting Oversight Board.

“Pension Plan” means a pension plan (as defined in section 3(2) of ERISA) subject to Title IV of ERISA which Holdings or the Company sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, or in the case of a multiple employer plan (as described in section 4064(a) of ERISA) has made contributions at any time during the immediately preceding five (5) plan years.

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

“Permitted Liens” has the meaning specified in Section 8.01.

“Permitted Prepetition Claim Payment” means a payment on account of any claim arising or deemed to have arisen prior to the Petition Date, the payment of which is approved pursuant to the First Day Orders or otherwise authorized by the Bankruptcy Court; provided, however, that no such payment shall be made after the occurrence and during the continuance of an Event of Default.

“Permitted Priority Liens” means any Permitted Liens described in clauses (iii) [taxes], (iv) [carriers, warehouseman], (v) [ordinary course liens], and (viii) [ordinary course real estate liens] of Section 8.01(a), but only to the extent such Liens were perfected, non-avoidable, first priority Liens by operation of law prior to the Petition Date.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Petition Date” has the meaning specified in Recital A.

“Plan” means an employee benefit plan (as defined in section 3(3) of ERISA) which Holdings or the Company sponsors or maintains or to which Holdings or the Company makes, is making, or is obligated to make contributions and includes any Pension Plan.

“Plan of Reorganization” means any Chapter 11 plan or plans for Holdings and each Guarantor to be filed with the Bankruptcy Court in the Bankruptcy Cases; provided, however, that notwithstanding anything to the contrary set forth herein, the Plan of Reorganization (or any amendments or modifications thereto) shall provide for the payment in full in cash of all outstanding Loans and other non-contingent obligations hereunder and the

replacement, cancellation, cash collateralization or satisfactory rollover of all Letters of Credit on the effective date of the Plan of Reorganization.

“Pledged Collateral” means the “Pledged Collateral” as defined in the Security Agreement and shall include all products and Proceeds (as defined in the Security Agreement) of the Pledged Collateral.

“Postpetition Liabilities” means any liabilities or other obligations of Holdings or any Subsidiary incurred or assumed after the Petition Date.

“Prepetition Administrative Agent” means Wells Fargo in its capacity as “Administrative Agent” under the Prepetition Credit Agreement, and its successors and assigns in such capacity.

“Prepetition Credit Agreement” means the Second Amended and Restated Credit Agreement dated as of November 10, 2006, by and among Holdings, the Guarantors, the lenders party thereto and Wells Fargo, as administrative agent, as amended by that certain First Amendment to Second Amended and Restated Credit Agreement dated as of February 29, 2008 and that certain Second Amendment to Second Amended and Restated Credit Agreement dated as of September 30, 2008.

“Prime Rate” means at any time the rate of interest most recently announced within Wells Fargo at its principal office as its Prime Rate, with the understanding that the Prime Rate is one of Wells Fargo’s base rates and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto, and is evidenced by the recording thereof after its announcement in such internal publication or publications as Wells Fargo may designate.

“Professional Persons” has the meaning specified in the definition of “Carve-Out” herein.

“Proportionate Share” means, as to any Lender at any time, the percentage equivalent (expressed as a decimal, rounded to the ninth decimal place) at such time of such Lender’s Revolving Commitment divided by the Aggregate Revolving Commitment (or, if all Revolving Commitments have been terminated, (i) the sum of (A) the Effective Amount of such Lender’s Revolving Loans and (B) such Lender’s pro rata share, if any, of the Effective Amount of all L/C Obligations, divided by (ii) the sum of (A) the Effective Amount of all Revolving Loans and (B) the Effective Amount of all L/C Obligations).

“Put Obligations” mean obligations of Holdings either directly or indirectly to purchase from any Person such Person’s equity interest in Non-Wholly-Owned Subsidiaries or such Person’s equity interest in Persons in which Holdings has a Minority Investment.

“Reimbursement Date” has the meaning specified in Section 3.03(b).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“Rent Reserve” means, as of any date of determination and without duplication for multiple classes of eligible assets held at any particular location, a Dollar amount equal to (i) three multiplied by (ii) the aggregate monthly rent payable by Holdings and its Subsidiaries in respect of all real property leased by Holdings and its Subsidiaries and all contract warehouses, in each case, where Eligible Inventory or Eligible Fixed Assets are located, but only to the extent that the underlying real property lease or contract has been assumed by a Loan Party in the Bankruptcy Cases.

“Reportable Event” means any of the events set forth in section 4043(c) of ERISA or the regulations thereunder, other than any such event for which the 30-day notice requirement under ERISA has been waived in regulations issued by the PBGC.

“Requirement of Law” means, as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

“Requisite Priority” means the following with respect to Holdings and each Guarantor in the Bankruptcy Cases, subject and subordinate only to the Carve-Out (provided that such exceptions set forth in the definition of “Carve-Out” shall only apply upon the actual accrual of such amounts in accordance therewith and, at all times prior to such accruals, such amounts shall be subject to clauses (i) and (ii) below) and Permitted Priority Liens:

(i) pursuant to Bankruptcy Code Section 364(c)(2), a first priority, perfected Lien upon each Loan Party’s right, title and interest in, to and under the Collateral that is not otherwise encumbered by a valid perfected security interest or Lien on the Petition Date; and

(ii) pursuant to Bankruptcy Code Section 364(d)(1), a first priority, senior, priming, perfected Lien upon all of each Loan Party’s right, title and interest in, to and under all other Collateral, including the collateral under the Prepetition Credit Agreement.

“Responsible Officer” means as to any Person, the chief executive officer or the president of such Person, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants, the chief financial officer or the treasurer of such Person, or any other officer having substantially the same authority and responsibility.

“Revolving Commitment” means, as to each Lender, its obligation to (a) make Revolving Loans to Holdings pursuant to Section 2.01(a) and (b) purchase participations in L/C Obligations, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01(a) or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Revolving Loan” has the meaning specified in Section 2.01(a).

“Revolving Loan Maturity Date” means the earliest to occur of (a) January 2, 2010 or, upon the effectiveness of the Extension Option, March 31, 2010; (b) the date upon which the Interim Financing Order expires unless the Final Financing Order has been entered and has become effective; (c) the earlier of the effectiveness or effective date of the Plan of Reorganization; (d) the date of the closing of a sale of all or substantially all of Holdings’ assets pursuant to Section 363 of the Bankruptcy Code; (e) a dismissal of the Bankruptcy Cases or a conversion of the Bankruptcy Cases to Chapter 7 cases under the Bankruptcy Code; and (f) the date of termination of the Revolving Commitments in accordance with the provisions of this Agreement.

“Sale Cash Collateral Excess Proceeds Account” means that certain deposit account with account number 4121914295 held at Wells Fargo Bank, N.A. (or such other interest-bearing deposit accounts held at Wells Fargo Bank, N.A. or its Affiliates satisfactory to the Administrative Agent) in the name of Holdings, in which cash shall from time to time be deposited as provided in Sections 2.06(a)(iii) and 2.06(a)(vii) as additional collateral for the Indebtedness under the Prepetition Credit Agreement, and on which the Administrative Agent shall have a first priority Lien, subject and subordinate only to the Carve-Out and Permitted Priority Liens, and over which the Administrative Agent shall have dominion and control, which account shall be treated in accordance with the Plan of Reorganization. The Prepetition Administrative Agent shall have a second priority lien on the Sale Cash Collateral Excess Proceeds Account, subject and subordinate only to the Liens securing the Obligations, the Carve-Out and Permitted Priority Liens.

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

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

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Securities Laws” means the Securities Act of 1933, the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002, and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the PCAOB.

“Security Agreement” means that certain Security Agreement, dated as of the Effective Date, among Holdings, the Guarantors and the Administrative Agent for the benefit of the Lenders and the other Secured Parties (as defined in the Security Agreement) in substantially the form of Exhibit G.

“Selling, General and Administrative Expenses From Continuing Operations” means, for any period, selling, general and administrative expenses of Holdings and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but exclusive of selling, general and administrative expenses of the Wind-Down Business Units.

“Servicing Fee” has the meaning specified in Section 2.09(c).

“Solvent” means, with respect to any Person on a particular date, that, at fair valuations, the sum of such Person’s assets is greater than all of such Person’s debts.

“Standby Letter of Credit” means a standby Letter of Credit issued for the account of Holdings to support obligations of Holdings or any Subsidiary, contingent or otherwise (and excluding all Commercial Letters of Credit).

“Stock Price Guaranty” means a guaranty that (i) is issued by Holdings or an Affiliate of Holdings in connection with the Acquisition of another Person, and (ii) is for the payment of cash or issuance of Holdings’ common stock if the common stock issued by Holdings in connection with such an Acquisition is sold for less than the price provided for in the guaranty during its term, provided that for purposes of determining the amount of any Stock Price Guaranty at any time, the amount of such guaranty shall be equal to (a) the guaranteed stock price multiplied by the number of shares covered by the guaranty, minus (b) the current fair market value of one share of Holdings’ common stock (which fair market value shall be equal to the five day trailing average closing price for Holdings’ common stock as reported by the Nasdaq National Stock Market) multiplied by the number of shares covered by the guaranty, provided further, that for purposes of determining the amount of any Stock Price Guaranty which is payable solely in common stock of Holdings, the amount of such Stock Price Guaranty shall equal zero.

“Subsidiary” of a Person means any corporation, association, partnership, limited liability company, joint venture or other business entity of which more than 50% of the voting stock, membership interests or other equity interests, is owned or controlled directly or indirectly by the Person, or one or more of the Subsidiaries of the Person, or a combination thereof. Unless the context otherwise clearly requires, references herein to a “Subsidiary” refer to a Subsidiary of Holdings.

“Superpriority Status” has the meaning specified in Section 6.24(c).

“Surety Instruments” means all letters of credit (including standby and commercial), banker’s acceptances, bank guaranties, shipside bonds, surety bonds and similar instruments.

“Swap Contract” means any agreement, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, swaption, currency option or any other, similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any master agreement relating to or governing any or all of the foregoing.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (i) for any date on or after the date such Swap Contracts have been closed out

and termination value(s) determined in accordance therewith, such termination value(s), and (ii) for any date prior to the date referenced in clause (i) the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined by Holdings based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include any Lender).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Total Sales From Continuing Operations” means, for any period, total sales of Holdings and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but exclusive of total sales of the Wind-Down Business Units.

“Truss and Millwork Inventory” means Inventory consisting of trusses and millwork.

“Truss and Millwork Inventory Percentage” means, as of any date of determination, the percentage of Holdings’ and its Subsidiaries’ total Inventory consisting of Truss and Millwork Inventory as of such date.

“Truss and Millwork Vendor Discount Reserve” means, as of any date of determination, (i) the Truss and Millwork Inventory Percentage multiplied by (ii) the amount of reserves that Holdings has recorded in its books as of such date, in accordance with GAAP, in respect of vendor discounts earned on Holdings’ and its Subsidiaries’ Inventory.

“Truss and Millwork Volume Rebate Reserve” means, as of any date of determination, (i) the Truss and Millwork Inventory Percentage multiplied by (ii) the amount of reserves that Holdings has recorded in its books as of such date, in accordance with GAAP, in respect of rebates earned by vendors relating to volume purchases of Holdings’ and its Subsidiaries’ Inventory.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of California.

“Unfunded Pension Liability” means the excess of a Plan’s benefit liabilities under section 4001(a)(16) of ERISA, over the current value of that Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to section 412 of the Code for the applicable plan year.

“United States” and “U.S.” each means the United States of America.

“Update Certificate” means a certificate in substantially the form of Exhibit H.

“U.S. Subsidiary” and “U.S. Wholly-Owned Subsidiary” means a Subsidiary or Wholly-Owned Subsidiary, as the case may be, that is located in and a resident of the United States.

“U.S. Trustee” means the U.S. Trustee for the District of Delaware.

“Warranty Reserve” means, as of any date of determination, the amount of reserves that Holdings has recorded in its books as of such date, in accordance with GAAP, in respect of actual or estimated warranty claims relating to products or services provided by Holdings and its Subsidiaries.

“Wells Fargo” has the meaning specified in the preamble, or any successor by merger thereto.

“Wholly-Owned Subsidiary” means any Person in which (other than directors’ qualifying shares required by law) 100% of the capital stock or similar equity interest of each class having ordinary voting power, and 100% of the capital stock or similar equity interest of every other class, in each case, at the time as of which any determination is being made, is owned, beneficially and of record, by Holdings, or by one or more of the other Wholly-Owned Subsidiaries, or both.

“Wind-Down Business Units” means the business units identified on Schedule 1.01E, together with such other business units as Holdings may designate and that are approved by the Administrative Agent and the Majority Lenders, such approval not to be unreasonably withheld or delayed.

“Wind-Down of Non-Core Operations” means the termination or transfer of all employees and the cessation of business operations (within the meaning of Section 165 of the Code) of the Wind-Down Business Units.

1.02 Other Interpretive Provisions.

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, (vi) the

words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, and (vii) the term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(d) This Agreement and other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms. Unless otherwise expressly provided, any reference to any action of the Administrative Agent or the Lenders by way of consent, approval or waiver shall be deemed modified by the phrase “in its/their sole discretion.”

(e) This Agreement and the other Loan Documents are the result of negotiations among the Administrative Agent, Holdings, the Company and the other parties, have been reviewed by counsel to the Administrative Agent, Holdings, the Company and such other parties, and are the products of all parties. Accordingly, they shall not be construed against the Lenders or the Administrative Agent merely because of the Administrative Agent’s or Lenders’ involvement in their preparation.

1.03 Accounting Principles.

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein shall be construed, and all financial computations required under this Agreement shall be made, in accordance with GAAP, consistently applied; provided, however, that if GAAP shall have been modified after the Effective Date and the application of such modified GAAP shall have a material effect on such financial computations (including the computations required for the purpose of determining compliance with the covenants set forth in Article VIII), then such computations shall be made and such financial statements, certificates and reports shall be prepared, and all accounting terms not otherwise defined herein shall be construed, in accordance with GAAP as in effect prior to such modification, unless and until the Majority Lenders and Holdings shall have agreed upon the terms of the application of such modified GAAP.

(b) References herein to “fiscal year”, “fiscal quarter” and “fiscal month” refer to such fiscal periods of Holdings.

ARTICLE II.

THE CREDITS

2.01 Amounts and Terms of Commitments and Loans.

(a) The Revolving Credit. On the terms and subject to the conditions of this Agreement, each Lender severally agrees to advance to Holdings from time to time during the period beginning on the Effective Date and ending on the Revolving Loan Maturity Date such loans (each such loan, a “Revolving Loan”) in Dollars as Holdings may request under this Section 2.01(a); provided, however, that (i) after giving effect to any Borrowing of Revolving Loans, (A) the Effective Amount of all Revolving Loans and the Effective Amount of all L/C Obligations shall not exceed the Aggregate Revolving Commitment, (B) the Effective Amount of the Revolving Loans of any Lender plus the participation of such Lender in the Effective Amount of all L/C Obligations shall not at any time exceed such Lender’s Revolving Commitment and (C) the Effective Amount of all Revolving Loans and L/C Obligations shall not exceed the Borrowing Base then in effect. Within the limits of each Lender’s Revolving Commitment, and subject to the other terms and conditions hereof, Holdings may borrow under this Section 2.01(a), prepay under Section 2.05 and reborrow under this Section 2.01(a).

2.02 Loan Accounts.

(a) The Loans made by each Lender and the Letters of Credit Issued by the L/C Issuer shall be evidenced by one or more accounts or records maintained by such Lender or L/C Issuer, as the case may be, in the ordinary course of business. The accounts or records maintained by the Administrative Agent, the L/C Issuer and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to Holdings and the Letters of Credit Issued for the account of Holdings, and the interest and payments thereon. Any failure so to record or any error in doing so shall not, however, limit or otherwise affect the obligation of Holdings hereunder to pay any amount owing with respect to the Loans or any Letter of Credit.

(b) Upon the request of any Lender made through the Administrative Agent, the Loans made by such Lender may be evidenced by one or more Notes, instead of or in addition to loan accounts. Each such Lender shall endorse on the schedules annexed to its Note(s) the date, amount and maturity of each Loan made by it and the amount of each payment of principal made by Holdings with respect thereto. Each such Lender is irrevocably authorized by Holdings to endorse its Note(s), and each Lender’s record shall be conclusive absent manifest error; provided, however, that the failure of a Lender to make, or an error in making, a notation thereon with respect to any Loan shall not limit or otherwise affect the obligations of Holdings hereunder or under any such Note to such Lender.

2.03 Procedure for Borrowing.

(a) Each Borrowing of Revolving Loans shall be made upon Holdings’ irrevocable written notice delivered to the Administrative Agent in the form of a Notice of Revolving Borrowing, which notice must be received by the Administrative Agent prior to 9:00 a.m. (San Francisco time) on the requested Borrowing Date, specifying:

(i) the amount of the Borrowing, which shall be in a Minimum Amount; and

(ii) the requested Borrowing Date, which shall be a Business Day.

(b) The Administrative Agent will promptly notify each Lender of its receipt of any Notice of Revolving Borrowing and of the amount of such Lender's Proportionate Share of that Borrowing.

(c) Each Lender will make the amount of its Proportionate Share of each Borrowing available to the Administrative Agent for the account of Holdings at the Administrative Agent's Payment Office by 11:00 a.m. (San Francisco time) on the Borrowing Date requested by Holdings in funds immediately available to the Administrative Agent. The proceeds of each such Borrowing will then be made available to Holdings by the Administrative Agent at such office by crediting the account of Holdings on the books of Wells Fargo with the aggregate of the amounts made available to the Administrative Agent by the Lenders and in like funds as received by the Administrative Agent, or if requested by Holdings, by wire transfer in accordance with written instructions provided to the Administrative Agent by Holdings of such funds as received by the Administrative Agent, unless on the date of the Borrowing all or any portion of the proceeds thereof shall then be required to be applied to the repayment of any outstanding Loans or L/C Obligations, in which case such proceeds or portion thereof shall be applied to the payment of such Loans or L/C Obligations.

2.04 Voluntary Termination or Reduction of Commitments. Holdings may, upon not less than three (3) Business Days' prior written notice to the Administrative Agent, terminate the Revolving Commitments, or permanently reduce the Revolving Commitments, provided that the aggregate amount of any partial reduction is in a Minimum Amount; unless, after giving effect thereto and to any prepayments of any Loans made on the effective date thereof, (i) the Effective Amount of all Revolving Loans and L/C Obligations together would exceed the Aggregate Revolving Commitment then in effect, or (ii) the Effective Amount of all L/C Obligations would exceed the L/C Commitment then in effect. Once reduced in accordance with this Section 2.04, the Revolving Commitments may not be increased. Any reduction of the Revolving Commitments shall be applied to each Lender according to its Proportionate Share. If and to the extent specified by Holdings in the notice to the Administrative Agent, some or all of the reduction in the Revolving Commitments shall be applied to reduce the L/C Commitment. All accrued commitment and letter of credit fees to, but not including, the effective date of any reduction or termination of Revolving Commitments, shall be paid on the effective date of such reduction or termination.

2.05 Optional Prepayments. Subject to Section 4.04, Holdings may, at any time or from time to time, upon irrevocable written notice to the Administrative Agent provided prior to 9:00 a.m. (San Francisco time) on the day of such prepayment (provided that, if such prepayment is received by the Administrative Agent on or prior to 11:00 a.m. (San Francisco time) on any Business Day, such payment shall be applied against the outstanding Loans on the same Business Day), ratably prepay Loans in whole or in part, in Minimum Amounts without penalty; provided, however, that such notice may state that it is conditioned upon the consummation of a refinancing or other transaction, in which case such notice may be revoked by Holdings (by written notice to the Administrative Agent on or prior to the specified prepayment date), subject to Section 4.04, if such condition is not satisfied. Such notice of

prepayment shall specify the date and amount of such prepayment. The Administrative Agent will promptly notify the Lenders of its receipt of any such notice and of such prepayment. If such notice is given by Holdings, Holdings shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein, together with (in the case of Loans based on LIBOR) accrued interest to each such date on the amount prepaid and any amounts required pursuant to Section 4.04.

2.06 Mandatory Prepayments of Loans; Mandatory Commitment Reductions.

(a) Mandatory Prepayments of Loans.

(i) Over L/C Commitment. If at any time the Effective Amount of all L/C Obligations exceeds the L/C Commitment, Holdings shall Cash Collateralize on such date the outstanding Letters of Credit in an amount equal to the excess of the maximum amount then available to be drawn under the Letters of Credit over the L/C Commitment.

(ii) Over Aggregate Revolving Commitment. If at any time the Effective Amount of all Revolving Loans plus the Effective Amount of all L/C Obligations exceeds the Aggregate Revolving Commitment, Holdings shall immediately, and without notice or demand, pay an amount equal to the applicable excess in the following order of priority: first, Holdings shall prepay any L/C Borrowings then outstanding up to an amount equal to any remaining excess; and second, Holdings shall prepay the Revolving Loans then outstanding up to an amount equal to any remaining excess.

(iii) Dispositions of Property other than Excess Real Estate. If Holdings, the Company or any other Subsidiary shall at any time make or agree to make a Disposition of assets other than Excess Real Estate, then (A) Holdings shall promptly notify the Administrative Agent and the Prepetition Administrative Agent of such Disposition (including notice of the amount of the estimated Net Proceeds to be received by Holdings, the Company or such other Subsidiary in respect thereof), and (B) promptly upon, and in no event later than one (1) Business Day after, receipt by Holdings, the Company or such other Subsidiary of the Net Proceeds of such Disposition, Holdings shall pay an amount equal to 100% of such Net Proceeds in the following order of priority: first, Holdings shall prepay the outstanding amount of any L/C Borrowings; second, with any remaining excess, Holdings shall prepay the outstanding amount of any Revolving Loans; third, with any remaining excess, Holdings shall Cash Collateralize the L/C Obligations in accordance with Section 3.07; and fourth, to the extent that Holdings and its Subsidiaries have received such Net Proceeds exceeding \$25,000,000 in the aggregate, and provided no Default then exists, Holdings shall pay any remaining excess to the Prepetition Administrative Agent as cash collateral for the Indebtedness under the Prepetition Credit Agreement, which excess would be deposited in the Sale Cash Collateral Excess Proceeds Account and be treated in accordance with the Plan of Reorganization; provided, however, that with respect to any Non-Wholly-Owned Subsidiary, Holdings shall only be required to make the payments provided above in an amount equal to the ratable portion of the Net Proceeds received by such Non-Wholly-Owned Subsidiary based on Holdings' direct or indirect interest in such Non-Wholly-Owned Subsidiary; and provided, further, however, that if the Net Proceeds of any Disposition are less than \$100,000, then Holdings may delay the payments required under this

Section 2.06(a)(iii) until such time as aggregate Net Proceeds from Dispositions in respect of which a payment under this Section 2.06(a)(iii) has not been made exceed \$100,000.

(iv) New Debt. If Holdings, the Company or any other Subsidiary shall at any time or from time to time issue any debt securities or otherwise borrow money (other than any Loans and other Indebtedness permitted under Section 8.05), then (i) Holdings shall promptly notify the Administrative Agent in advance of the estimated Net Issuance Proceeds of such issuance or borrowing, and (ii) promptly upon, and in no event later than one (1) Business Day after, receipt by Holdings, the Company or such other Subsidiary of the Net Issuance Proceeds of such issuance or borrowing, Holdings shall pay an amount equal to 100% of such Net Issuance Proceeds in the following order of priority: first, Holdings shall prepay the outstanding amount of any L/C Borrowings; second, with any remaining excess, Holdings shall prepay the outstanding amount of any Revolving Loans; third, with any remaining excess, Holdings shall Cash Collateralize the outstanding amount of any L/C Obligations in accordance with Section 3.07; and fourth, with any remaining excess, Holdings shall fund the Cash Collateral Account; provided, however, that with respect to any Non-Wholly-Owned Subsidiary, Holdings shall only be required to make the payments provided above in an amount equal to the ratable portion of the Net Issuance Proceeds received by such Non-Wholly-Owned Subsidiary in respect of such issuance or borrowing based on Holdings' direct or indirect interest in such Non-Wholly-Owned Subsidiary.

(v) Over Borrowing Base. If at any time the Effective Amount of all Revolving Loans plus the Effective Amount of all L/C Obligations exceeds the Borrowing Base then in effect, Holdings shall immediately, and without notice or demand, pay an amount equal to the applicable excess in the following order of priority: first, Holdings shall prepay any L/C Borrowings then outstanding up to an amount equal to the applicable excess; second, Holdings shall prepay the Revolving Loans then outstanding up to an amount equal to any remaining excess; and third, Holdings shall Cash Collateralize the L/C Obligations then outstanding up to an amount equal to any remaining excess in accordance with Section 3.07.

(vi) New Equity. Unless waived by the Majority Lenders in each instance, upon the receipt of Net Issuance Proceeds in respect of the issuance and sale of any Equity Securities by Holdings or any Subsidiary, Holdings shall, within one (1) Business Day of Holdings' or such Subsidiary's receipt of such Net Issuance Proceeds, pay an amount equal to 100% of such Net Issuance Proceeds in the following priority: first, Holdings shall prepay the outstanding amount of any L/C Borrowings; second, with any remaining excess, Holdings shall prepay the outstanding amount of any Revolving Loans; third, with any remaining excess, Holdings shall Cash Collateralize the outstanding amount of any L/C Obligations in accordance with Section 3.07; and fourth, with any remaining excess, Holdings shall fund the Cash Collateral Account.

(vii) Dispositions of Excess Real Estate. If Holdings, the Company or any other Subsidiary shall at any time make or agree to make a Disposition of Excess Real Estate, then (A) Holdings shall promptly notify the Administrative Agent and the Prepetition Administrative Agent of such Disposition (including notice of the amount of the estimated Net Proceeds to be received by Holdings, the Company or such other Subsidiary in respect thereof), and (B) provided no Default then exists, then promptly upon, and in no event

later than one (1) Business Day after, receipt by Holdings, the Company or such other Subsidiary of the Net Proceeds of such Disposition, Holdings shall pay an amount equal to 100% of such Net Proceeds to the Prepetition Administrative Agent as cash collateral for the Indebtedness under the Prepetition Credit Agreement, which excess would be deposited in the Sale Cash Collateral Excess Proceeds Account and be treated in accordance with the Plan of Reorganization; provided, however, that with respect to any Non-Wholly-Owned Subsidiary, Holdings shall only be required to make the payments provided above in an amount equal to the ratable portion of the Net Proceeds received by such Non-Wholly-Owned Subsidiary based on Holdings' direct or indirect interest in such Non-Wholly-Owned Subsidiary.

(viii) Extraordinary Payments. If Holdings, the Company or any other Subsidiary shall at any time or from time to time receive extraordinary payments (*i.e.*, payments received outside of the Ordinary Course of Business) of cash, checks or other cash equivalent financial instruments, including payments from any Governmental Authority in respect of any federal, state or local tax refunds, then promptly upon, and in no event later than one (1) Business Day after, receipt by Holdings, the Company or such other Subsidiary of such extraordinary payments, Holdings shall pay an amount equal to 100% of such extraordinary payments in the following order of priority: first, Holdings shall prepay the outstanding amount of any L/C Borrowings; second, with any remaining excess, Holdings shall prepay the outstanding amount of any Revolving Loans; third, with any remaining excess, Holdings shall Cash Collateralize the outstanding amount of any L/C Obligations in accordance with Section 3.07; and fourth, with any remaining excess, Holdings shall fund the Cash Collateral Account; provided, however, that if the Net Proceeds of any extraordinary payment are less than \$100,000, then Holdings may delay the payments required under this Section 2.06(a)(viii) until such time as aggregate Net Proceeds from extraordinary payments in respect of which a payment under this Section 2.06(a)(viii) has not been made exceed \$100,000.

(ix) Cash Collateral Account Balance. If as of the close of business on any Business Day the balance in the Cash Collateral Account on such day exceeds \$1,000,000, then Holdings shall within one (1) Business Day, and without notice or demand, pay an amount equal to the applicable excess in the following order of priority: first, Holdings shall prepay any L/C Borrowings then outstanding up to an amount equal to any remaining excess; second, Holdings shall prepay the Revolving Loans then outstanding up to an amount equal to any remaining excess; and third, Holdings shall Cash Collateralize the L/C Obligations then outstanding up to an amount equal to any remaining excess in accordance with Section 3.07.

(x) Holdings shall pay, together with each prepayment under this Section 2.06, accrued interest on the amount of any Loans prepaid and any amounts required pursuant to Section 4.04.

(b) Mandatory Commitment Reductions. The Aggregate Revolving Commitment shall be automatically and permanently reduced to \$0 on the Revolving Loan Maturity Date.

2.07 Repayment.

(a) The Revolving Loans. Holdings shall repay to the Administrative Agent for the account of the Lenders on the Revolving Loan Maturity Date the aggregate principal amount of Revolving Loans outstanding on such date.

2.08 Interest.

(a) Subject to Section 2.08(c) below, each Revolving Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing Date at a rate per annum equal to the Base Rate plus the Applicable Margin.

(b) Interest on each Revolving Loan shall be paid in arrears on each Interest Payment Date. Interest shall also be paid on the date of any prepayment of the Loans under Section 2.05 or Section 2.06 for the portion of such Loans so prepaid and upon payment (including prepayment) in full thereof, and on the Revolving Loan Maturity Date. During the existence of any Event of Default, interest shall be paid on demand of the Administrative Agent at the request or with the consent of the Majority Lenders.

(c) Notwithstanding Section 2.08(a), while any Event of Default exists or after acceleration, Holdings shall pay interest (after as well as before entry of judgment thereon to the extent permitted by law) on the principal amount of all outstanding Loans and other Obligations of Holdings, at a rate per annum which is determined by adding 4% per annum to the Applicable Margin and, in the case of Obligations not subject to the Applicable Margin, at a rate per annum equal to the Base Rate plus the Applicable Margin plus 4% per annum.

(d) Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to Holdings. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

2.09 Fees. In addition to certain fees described in Section 3.08:

(a) Agency Fee. On the Effective Date, Holdings shall pay the fee specified in that certain letter agreement between Holdings and Wells Fargo dated June 16, 2009 (the "Agency Fee Letter", and such fee, the "Agency Fee"). The Agency Fee is fully earned when due and, once paid, is non-refundable.

(b) Commitment Fees. Holdings shall pay to the Administrative Agent for the account of each Lender a commitment fee on the actual daily unused portion of such Lender's Proportionate Share of the then effective Aggregate Revolving Commitment (the "Available Commitment"), computed on a monthly basis in arrears on the last Business Day of each calendar month based upon the daily utilization for that month as calculated by the

Administrative Agent at a rate per annum equal to the Applicable Fee Amount (such fees, the “Commitment Fees”). For purposes of calculating the Available Commitment under this Section 2.09, the Revolving Commitments shall be deemed used to the extent of the Effective Amount of Revolving Loans then outstanding plus the Effective Amount of L/C Obligations then outstanding (other than L/C Obligations consisting of the aggregate undrawn amount of all Commercial Letters of Credit then outstanding). Such Commitment Fees shall accrue from the Effective Date to the Revolving Loan Maturity Date and shall be due and payable monthly in arrears on the last Business Day of each calendar month, commencing on June 30, 2009, to the Revolving Loan Maturity Date, with the final payment to be made on the Revolving Loan Maturity Date; provided that in connection with any termination of Revolving Commitments hereunder, the accrued Commitment Fees calculated for the period ending on such date shall also be paid on the date of termination. The Commitment Fees provided in this Section 2.09(b) shall accrue at all times after the Effective Date, including at any time during which one or more conditions in Article V are not met. The Commitment Fees are fully earned when due and, once paid, are non-refundable.

(c) Servicing Fee. Holdings shall pay to the Administrative Agent, for the Administrative Agent’s sole account, a servicing fee equal to \$2,500 per month for each month (or a pro-rata share thereof, if in respect of a portion of a month) from and after the Effective Date up to the Revolving Loan Maturity Date (the “Servicing Fee”), which shall be due and payable monthly in arrears on the last Business Day of each calendar month, commencing on June 30, 2009, to the Revolving Loan Maturity Date, with the final payment to be made on the Revolving Loan Maturity Date. The Servicing Fee is fully earned when due and, once paid, is non-refundable.

(d) Closing Fee. On the Effective Date, Holdings shall pay to the Administrative Agent for the account of each of the Lenders in accordance with its respective Proportionate Share a closing fee equal to 2.00% of the Maximum Commitment Amount (such fee, the “Closing Fee”). The Closing Fee is fully earned when due and, once paid, is non-refundable.

(e) Audit, Appraisal and Examination Fees. Holdings shall pay to the Administrative Agent, for the Administrative Agent’s sole account, (i) a fee equal to \$1,000 per day, per auditor, plus reasonable out-of-pocket expenses for each financial audit of Holdings or any Guarantor performed by personnel, employed by the Administrative Agent, (ii) if implemented, a fee equal to \$1,000 per day, per applicable individual, plus reasonable out-of-pocket expenses for the establishment of electronic collateral reporting, and (iii) the actual charges paid or incurred by the Administrative Agent if it elects to employ the services of one or more third persons to perform financial audits or quality of the earnings analyses of Holdings or any Guarantor, to establish electronic collateral reporting systems, to appraise the Collateral, or any portion thereof, or to assess Holdings’ or any Guarantor’s business valuation.

2.10 Computation of Fees and Interest.

(a) All computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest and fees shall accrue during each period during which interest or such fees are computed from the first day thereof to the last day thereof.

(b) Each determination of an interest rate by the Administrative Agent shall be conclusive and binding on Holdings and the Lenders in the absence of manifest error. The Administrative Agent will, at the request of Holdings or any Lender, deliver to Holdings or the Lender, as the case may be, a statement showing the quotations used by the Administrative Agent in determining any interest rate and the resulting interest rate.

2.11 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by Holdings shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by Holdings hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Payment Office in Dollars and in immediately available funds not later than 11:00 a.m. (San Francisco time) on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Proportionate Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 11:00 a.m. (San Francisco time) shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by Holdings shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing (or prior to the time of any Borrowing, in the case of any same day advance of Revolving Loans) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.03 and may, in reliance upon such assumption, make available to Holdings a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and Holdings severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to Holdings to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (B) in the case of a payment to be made by Holdings, the interest rate applicable to Revolving Loans. If Holdings and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to Holdings the amount of such interest paid by Holdings for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by Holdings shall be without prejudice to any claim Holdings may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Holdings; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from Holdings prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that Holdings will not make such payment, the Administrative Agent may assume that Holdings has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if Holdings has not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or Holdings with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to Holdings by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article V are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

2.12 Sharing of Payments, Etc.

(a) Except as otherwise provided herein:

(i) Each Revolving Loan and reduction of the Aggregate Revolving Commitment shall be made or shared among the Lenders pro rata according to their respective Proportionate Shares;

(ii) Each payment of principal on Loans in any Borrowing shall be shared among the Lenders which made or funded the Loans in such Borrowing pro rata according to the respective unpaid principal amounts of such Loans then owed to such Lenders;

(iii) Each payment of interest on Loans in any Borrowing shall be shared among the Lenders that made or funded the Loans in such Borrowing pro rata

according to (A) the respective unpaid principal amounts of such Loans so made or funded by such Lenders and (B) the dates on which such Lenders so made or funded such Loans;

(iv) Each payment of Commitment Fees pursuant to this Agreement shall be shared among the Lenders (except for Defaulting Lenders) pro rata according to (A) their respective Proportionate Shares and (B) in the case of each Lender which becomes a Lender hereunder after the date hereof, the date upon which such Lender so became a Lender;

(v) Each payment of any fees due in connection with any amendment hereto or any waiver of or forbearance from any Event of Default existing hereunder shall be shared among those Lenders consenting to such amendment, waiver or forbearance or as otherwise agreed to by such Lenders;

(vi) Each payment of interest (other than interest on Loans) and fees (other than Commitment Fees) shall be shared among the Lenders and the Administrative Agent owed the amount upon which such interest or fee accrues pro rata according to (A) the respective amounts so owed such Lenders and the Administrative Agent and (B) the dates on which such amounts became owing to such Lenders and the Administrative Agent; and

(vii) All other payments under this Agreement and the other Loan Documents shall be for the benefit of the Person or Persons specified.

(b) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it, or the participations in L/C Obligations held by it or other obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans or participations and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans, subparticipations in L/C Obligations and participations in such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section 2.12(b) shall not be construed to apply to (x) any payment made by Holdings pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations to any assignee or participant, other than to Holdings or any Subsidiary thereof (as to which the provisions of this Section 2.12(b) shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.12(b) and will in each case notify the applicable Lenders following any such purchases or repayments.

2.13 Security and Guaranty.

(a) All Obligations under this Agreement, the Notes and all other Loan Documents shall be secured in accordance with the Collateral Documents.

(b) All Obligations of Holdings under this Agreement, each of the Notes and all other Loan Documents to which it is a party shall be unconditionally guaranteed by each Guarantor pursuant to its Guaranty.

2.14 Cash Collateral. Upon the occurrence of the circumstances described in Section 2.06 requiring Holdings to fund the Cash Collateral Account, then Holdings shall immediately fund the Cash Collateral Account and Cash Collateralize the Obligations in the applicable amount required under Section 2.06. Cash collateral held under this Section 2.14 shall be maintained in the Cash Collateral Account pursuant to the Security Agreement. Unless an Event of Default has occurred and is continuing, Holdings shall have access to the funds in the Cash Collateral Account and Holdings may from time to time give instructions to the depository bank directing the disposition of the funds in the Cash Collateral Account. If an Event of Default has occurred and is continuing, Holdings shall not have access to the funds in the Cash Collateral Account and may not direct the disposition of the funds in the Cash Collateral Account, except with the consent of the Administrative Agent.

2.15 Extension Option. Holdings may extend the date set forth in clause (a) of the definition of Revolving Loan Maturity Date from January 2, 2010 to March 31, 2010 (the "Extension Option") subject to (and such date shall be so extended upon the satisfaction of) the following conditions:

(a) Holdings shall provide written notice to the Administrative Agent at least thirty (30) days prior to January 2, 2010 of its intention to exercise the Extension Option;

(b) Holdings shall pay a fee to the Administrative Agent on or before January 2, 2010 for the ratable amount of the Lenders equal to 1.00% of the Aggregate Revolving Commitment less any permanent reductions of Revolving Commitments;

(c) the Loan Parties shall have filed with the Bankruptcy Court the Plan of Reorganization; and

(d) no Default or Event of Default shall have occurred and be continuing as of January 2, 2010.

The Administrative Agent shall promptly notify Holdings and the Lenders upon the effectiveness of the Extension Option.

ARTICLE III.

THE LETTERS OF CREDIT

3.01 The Letter of Credit Subfacility.

(a) On the terms and subject to the conditions set forth herein (i) the L/C Issuer agrees, (A) from time to time on any Business Day during the period from the Effective Date to the Revolving Loan Maturity Date to issue Letters of Credit for the account of Holdings, and to amend or renew Letters of Credit previously issued by it, in accordance with Section 3.02(c) and Section 3.02(d), and (B) to honor drafts under the Letters of Credit; and (ii) the Lenders severally agree to participate in Letters of Credit Issued for the account of Holdings; provided that the L/C Issuer shall not be obligated to Issue, and no Lender shall be obligated to participate in, any Letter of Credit if such Letter of Credit is not denominated in Dollars or if as of the date of Issuance of such Letter of Credit (the "Issuance Date") and after giving effect thereto (w) the Effective Amount of all L/C Obligations plus the Effective Amount of all Revolving Loans shall exceed the Aggregate Revolving Commitment, (x) the participation of any Lender in the Effective Amount of all L/C Obligations plus the Effective Amount of the Revolving Loans of such Lender shall exceed such Lender's Revolving Commitment, (y) the Effective Amount of L/C Obligations shall exceed the L/C Commitment or (z) the Effective Amount of all Revolving Loans and L/C Obligations shall exceed the Borrowing Base then in effect. Within the foregoing limits, and subject to the other terms and conditions hereof, Holdings' ability to obtain Letters of Credit shall be fully revolving, and, accordingly, Holdings may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit which have expired or which have been drawn upon and reimbursed.

(b) The L/C Issuer is under no obligation to Issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from Issuing such Letter of Credit, or any Requirement of Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the Issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the L/C Issuer in good faith deems material to it;

(ii) the L/C Issuer has received written notice from any Lender, the Administrative Agent or Holdings, on or prior to the Business Day prior to the requested date of Issuance of such Letter of Credit, that one or more of the applicable conditions contained in Article V is not then satisfied;

(iii) the expiry date of any requested Letter of Credit is after the Revolving Loan Maturity Date, unless all of the Lenders have approved such expiry date in writing;

(iv) the expiry date of any requested Letter of Credit is prior to the maturity date of any financial obligation to be supported by the requested Letter of Credit;

(v) any requested Letter of Credit does not provide for drafts, or is not otherwise in form and substance acceptable to the L/C Issuer, or the Issuance of a Letter of Credit shall violate any applicable policies of the L/C Issuer;

(vi) any Standby Letter of Credit is in a face amount less than \$1,000,000; or

(vii) any requested Letter of Credit is to be denominated in a currency other than Dollars.

(c) Letters of Credit issued under this Article III shall be either Commercial Letters of Credit or Standby Letters of Credit.

3.02 Issuance, Amendment and Renewal of Letters of Credit.

(a) Each Letter of Credit shall be issued upon the irrevocable written request of Holdings received by the L/C Issuer (with a copy sent by Holdings to the Administrative Agent) at least four (4) Business Days (or such shorter time as the L/C Issuer may agree in a particular instance in its sole discretion) prior to the proposed date of issuance. Each such request for issuance of a Letter of Credit shall be by facsimile, confirmed immediately in an original writing, in the form of an L/C Application, and shall specify in form and detail satisfactory to the L/C Issuer: (i) the proposed date of issuance of the Letter of Credit (which shall be a Business Day); (ii) the face amount of the Letter of Credit; (iii) the expiry date of the Letter of Credit; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by the beneficiary of the Letter of Credit in case of any drawing thereunder; (vi) the full text of any certificate to be presented by the beneficiary in case of any drawing thereunder; and (vii) such other matters as the L/C Issuer may require.

(b) At least two (2) Business Days prior to the Issuance of any Letter of Credit, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of the L/C Application or L/C Amendment Application from Holdings and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received notice on or before the Business Day immediately preceding the date the L/C Issuer is to issue a requested Letter of Credit from the Administrative Agent (A) directing the L/C Issuer not to issue such Letter of Credit because such issuance is not then permitted under Section 3.01(a) as a result of the limitations set forth in clauses (w) through (z) thereof or Section 3.01(b)(ii); or (B) that one or more conditions specified in Article V are not then satisfied; then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of Holdings in accordance with the L/C Issuer's usual and customary business practices.

(c) From time to time while a Letter of Credit is outstanding and prior to the Revolving Loan Maturity Date, the L/C Issuer will, upon the written request of Holdings received by the L/C Issuer (with a copy sent by Holdings to the Administrative Agent) at least four (4) Business Days (or such shorter time as the L/C Issuer may agree in a particular instance in its sole discretion) prior to the proposed date of amendment (including a renewal or extension thereof), amend any Letter of Credit issued by it. Each such request for amendment of a Letter of Credit shall be made by facsimile, confirmed immediately in an original writing, made in the form of an L/C Amendment Application and shall specify in form and detail satisfactory to the L/C Issuer: (i) the Letter of Credit to be amended; (ii) the proposed date of amendment of the Letter of Credit (which shall be a Business Day); (iii) the nature of the proposed amendment; and (iv) such other matters as the L/C Issuer may require. The L/C Issuer shall be under no obligation to amend any Letter of Credit if: (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms of this Agreement; or (B) the beneficiary of any such Letter of Credit does not accept the proposed amendment to the Letter of Credit. The Administrative Agent will promptly notify the Lenders of the Issuance of any Standby Letter of Credit notified to it by the L/C Issuer. The Lenders acknowledge and agree that the Administrative Agent will not notify them of the receipt by the Administrative Agent of any L/C Application or L/C Amendment Application or of the Issuance of any Commercial Letter of Credit. From time to time the Administrative Agent will notify the Lenders of the amount of all outstanding Letters of Credit hereunder.

(d) The L/C Issuer and the Lenders agree that, while a Letter of Credit is outstanding and prior to the Revolving Loan Maturity Date, the L/C Issuer shall be entitled to authorize the renewal of any Letter of Credit issued by it. The L/C Issuer shall be under no obligation to so renew any Letter of Credit if: (A) the L/C Issuer would have no obligation at such time to issue or amend such Letter of Credit in its renewed form under the terms of this Agreement; or (B) the beneficiary of any such Letter of Credit does not accept the proposed renewal of the Letter of Credit. If any outstanding Letter of Credit shall provide that it shall be automatically renewed unless the beneficiary thereof receives notice from the L/C Issuer that such Letter of Credit shall not be renewed, and if at the time of renewal, the L/C Issuer would be entitled to authorize the renewal of such Letter of Credit in accordance with this Section 3.02(d) upon the request of Holdings, but the L/C Issuer shall not have received any written direction by Holdings with respect thereto, the L/C Issuer shall nonetheless be permitted to allow such Letter of Credit to renew, and Holdings and the Lenders hereby authorize such renewal, and, accordingly, the L/C Issuer shall be deemed to have received an L/C Amendment Application from Holdings requesting such renewal.

(e) The L/C Issuer may, at its election (or as required by the Administrative Agent at the direction of the Majority Lenders), deliver any notices of termination or other communications to any Letter of Credit beneficiary or transferee, and take any other action as necessary or appropriate, at any time and from time to time, in order to cause the expiry date of such Letter of Credit to be a date not later than the Revolving Loan Maturity Date.

(f) This Agreement shall control in the event of any conflict with any L/C Related Document (other than any Letter of Credit).

(g) The L/C Issuer will also deliver to the Administrative Agent, concurrently or promptly following its delivery of a Letter of Credit, or amendment to or renewal of a Letter of Credit, to an advising bank or a beneficiary, a true and complete copy of each such Letter of Credit or amendment to or renewal of a Letter of Credit.

3.03 Risk Participations, Drawings and Reimbursements.

(a) Immediately upon the Issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a participation in such Letter of Credit and each drawing thereunder in an amount equal to the product of (i) the Proportionate Share of such Lender, times (ii) the maximum amount available to be drawn under such Letter of Credit and the amount of such drawing, respectively. Each Issuance of a Letter of Credit shall be deemed to utilize the Revolving Commitment of each Lender by an amount equal to the amount of such participation.

(b) In the event of any request for a drawing under a Letter of Credit by the beneficiary or transferee thereof, the L/C Issuer will promptly notify Holdings and specify in such notice the date such drawing will be honored by the L/C Issuer (the "Honor Date"). If the L/C Issuer so notifies Holdings prior to 9:00 a.m. (San Francisco time) on the Honor Date, Holdings, as account party under such Letter of Credit, shall reimburse the L/C Issuer no later than 11:00 a.m. (San Francisco time) on the Honor Date for the amount paid by the L/C Issuer under such Letter of Credit or, if the L/C Issuer shall so notify Holdings after 9:00 a.m. (San Francisco time) on the Honor Date, Holdings, as account party under such Letter of Credit, shall reimburse the L/C Issuer no later than 11:00 a.m. (San Francisco time) on the next succeeding Business Day for the amount paid by the L/C Issuer under such Letter of Credit on the Honor Date (each such date, a "Reimbursement Date"), in each case, in an amount equal to the amount so paid by the L/C Issuer. In the event Holdings fails to reimburse the L/C Issuer for the full amount of any drawing under any Letter of Credit by the required time as provided above on the Reimbursement Date, the L/C Issuer will promptly notify the Administrative Agent, and the Administrative Agent will promptly notify each Lender thereof (including the amount thereof and such Lender's Proportionate Share thereof), and Holdings shall be deemed to have requested that Revolving Loans be made by the Lenders to Holdings to be disbursed on the Reimbursement Date for such Letter of Credit, subject to the amount of the unutilized portion of the Aggregate Revolving Commitment and subject to the conditions set forth in Section 5.02. Holdings hereby directs that the proceeds of any such Loans deemed to be borrowed by it shall be used to pay its reimbursement obligations in respect of any such drawing. Solely for the purposes of making such Loans, the Minimum Amount limitations set forth in Section 2.03 shall not be applicable. Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 3.03(b) may be oral if immediately confirmed in writing (including by facsimile); provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice. In the event that any amount of any drawing under any Letter of Credit is not reimbursed by Holdings on the Honor Date, such unreimbursed amount shall bear interest until it is either deemed to be an L/C Borrowing as provided in Section 3.03(d) or deemed to be converted to a Revolving Loan as provided in this Section 3.03(b), at a rate per annum equal to the Base Rate plus the Applicable Margin.

(c) Each Lender shall, upon receipt of any notice pursuant to Section 3.03(b), make available to the Administrative Agent for the account of the L/C Issuer an amount in Dollars and in immediately available funds equal to its Proportionate Share of the amount of the drawing, whereupon such Lender shall (subject to Section 3.03(f)) be deemed to have made a Revolving Loan to Holdings in that amount. The Administrative Agent will promptly give notice of the occurrence of the Reimbursement Date, but failure of the Administrative Agent to give any such notice on the Reimbursement Date or in sufficient time to enable any Lender to effect such payment on such date shall not relieve such Lender from its obligations under this Section 3.03.

(d) With respect to any unreimbursed drawing that is not converted into Revolving Loans in whole or in part, because of Holdings' failure to satisfy the conditions set forth in Section 5.02 or for any other reason, Holdings shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of such drawing, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at a rate per annum equal to the Base Rate, plus the Applicable Margin plus 4% per annum. In such event, each Lender shall upon receipt of any notice pursuant to Section 3.03(b) make available to the Administrative Agent for the account of the L/C Issuer an amount in Dollars and in immediately available funds equal to its Proportionate Share of the amount of the drawing. Each Lender's payment to the L/C Issuer pursuant to this Section 3.03(d) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 3.03.

(e) If any Lender fails to make available to the Administrative Agent for the account of the L/C Issuer the amount of such Lender's Proportionate Share of the amount of any drawing by no later than 12:00 noon (San Francisco time) on the Reimbursement Date, then interest shall accrue on such Lender's obligation to make such payment, from the Reimbursement Date to the date such Lender makes such payment, at (i) the Federal Funds Rate in effect from time to time during the period commencing on the Reimbursement Date and ending on the date three (3) Business Days thereafter, and (ii) thereafter at the Base Rate as in effect from time to time, payable on demand of the Administrative Agent.

(f) Each Lender's obligation in accordance with this Agreement to make or participate in the Revolving Loans or L/C Advances, as contemplated by this Section 3.03, as a result of a drawing under a Letter of Credit, shall be absolute and unconditional and without recourse to the L/C Issuer and shall not be affected by any circumstance, including (i) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, Holdings or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default, an Event of Default or a Material Adverse Effect; or (iii) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Revolving Loans under this Section 3.03 is subject to the conditions set forth in Section 5.02; and provided, further, however, that a Lender may have recourse against the L/C Issuer, and the L/C Issuer may be liable to a Lender, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by such Lender which such Lender proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the

beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit.

3.04 Repayment of Participations.

(a) Upon (and only upon) receipt by the Administrative Agent for the account of the L/C Issuer of immediately available funds from Holdings (i) in reimbursement of any payment made by the L/C Issuer under the Letter of Credit with respect to which any Lender has paid the Administrative Agent for the account of the L/C Issuer for such Lender's participation in the Letter of Credit pursuant to Section 3.03 or (ii) in payment of interest thereon, the Administrative Agent will pay to each Lender, in the same funds as those received by the Administrative Agent for the account of the L/C Issuer, the amount of such Lender's Proportionate Share of such funds, and the L/C Issuer shall receive the amount of the Proportionate Share of such funds of any Lender that did not so pay the Administrative Agent for the account of the L/C Issuer.

(b) If the Administrative Agent or the L/C Issuer is required at any time to return to Holdings, or to a trustee, receiver, liquidator, custodian, or any official in any Insolvency Proceeding, any portion of the payments made by Holdings to the Administrative Agent for the account of the L/C Issuer pursuant to Section 3.04(a) in reimbursement of a payment made under the Letter of Credit or interest or fee thereon, each Lender shall, on demand of the Administrative Agent, forthwith return to the Administrative Agent or the L/C Issuer the amount of its Proportionate Share of any amounts so returned by the Administrative Agent or the L/C Issuer plus interest thereon from the date such demand is made to the date such amounts are returned by such Lender to the Administrative Agent or the L/C Issuer, at a rate per annum equal to the Federal Funds Rate in effect from time to time.

3.05 Role of the L/C Issuer.

(a) Each Lender and Holdings agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft and certificates expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document.

(b) No Administrative Agent-Related Person nor any of the respective correspondents, participants or assignees of the L/C Issuer shall be liable to any Lender for: (i) any action taken or omitted in connection herewith at the request or with the approval of the Lender (including the Majority Lenders, as applicable); (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any L/C-Related Document.

(c) Holdings hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude Holdings pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. No Administrative Agent-Related Person, nor any of the respective correspondents,

participants or assignees of the L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (vii) of Section 3.06; provided, however, anything in such clauses to the contrary notwithstanding, that Holdings may have a claim against the L/C Issuer, and the L/C Issuer may be liable to Holdings, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Holdings which Holdings proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing: (i) the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary; and (ii) the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

3.06 Obligations Absolute. The obligations of Holdings under this Agreement and any L/C-Related Document to reimburse the L/C Issuer for a drawing under a Letter of Credit, and to repay any L/C Borrowing and any drawing under a Letter of Credit converted into Revolving Loans, shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement and each such other L/C-Related Document under all circumstances, including the following:

(i) any lack of validity or enforceability of this Agreement or any L/C-Related Document;

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of Holdings in respect of any Letter of Credit or any other amendment or waiver of or any consent to departure from all or any of the L/C-Related Documents;

(iii) the existence of any claim, set-off, defense or other right that Holdings may have at any time against any beneficiary or any transferee of any Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by the L/C-Related Documents or any unrelated transaction;

(iv) any draft, demand, certificate or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit;

(v) any payment by the L/C Issuer under any Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of any Letter of Credit; or any payment made by the L/C Issuer under any Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any

transferee of any Letter of Credit, including any arising in connection with any Insolvency Proceeding;

(vi) any exchange, release or non-perfection of any collateral, or any release or amendment or waiver of or consent to departure from any other guarantee, for all or any of the obligations of Holdings in respect of any Letter of Credit; or

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, Holdings or a Guarantor.

3.07 Cash Collateral Pledge. (a) Upon the request of the Administrative Agent, if the L/C Issuer has honored any full or partial drawing request on any Letter of Credit and such drawing has resulted in an L/C Borrowing hereunder, or (b) if, as of the Revolving Loan Maturity Date, any Letters of Credit may for any reason remain outstanding and partially or wholly undrawn, or (c) upon the occurrence of the circumstances described in Sections 2.06(a)(i) or 2.06(a)(v) requiring Holdings to Cash Collateralize Letters of Credit, or (d) upon the occurrence of the circumstances described elsewhere in Section 2.06(a) requiring Holdings to Cash Collateralize Letters of Credit, then Holdings shall immediately Cash Collateralize the L/C Obligations in an amount equal to such L/C Obligations, or in such other applicable amount required under Section 2.06(a). In the case of the preceding clauses (a), (b) and (c), Holdings shall, to the extent necessary, make such additional pledges from time to time as shall be necessary to ensure that all such L/C Obligations remain at all times fully Cash Collateralized. Cash collateral held under this Section 3.07 or Section 9.02 shall be maintained in the L/C Cash Collateral Account pursuant to the Security Agreement. If L/C Obligations are Cash Collateralized pursuant to Sections 2.06(a)(iii) through 2.06(a)(ix) and at any time thereafter the Borrowing Base then in effect exceeds the Effective Amount of all Revolving Loans and L/C Obligations, then Holdings may request in writing that the Administrative Agent release funds from the L/C Cash Collateral Account in an amount up to the Dollar amount of the applicable excess, and promptly following its receipt of such written request the Administrative Agent shall, subject to the other provisions of this Agreement and the other Loan Documents, so release such funds in such Dollar amount, provided that no Default then exists and the Administrative Agent has received a certification to such effect from a Responsible Officer of Holdings.

3.08 Letter of Credit Fees.

(a) Holdings shall pay to the Administrative Agent for the account of each of the Lenders in accordance with its respective Proportionate Share a letter of credit fee with respect to the Standby Letters of Credit equal to the rate per annum equal to the Applicable Fee Amount of the actual daily maximum amount available to be drawn of the outstanding Standby Letters of Credit, computed on a monthly basis in arrears on the last Business Day of each calendar month based upon Standby Letters of Credit outstanding for that month as calculated by the Administrative Agent. Such letter of credit fees shall be due and payable monthly in arrears on the last Business Day of each calendar month during which Standby Letters of Credit are outstanding, commencing on the first such monthly date to occur after the Effective Date, to the Revolving Loan Maturity Date (or such later date upon which the outstanding Letters of Credit shall expire), with the final payment to be made on the Revolving

Loan Maturity Date (or such later expiration date). Such fees are fully earned when due and, once paid, are non-refundable.

(b) Holdings shall pay to the L/C Issuer, for the L/C Issuer's sole account, a letter of credit fee with respect to the amount from time to time available to be drawn under Commercial Letters of Credit in such amount and on such dates as shall separately be agreed upon between the L/C Issuer and Holdings. Such fees are fully earned when due and, once paid, are non-refundable.

(c) Holdings shall pay to the L/C Issuer, for the L/C Issuer's sole account, a letter of credit fronting fee for each Standby Letter of Credit Issued by the L/C Issuer equal to 0.125% per annum of the actual daily maximum amount available to be drawn of the outstanding Standby Letters of Credit, computed on a monthly basis in arrears on the last Business Day of each calendar month based upon Standby Letters of Credit outstanding for that month as calculated by the L/C Issuer. Such letter of credit fronting fees shall be due and payable monthly in arrears on the last Business Day of each calendar month during which Standby Letters of Credit are outstanding, commencing on the first such monthly date to occur after the Effective Date, to the Revolving Loan Maturity Date (or such later date upon which the outstanding Letters of Credit shall expire), with the final payment to be made on the Revolving Loan Maturity Date (or such later expiration date). Such fees are fully earned when due and, once paid, are non-refundable.

(d) Holdings shall pay to the L/C Issuer from time to time on demand the normal issuance, presentation, transfer, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect.

(e) Notwithstanding subsection (a) of this Section 3.08, while any Event of Default exists or after acceleration, Holdings shall pay a letter of credit fee (after as well as before entry of judgment thereon to the extent permitted by law) on the actual daily maximum amount available to be drawn of the outstanding Letters of Credit, at a rate per annum which is determined by adding 4% per annum to the rate otherwise then in effect hereunder for such Letters of Credit.

3.09 Applicability of ISP98 and UCP. Unless otherwise expressly agreed by the L/C Issuer and Holdings when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to each Standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits (the "UCP"), as most recently published by the International Chamber of Commerce (the "ICC") at the time of issuance (including the ICC decision published by the Commission on Banking Technique and Practice on April 6, 1998 regarding the European single currency (euro)) shall apply to each Commercial Letter of Credit.

ARTICLE IV.

TAXES, YIELD PROTECTION AND ILLEGALITY

4.01 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of Holdings hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if Holdings shall be required by applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) Holdings shall make such deductions and (iii) Holdings shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by Holdings. Without limiting the provisions of subsection (a) above, Holdings shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by Holdings. Holdings shall indemnify the Administrative Agent, each Lender and the L/C Issuer, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Holdings by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by Holdings to a Governmental Authority, Holdings shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which Holdings is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to Holdings (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by Holdings or the Administrative Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made

without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by Holdings or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Holdings or the Administrative Agent as will enable Holdings or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, in the event that Holdings is resident for tax purposes in the United States, any Foreign Lender shall deliver to Holdings and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of Holdings or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed copies of Internal Revenue Service Form W-8ECI,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of Holdings within the meaning of section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit Holdings to determine the withholding or deduction required to be made.

(f) Treatment of Certain Refunds. If the Administrative Agent, any Lender or the L/C Issuer determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by Holdings or with respect to which Holdings has paid additional amounts pursuant to this Section, it shall pay to Holdings an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Holdings under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that Holdings, upon the request of the Administrative Agent, such Lender or the L/C Issuer, agrees to repay the amount paid over to Holdings (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or the L/C Issuer in the event the Administrative Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative

Agent, any Lender or the L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Holdings or any other Person.

4.02 Illegality.

(a) If any Lender determines that the introduction of any Requirement of Law, or any change in any Requirement of Law, or in the interpretation or administration of any Requirement of Law, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make or maintain Loans priced by reference to LIBOR, then, on notice thereof by such Lender to Holdings through the Administrative Agent, the Base Rate shall be determined without reference to any element incorporating LIBOR until such Lender notifies the Administrative Agent and Holdings that the circumstances giving rise to such determination no longer exist.

(b) Before giving any notice to the Administrative Agent under this Section 4.02, the affected Lender shall designate a different Lending Office with respect to its Loans priced by reference to LIBOR if such designation will avoid the need for giving such notice or making such demand and will not, in the judgment of such Lender, be illegal or otherwise disadvantageous to such Lender.

4.03 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender or the L/C Issuer;

(ii) subject any Lender or the L/C Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Loan made by it, or change the basis of taxation of payments to such Lender or the L/C Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 4.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or the L/C Issuer); or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, Holdings will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Revolving Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time Holdings will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer delivered pursuant to Section 4.06 setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to Holdings shall be conclusive absent manifest error. Holdings shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that Holdings shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies Holdings of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

4.04 Funding Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, Holdings shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any failure by Holdings (for a reason other than the failure of such Lender to make a Loan) to prepay or borrow any Loan on the date or in the amount notified by Holdings; or

(b) any assignment of a Loan based on LIBOR as a result of a request by Holdings pursuant to Section 11.11;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained.

For purposes of calculating amounts payable by Holdings to the Lenders under this Section 4.04, each Lender shall be deemed to have funded each Loan based on LIBOR made by it by a matching deposit or other borrowing in the London interbank market for a comparable amount and for a comparable period, whether or not such Loan was in fact so funded.

4.05 Inability to Determine Rates. If the Administrative Agent or the Majority Lenders determine that for any reason adequate and reasonable means do not exist for determining LIBOR with respect to a proposed Borrowing of Loans or of Loans outstanding, the Base Rate shall be determined without reference to any element incorporating LIBOR.

4.06 Certificates of Lenders. Any Lender claiming reimbursement or compensation under this Article IV shall deliver to Holdings (with a copy to the Administrative Agent) a certificate setting forth in reasonable detail the amount payable to such Lender hereunder, and the basis for calculation of such amount, and such certificate shall be conclusive and binding on Holdings in the absence of manifest error.

4.07 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 4.03, or Holdings is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.01, or if any Lender gives a notice pursuant to Section 4.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 4.01 or 4.03, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 4.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Holdings hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 4.03, or if Holdings is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.01, Holdings may replace such Lender in accordance with Section 11.11.

4.08 Survival. The agreements and obligations of Holdings in this Article IV shall survive the termination of the Revolving Commitments, the termination or expiration of all Letters of Credit and the payment of all other Obligations.

ARTICLE V.

CONDITIONS PRECEDENT

5.01 Conditions to Effective Date. The obligations of each Lender and the L/C Issuer to make its initial Credit Extension hereunder shall be subject to the condition that the Administrative Agent shall have received on or before the Effective Date all of the following, in form and substance reasonably satisfactory to the Administrative Agent:

(a) Credit Agreement. This Agreement executed by (i) Holdings, the Company and each direct or indirect U.S. Wholly-Owned Subsidiary of Holdings; (ii) each Lender and the L/C Issuer; and (iii) the Administrative Agent.

(b) Resolutions; Incumbency.

(i) Copies of the resolutions of the board of directors of each Loan Party (or other similar enabling action of each Loan Party that is not a corporation) authorizing the transactions contemplated hereby, certified as of the Effective Date by the Secretary or an Assistant Secretary of such Person; and

(ii) a certificate of the Secretary or Assistant Secretary of each Loan Party, dated as of the Effective Date, certifying the names, titles and true signatures of the officers of such Person authorized to execute, deliver and perform, as applicable, this Agreement and all other Loan Documents to be delivered by it hereunder.

(c) Financial Statements.

(i) the unaudited consolidated balance sheet of Holdings and its Subsidiaries as at April 30, 2009, and the related consolidated statements of income or operations and cash flows for the fiscal month then ended, certified by a Responsible Officer of Holdings; and

(ii) such other financial information as the Administrative Agent may reasonably request.

(d) Organization Documents; Good Standing. Each of the following documents:

(i) the Organization Documents of each Loan Party as in effect on the Effective Date, certified by the Secretary or Assistant Secretary of such Person as of the Effective Date; and

(ii) a good standing certificate, as of a recent date, for each Loan Party from the Secretary of State (or similar, applicable Governmental Authority) of its state of incorporation or formation and each state where (A) its ownership, lease or operation of property or (B) the conduct of its business requires such Loan Party be qualified or otherwise licensed to do business, except to the extent that, in the case of the preceding clause (B), the

failure to be so qualified in any such foreign jurisdiction could not reasonably be expected to cause a Material Adverse Effect.

(e) Legal Opinion. An opinion of Gibson, Dunn & Crutcher LLP, counsel to the Loan Parties and addressed to the Administrative Agent and the Lenders, dated the Effective Date, substantially in the form of Exhibit C.

(f) Payment of Fees. Evidence of payment by Holdings of all accrued and unpaid fees, costs and expenses related to the transactions contemplated hereby to the extent then due and payable on the Effective Date, together with reasonable Attorney Costs and financial advisor fees and expenses of Wells Fargo and the Lenders to the extent invoiced prior to or on the Effective Date, plus such additional amounts of reasonable Attorney Costs and financial advisor fees and expenses as shall constitute Wells Fargo's and the applicable Lenders' reasonable estimate of Attorney Costs and financial advisor fees and expenses incurred or to be incurred by it through the date of entry of the Interim Financing Order (provided that such estimate shall not thereafter preclude final settling of accounts between Holdings and Wells Fargo); including any such costs, fees and expenses arising under or referenced in Section 2.09 (including the Agency Fee and the Closing Fee) and Section 11.04.

(g) Officer's Certificate. A certificate signed by a Responsible Officer of each of Holdings and the Company, dated as of the Effective Date, stating that:

(i) the representations and warranties contained in Article VI are true and correct on and as of such date, as though made on and as of such date; and

(ii) no Default exists or would result from the initial Credit Extension.

(h) Collateral Documents. The Collateral Documents, executed by each Loan Party, in appropriate form for recording, where necessary, together with:

(i) copies of all UCC-1 financing statements to be filed to perfect the security interests of the Administrative Agent for the benefit of the Lenders; and

(ii) receipt by the Administrative Agent of all certificates and instruments representing the Pledged Collateral, together with stock transfer powers executed in blank with signatures guaranteed, as the Administrative Agent may specify.

(i) Insurance Policies. Evidence that the Administrative Agent has been named as loss payee under all policies of casualty insurance under a Form 438BFU or other standard lender's loss payable endorsement and as additional insured under all policies of liability insurance required in accordance with Section 7.06 and the Collateral Documents, together with a certificate of insurance as to all insurance coverage on the properties of Holdings and its Subsidiaries.

(j) Control Agreements. Any control agreements for the perfection of the Administrative Agent's Lien on the deposit accounts of Holdings and the Guarantors party hereto which have been requested by the Administrative Agent prior to the Effective Date shall

have been executed by Holdings or such Guarantor, as applicable, and any applicable financial institutions.

(k) Assignments of Trademarks. Such actions shall have been taken as the Administrative Agent deems necessary to ensure the Administrative Agent's and the Lenders' rights as secured party with respect to any trademarks of Holdings or any Guarantor party hereto.

(l) Notes. Notes executed by Holdings for the Lenders requesting Notes.

(m) Other Documents. Such other approvals, documents or materials as the Administrative Agent may reasonably request.

(n) Commencement of Bankruptcy Cases; First Day Orders. The commencement of the Bankruptcy Cases and the Borrowings and other transactions contemplated hereunder and by the other Loan Documents shall have been duly authorized by Holdings and each applicable Guarantor and the Bankruptcy Cases shall have been commenced by Holdings and the Guarantors and the same shall each be a debtor and a debtor-in-possession therein. All of the First Day Orders sought to be entered at the time of the commencement of the Bankruptcy Cases shall be in form and substance satisfactory to the Administrative Agent and the Majority Lenders.

(o) Cash Management Order and Interim Financing Order. The Bankruptcy Court shall have entered the Cash Management Order and Interim Financing Order, after notice given and a hearing conducted in accordance with Bankruptcy Rule 4001(c), authorizing and approving the applicable Borrowing and the transactions contemplated by the Loan Documents (including the granting of Liens according to the Requisite Priority and the Superpriority Status of the claims hereunder) and finding that the Lenders are extending credit to Holdings in good faith within the meaning of Bankruptcy Code Section 364(e), which orders shall, among other things, (i) approve the payment by Holdings of all of the fees provided for or referenced herein, (ii) grant Adequate Protection, (iii) otherwise be in form and substance reasonably satisfactory to the Administrative Agent and the Majority Lenders and (iv) be in full force and effect and shall not have been stayed, reversed, vacated, subject to appeal, or otherwise modified in a manner materially adverse to the Lenders (as reasonably determined by the Administrative Agent and the Majority Lenders).

(p) Releases. Holdings and the Guarantors shall have released (for themselves and their respective bankruptcy estates) (i) the Lenders and the Administrative Agent from any and all claims, Liens, priority, actions or inactions arising hereunder or in any other manner, and (ii) the lenders under the Prepetition Credit Agreement and Prepetition Administrative Agent from any and all claims, Liens, priority, actions or inactions arising under the Prepetition Credit Agreement or in any other manner (the releases set forth in this clause (ii) being subject only to the right of any statutory committee appointed in the Bankruptcy Cases or any party in interest to investigate and bring any such claims within 90 days of the filing of the Bankruptcy Cases), with such releases being satisfactory to such Lenders and Prepetition Credit Agreement lenders, as applicable, in their discretion.

(q) DIP Budget. The Administrative Agent shall have received and be satisfied with the DIP Budget.

5.02 Conditions to All Credit Extensions. The obligation of each Lender to make any Credit Extension (including its initial Credit Extension) and the obligation of the L/C Issuer to Issue any Letter of Credit (including the initial Letter of Credit) shall be subject to the satisfaction of the following conditions precedent on the relevant Borrowing Date or Issuance Date:

(a) Notice, Application. The Administrative Agent shall have received a Notice of Revolving Borrowing or in the case of any Issuance of any Letter of Credit, the L/C Issuer and the Administrative Agent shall have received an L/C Application or L/C Amendment Application, as required under Section 3.02.

(b) Continuation of Representations and Warranties. The representations and warranties in Article VI shall be true and correct on and as of such Borrowing Date or Issuance Date with the same effect as if made on and as of such Borrowing Date or Issuance Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 5.02(b), the representations and warranties contained in Section 6.11(a) shall be deemed to refer to the most recent statements furnished pursuant to such Section.

(c) No Existing Default. No Default shall exist or shall result from such Borrowing or Issuance.

(d) No Material Adverse Effect. There has occurred since the Petition Date, no event or circumstance that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(e) No Future Advance Notice. Neither the Administrative Agent nor any Lender shall have received from Holdings or any other Person any notice that any Collateral Document will no longer secure on a first priority basis future advances or future Loans to be made or extended under this Agreement.

(f) No L/C Cash Collateral Account or Cash Collateral Account Balances. Unless waived by the Administrative Agent, in the event of a Borrowing the balances in the Cash Collateral Account and L/C Cash Collateral Account shall be zero.

(g) No Prepetition Cash Collateral Remaining. Unless waived by the Administrative Agent, in the event of a Borrowing Holdings shall have exhausted all available prepetition cash collateral (from its operations or otherwise), except to the extent such cash collateral is (i) being held by the Prepetition Administrative Agent pursuant to Sections 2.06(a)(iii) and 2.06(a)(vii) or (ii) otherwise excluded from the Collateral.

Each Notice of Revolving Borrowing and L/C Application or L/C Amendment Application submitted by Holdings hereunder shall constitute a representation and warranty by

Holdings hereunder, as of the date of each such notice and as of each Borrowing Date or Issuance Date, as applicable, that the conditions in this Section 5.02 are satisfied.

ARTICLE VI.

REPRESENTATIONS AND WARRANTIES

Each of Holdings and the Company represents and warrants to the Administrative Agent and each Lender that:

6.01 Corporate Existence and Power. Holdings and each of its Subsidiaries:

(a) is a corporation, limited liability company or partnership duly organized or formed, as the case may be, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation;

(b) subject to the entry of the Financing Orders and the First Day Orders, has the power and authority and all governmental licenses, authorizations, consents and approvals (i) to own its assets and carry on its business and (ii) in the case of any Loan Party, to execute, deliver, and perform its obligations under the Loan Documents;

(c) is duly qualified, licensed and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, license or good standing; and

(d) subject to the entry of the Financing Orders and the First Day Orders and other than as a result of the Bankruptcy Cases (including the operation of the automatic stay), is in compliance with all Requirements of Law;

except, in each case referred to in clauses (b)(i), (c) or (d) of this Section 6.01, to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

6.02 Corporate Authorization; No Contravention. Subject, in each case, to the entry of the Financing Orders and the filing of the Bankruptcy Cases, the execution, delivery and performance by each Loan Party of this Agreement and each other Loan Document to which such Loan Party is party, have been duly authorized by all necessary corporate, limited liability company or other applicable organizational action, and do not and will not:

(a) contravene the terms of any of that Person's Organization Documents;

(b) other than the Prepetition Credit Agreement, and except for such conflicts, breaches or defaults resulting from the filing of the Bankruptcy Cases, conflict with or result in any breach or contravention of, or the creation of any Lien under, any document evidencing any Indebtedness or any material Contractual Obligation to which such Person is a party or any order, injunction, writ or decree of any Governmental Authority to which such Person or its property is subject; or

(c) subject to the entry of the applicable Financing Orders and the First Day Orders, violate any Requirement of Law that could reasonably be expected to result in a Material Adverse Effect.

6.03 Governmental Authorization. Subject to the entry of the Financing Orders and the First Day Orders, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority (except for recordings or filings in connection with the Liens granted to the Administrative Agent under the Collateral Documents and any filings that may be required under Securities Laws in connection with the enforcement of such Liens) is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document.

6.04 Binding Effect. Subject to the entry of the Financing Orders, this Agreement and each other Loan Document to which any Loan Party is a party constitute the legal, valid and binding obligations of such Loan Party, enforceable against such Loan Party in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

6.05 Litigation. Other than the Bankruptcy Cases and except as specifically disclosed in Schedule 6.05, there are no actions, suits, proceedings, claims or disputes pending, or to the best knowledge of Holdings and the Company, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, against Holdings or any of its Subsidiaries or any of their respective properties which:

(a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby or thereby; or

(b) are reasonably likely to result in an adverse result for Holdings or any of its Subsidiaries, which adverse result would reasonably be expected to have a Material Adverse Effect. No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement or any other Loan Document, or directing that the transactions provided for herein or therein not be consummated as herein or therein provided.

6.06 No Defaults. Neither Holdings nor any Subsidiary is in default under or with respect to any Contractual Obligation that is a Postpetition Liability in any respect which, individually or together with all such defaults, could reasonably be expected to have a Material Adverse Effect, or that would create an Event of Default under Section 9.01(e).

6.07 ERISA Compliance. Except as specifically disclosed in Schedule 6.07:

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state law. Each Plan which is intended to qualify under section 401(a) of the Code has received a favorable determination letter from the IRS and to the best knowledge of Holdings and the Company, nothing has occurred which would cause the loss of such qualification. Holdings, the Company and each ERISA

Affiliate have made all required contributions to any Plan subject to section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the best knowledge of Company, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan which has resulted or would reasonably be expected to result in a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except as would not reasonably be expected to have a Material Adverse Effect, (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither Holdings nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under section 4007 of ERISA); (iv) neither Holdings nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under section 4219 of ERISA, would result in such liability) under section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither Holdings nor any ERISA Affiliate has engaged in a transaction that could be subject to section 4069 or 4212(c) of ERISA.

6.08 Use of Proceeds; Margin Regulations. The proceeds of the Revolving Loans and the Letters of Credit will be used solely for the purposes set forth in and permitted by Section 7.12 and Section 8.07. No Loan Party is generally engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock.

6.09 Title to Properties; Liens. Other than as a result of the Bankruptcy Cases, Holdings and each Subsidiary have good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of their respective businesses, except for such defects in title as could not, individually or in the aggregate, have a Material Adverse Effect. Subject to the entry of the Financing Orders, the real and personal property of Holdings and its Subsidiaries is subject to no Liens, other than Permitted Liens. Holdings and each Guarantor has complied with all postpetition obligations under all real property leases to which it is a party to the extent non-compliance with which could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect and except as provided in any order of the Bankruptcy Court approving the rejection of one or more leases pursuant to Section 365 of the Bankruptcy Code. Except to the extent the Bankruptcy Court enters an order pursuant to Section 365 approving the rejection of such lease or leases, Holdings and each Subsidiary enjoy peaceful and undisturbed possession under all such material leases.

6.10 Taxes. Holdings and its Subsidiaries have filed all Federal and other material tax returns and reports required to be filed, and have paid all Federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except (i) as prohibited or excused by

the Bankruptcy Code during the pendency of the Bankruptcy Cases or pursuant to an order of the Bankruptcy Court, or (ii) those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against Holdings or any Subsidiary arising after the commencement of the Bankruptcy Cases that would, if made, have a Material Adverse Effect.

6.11 Financial Condition. Except as specifically disclosed in Schedule 6.11(a):

(a) The audited consolidated balance sheet of Holdings and its Subsidiaries dated December 31, 2008, the unaudited balance sheet of Holdings and its Subsidiaries for the fiscal quarter ended March 31, 2009 and, in each case, the related consolidated statements of income or operations and cash flows for the fiscal period ended on that date:

(i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, subject to year end audit adjustments and the absence of footnotes in the case of quarterly financial statements;

(ii) are complete and accurate in all material respects and fairly present the financial condition of Holdings and its Subsidiaries as of the date thereof and results of operations and cash flows for the period covered thereby; and

(iii) except as specifically disclosed in Schedule 6.11(a)(iii), show all material Indebtedness and other material liabilities, direct or contingent, of Holdings and its consolidated Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Contingent Obligations.

(b) Since the Petition Date, there has not been, nor is it reasonably likely that there will be, any Material Adverse Effect.

(c) Any pro forma financial statements of Holdings and its Subsidiaries furnished by Holdings to the Administrative Agent hereunder, and any financial projections furnished to the Administrative Agent hereunder (including the projection set forth in the DIP Budget), were prepared by Holdings based on estimates and assumptions believed to be reasonable and fair in light of current conditions and facts known to Holdings on the date such pro forma financial statements or projections, as the case may be, were furnished to the Administrative Agent, and as of the date so furnished reflect, in the case of pro forma financial statements, Holdings good faith representation of the pro forma financial condition of Holdings and its Subsidiaries as of the date thereof and, in the case of financial projections, Holdings good faith and reasonable estimates of the future financial performance of Holdings and its Subsidiaries for the periods set forth therein.

6.12 Environmental Matters. Holdings conducts in the Ordinary Course of Business a review of the effect of existing Environmental Laws and existing Environmental Claims on its business, operations and properties, and as a result thereof Holdings has reasonably concluded that, except as specifically disclosed in Schedule 6.12, such Environmental Laws and

Environmental Claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(a) Except as specifically disclosed in Schedule 6.12, the ongoing operations of Holdings and each of its Subsidiaries comply in all respects with all Environmental Laws, except such non-compliance which would not reasonably be expected to result in a Material Adverse Effect.

(b) Holdings and each of its Subsidiaries have obtained all licenses, permits, authorizations and registrations required under any Environmental Law (“Environmental Permits”) and necessary for their respective ordinary course operations, all such Environmental Permits are in good standing, and Holdings and each of its Subsidiaries are in compliance with all material terms and conditions of such Environmental Permits, except to the extent the failure to obtain any such Environmental Permit or to maintain any such Environmental Permit in good standing or otherwise to be in compliance with the material terms thereof could not reasonably be expected to have a Material Adverse Effect.

(c) Except as specifically disclosed in Schedule 6.12, none of Holdings, any of its Subsidiaries or any of their respective property or operations is subject to any outstanding written order from or agreement with any Governmental Authority, nor subject to any judicial or docketed administrative proceeding, respecting any Environmental Law, Environmental Claim or Hazardous Material that would reasonably be expected to result in a Material Adverse Effect.

(d) Except as specifically disclosed in Schedule 6.12, there are no Hazardous Materials or other conditions or circumstances existing with respect to any property of Holdings or any Subsidiary, or arising from operations prior to the Effective Date of Holdings or any of its Subsidiaries, that would reasonably be expected to give rise to Environmental Claims that could reasonably be expected to result in a Material Adverse Effect. In addition, (i) neither Holdings nor any Subsidiary has any underground storage tanks (A) that are not properly registered or permitted under applicable Environmental Laws, or (B) that are leaking or disposing of Hazardous Materials off-site, in each case, that would reasonably be expected to give rise to a Material Adverse Effect and (ii) Holdings and its Subsidiaries have notified all of their employees of the existence, if any, of any health hazard arising from the conditions of their employment and have met all notification requirements under Title III of CERCLA and all other Environmental Laws.

6.13 Collateral Documents.

(a) Subject to the entry of the Financing Orders, the provisions of each of the Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Lenders, a legal, valid and enforceable first priority Lien in all right, title and interest of Holdings, or the applicable Loan Party (as the case may be), in the Collateral described therein to secure the Obligations, subject only to Permitted Liens.

(b) All representations and warranties of Holdings and each of its Subsidiaries party thereto contained in the Collateral Documents are true and correct.

6.14 Regulated Entities. None of Holdings, any Person Controlling Holdings, or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

6.15 No Burdensome Restrictions. Neither Holdings nor any Subsidiary is a party to or bound by any Contractual Obligation that is a Postpetition Liability, or subject to any restriction in any Organization Document, or any Requirement of Law, which could reasonably be expected to have a Material Adverse Effect.

6.16 Copyrights, Patents, Trademarks and Licenses, Etc. Holdings or its Subsidiaries own or are licensed or otherwise have the right to use all of the patents, trademarks, service marks, trade names, copyrights, contractual franchises, authorizations and other rights that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except for such conflicts as would not reasonably be expected to have a Material Adverse Effect. To the best knowledge of Holdings and the Company, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by Holdings or any Subsidiary infringes upon any rights held by any other Person, except for those infringements that would, individually or in the aggregate, not reasonably be expected to have a Material Adverse Effect. Except as specifically disclosed in Schedule 6.05, no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of Holdings and the Company, threatened, and no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code is pending or, to the best knowledge of Holdings and the Company, proposed, which, in either case, could reasonably be expected to have a Material Adverse Effect.

6.17 Subsidiaries. As of the Effective Date, Holdings has no Subsidiaries other than those specifically disclosed in part (a) of Schedule 6.17 and has no equity investments in any other Person other than those specifically disclosed in part (b) of Schedule 6.17. All U.S. Subsidiaries of Holdings as of the Effective Date are identified as such on part (a) of Schedule 6.17, as well as a denotation as to whether such Subsidiary is a Wholly-Owned Subsidiary or Non-Wholly-Owned Subsidiary. All of the outstanding equity interests in the Subsidiaries of Holdings which are owned directly or indirectly by Holdings have been validly issued, are fully paid and nonassessable and are owned, as of the Effective Date, in the amounts specified on Part (a) of Schedule 6.17 free and clear of all Liens, other than Liens granted to the Administrative Agent and other than Liens created under the “Loan Documents” under and defined in the Prepetition Credit Agreement.

6.18 Insurance. Except as specifically disclosed in Schedule 6.18, the properties of Holdings and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of Holdings, in such amounts, with such deductibles and covering such risks as are deemed to be appropriate by Holdings in the exercise of its reasonable business judgment.

6.19 Full Disclosure. Except as specifically disclosed in Schedule 6.19, none of the representations or warranties made by any Loan Party in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements

contained in any exhibit, report, statement or certificate furnished by or on behalf of any Loan Party in connection with the Loan Documents (including the offering and disclosure materials delivered by or on behalf of any Loan Party to the Lenders prior to the Effective Date), contains any untrue statement of a material fact (when taken as a whole) or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered; provided, however, that with respect to information relating to Holdings' industry generally and not to Holdings or its Subsidiaries specifically, the Loan Parties' represent and warrant only that such information was derived from sources the Loan Parties believe to be reliable and the Loan Parties have no reason to believe at the time such information was furnished or provided to the Administrative Agent or any Lender that such information was misleading; and provided further that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, such Loan Party represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule (it being understood that forecasts and projections by their nature involve approximations and uncertainties).

6.20 Real Property. Schedule 6.20 contains a complete listing of all real property owned in fee simple by Holdings and each other Loan Party as of the Effective Date.

6.21 Eligible Accounts. As to each Account that is identified by Holdings as an Eligible Account in a Borrowing Base Certificate submitted to the Administrative Agent, such Account is (a) a bona fide existing payment obligation of the applicable Account Debtor created by the sale and delivery of Inventory or the rendition of services to such Account Debtor in the Ordinary Course of Business of Holdings or any Guarantor, (b) owed to Holdings or a Guarantor, and (c) not excluded as ineligible by virtue of one or more of the excluding criteria set forth in the definition of Eligible Accounts.

6.22 Eligible Fixed Assets. As to each item of fixed assets that is identified by Holdings as Eligible Fixed Assets in a Borrowing Base Certificate submitted to Administrative Agent, such fixed assets are (a) of good and saleable quality, and (b) not excluded as ineligible by virtue of one or more of the excluding criteria set forth in the definition of Eligible Fixed Assets.

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

6.24 Senior Secured, Super-Priority Obligations.

(a) On and after the Effective Date, the provisions of the Loan Documents and the Financing Orders are effective to create in favor of the Administrative Agent, for the benefit of the Lenders, legal, valid and perfected Liens on and security interests (having the priority provided for herein and in the Financing Orders) in all right, title and interest in the Collateral, enforceable against each Loan Party that owns an interest in such Collateral.

(b) Pursuant to the Financing Orders, all Obligations are secured by valid and perfected Liens and security interests having the Requisite Priority.

(c) Pursuant to the Financing Orders, all Obligations shall have a superpriority administrative expense status pursuant to Section 364(c)(1) of the Bankruptcy Code, with priority over all other costs and expenses of the kinds specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 363, 364, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 and 1114 of the Bankruptcy Code, subject and subordinate only to the Carve-Out (the “Superpriority Status”).

(d) The Financing Orders and the transactions contemplated hereby and thereby, are in full force and effect and have not been vacated, reversed, modified, amended or stayed without the prior written consent of the Administrative Agent and, to the extent required in the Financing Orders, the Majority Lenders.

ARTICLE VII.

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Revolving Commitment hereunder, or any Loan or other Obligation shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, unless the Majority Lenders waive compliance in writing:

7.01 Financial Statements. Holdings shall deliver to the Administrative Agent (which will promptly deliver to each Lender):

(a) as soon as available, but not later than forty-five (45) days after the end of each fiscal quarter of each fiscal year, a copy of the unaudited consolidated balance sheet of Holdings and its Subsidiaries as of the end of such quarter and the related consolidated statements of income, shareholders’ equity and cash flows for the period commencing on the first day and ending on the last day of such quarter, and certified by a Responsible Officer of Holdings as being complete and accurate in all material respects and fairly presenting, in accordance with GAAP (subject to year-end audit adjustments and the absence of footnotes), the financial position and the results of operations and cash flows of Holdings and the Subsidiaries;

(b) as soon as available, but not later than thirty (30) days after the end of each fiscal month, (i) a copy of the unaudited consolidated balance sheet of Holdings and its Subsidiaries as of the end of such month and the related consolidated statements of income and cash flows for the period commencing on the first day and ending on the last day of such month, and certified by a Responsible Officer of Holdings as fairly presenting in accordance with GAAP (subject to year-end audit adjustments, quarterly accounting adjustments and the absence of footnotes), the consolidated financial position and the results of operations and cash flows of Holdings and the Subsidiaries, (ii) a management commentary in respect of the financial condition and results of operations of Holdings and its Subsidiaries for such fiscal month for which financial statements have then been delivered in accordance with the preceding clause (i), and (iii) a rolling 13-week consolidated operating budget (the “DIP Budget”), updated monthly, for Holdings and its Subsidiaries, which budget shall (A) state the assumptions used in the

preparation thereof, (B) be otherwise in form satisfactory to the Administrative Agent, and (C) be accompanied by a certificate of a Responsible Officer of Holdings certifying that such cash flow forecast represents Holdings' reasonable good faith estimates and assumptions as to future performance, which Holdings believes to be fair and reasonable as of the time made in light of then current and reasonably foreseeable business conditions (it being understood that forecasts and projections by their nature involve approximations and uncertainties);

(c) as reasonably requested by Administrative Agent from time to time, an updated consolidated financial forecast for Holdings and its Subsidiaries for the then current fiscal month and each fiscal month thereafter through the Revolving Loan Maturity Date, including forecasted consolidated balance sheets and consolidated statements of income and cash flows of Holdings and its Subsidiaries, which forecast shall (A) state the assumptions used in the preparation thereof, (B) compare Holdings actual financial results versus the consolidated financial forecast delivered by Holdings to the Administrative Agent and the Lenders on or about the Effective Date, (C) be otherwise in form satisfactory to the Administrative Agent, and (D) be accompanied by a certificate of a Responsible Officer of Holdings certifying that such financial projections represent Holdings' reasonable good faith estimates and assumptions as to future performance, which Holdings believes to be fair and reasonable as of the time made in light of then current and reasonably foreseeable business conditions (it being understood that forecasts and projections by their nature involve approximations and uncertainties);

(d) promptly, such other financial statements and information (including financial information regarding Minority Investments) as the Administrative Agent, at the request of any Lender, may from time to time request;

(e) promptly, any financial information and pleadings filed with the Bankruptcy Court; and

(f) promptly, any financial information and reports prepared by Holdings, as required by the Bankruptcy Court or by the Operating Guidelines and Reporting Requirements of the U.S. Trustee's Office, but only to the extent filed with the Bankruptcy Court or U.S. Trustee.

As to any information contained in materials furnished pursuant to Section 7.02(b), Holdings shall not be separately required to furnish such information under Section 7.01(a) above, but the foregoing shall not be in derogation of the obligation of Holdings to furnish the information and materials described in Section 7.01(a) above at the times specified therein.

7.02 Certificates; Other Information. Holdings shall furnish to the Administrative Agent (which shall promptly furnish to each Lender), in form and detail satisfactory to the Administrative Agent and the Majority Lenders:

(a) concurrently with the delivery of the financial statements referred to in Section 7.01(a), and Section 7.01(b), a completed Compliance Certificate certified by a Responsible Officer of Holdings;

(b) promptly, copies of all financial statements and reports that Holdings sends to its shareholders, and copies of all financial statements and regular, periodical

or special reports (including Forms 10K, 10Q and 8K) that Holdings or any Subsidiary may make to, or file with, the SEC;

(c) promptly upon sending or receipt, copies of any and all management letters and correspondence relating to management letters, sent or received by Holdings or any of its Subsidiaries to or from the Independent Auditor;

(d) within twenty (20) days of the Administrative Agent's or any Lender's request therefor, (i) a current list of the names, addresses and outstanding debts of all account debtors, and (ii) a current list of the names, addresses and outstanding amounts due all creditors of Holdings or any Subsidiary;

(e) concurrently with the delivery of the financial statements referred to in Section 7.01(a), a completed Update Certificate, certified by a Responsible Officer of Holdings;

(f) promptly, and in any event within ten Business Days after receipt thereof by Holdings or any Subsidiary, copies of each notice or other correspondence received from the SEC concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of Holdings or any Subsidiary thereof;

(g) (i) not later than 30 days after the end of each fiscal month, a completed Borrowing Base Certificate setting forth the calculation of the Borrowing Base as of the close of business on the last day of such month then most recently ended, certified by a Responsible Officer of Holdings, and (ii) promptly upon the request from time to time of the Administrative Agent, reports detailing to the best knowledge of a Responsible Officer of Holdings, daily sales, gross accounts receivable and other items included in or related to the calculation of the Borrowing Base;

(h) as soon as available, but not later than 7 days after the end of each week, a weekly DIP Budget variance report, which report shall (i) compare Holdings' actual consolidated cash flows for the week then ended versus the forecasted cash flows for such week set forth in the DIP Budget then most recently delivered by Holdings to the Administrative Agent under Section 7.01(b) and (ii) be in a form satisfactory to the Administrative Agent;

(i) as soon as available, but not later than 30 days after the end of each fiscal month, a monthly status report on the Wind-Down of Non-Core Operations, which report shall address such matters as may be reasonably requested from time to time by the Administrative Agent and shall otherwise be in a form satisfactory to the Administrative Agent;

(j) promptly upon the request from time to time of the Administrative Agent, a status report on (i) any federal or state tax audits of Holdings or any of its Subsidiaries, (ii) the filing of any federal or state tax returns, (iii) any anticipated tax refunds, tax abatements or other credits and (iv) such other tax-related matters as the Administrative Agent may reasonably request;

(k) promptly, upon the reasonable request of the Administrative Agent from time to time, a report of all outstanding Surety Instruments; and

(l) promptly, such additional information regarding the business, financial or corporate affairs of Holdings or any Subsidiary as the Administrative Agent, at the request of any Lender, may from time to time reasonably request.

7.03 Notices. Holdings shall promptly notify the Administrative Agent (which shall promptly notify each Lender):

(a) of the occurrence of any Default, and of the occurrence or existence of any event or circumstance that foreseeably will become a Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) any breach or non-performance of, or any default under, any Contractual Obligation of Holdings or any of its Subsidiaries which has resulted or could result in a Material Adverse Effect; and (ii) any dispute, litigation, investigation, proceeding or suspension which may exist at any time between Holdings or any of its Subsidiaries and any Governmental Authority (including under or pursuant to any Environmental Laws) which has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) of the commencement of, or any material development in, any litigation or proceeding affecting Holdings or any Subsidiary (i) which, if adversely determined, would reasonably be expected to have a Material Adverse Effect, or (ii) in which the relief sought is an injunction or other stay of the performance of this Agreement or any Loan Document;

(d) upon, but in no event later than ten (10) days after, becoming aware of (i) any and all material enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Holdings or any Subsidiary or any of their respective properties pursuant to any applicable Environmental Laws, (ii) all other Environmental Claims, and (iii) any environmental or similar condition on any real property adjoining or in the vicinity of the property of Holdings or any Subsidiary that could reasonably be anticipated to cause such property or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use of such property under any Environmental Laws;

(e) of any other litigation or proceeding affecting Holdings or any of its Subsidiaries which Holdings would be required to report to the SEC pursuant to the Exchange Act, within four (4) days after reporting the same to the SEC;

(f) of the occurrence of any of the following events affecting Holdings or any ERISA Affiliate (but in no event more than ten (10) days after such event), and deliver to the Administrative Agent and each Lender a copy of any notice with respect to such event that is filed with a Governmental Authority and any notice delivered by a Governmental Authority to Holdings or any ERISA Affiliate with respect to such event:

(i) an ERISA Event;

- (ii) a material increase in the Unfunded Pension Liability of any Pension Plan;
- (iii) the adoption of, or the commencement of contributions to, any Plan subject to section 412 of the Code by Holdings or any ERISA Affiliate; or
- (iv) the adoption of any amendment to a Plan subject to section 412 of the Code, if such amendment results, or would reasonably be expected to result, in a material increase in contributions or Unfunded Pension Liability;
- (g) of any material change in accounting policies or financial reporting practices by Holdings or any of its consolidated Subsidiaries; and
- (h) the occurrence of any Event of Loss exceeding \$5,000,000.

Each notice under this Section 7.03 shall be accompanied by a written statement by a Responsible Officer of Holdings setting forth details of the occurrence referred to therein, and stating what action Holdings or any affected Subsidiary proposes to take with respect thereto and at what time. Each notice under Section 7.03(a) shall describe with particularity any and all clauses or provisions of this Agreement or other Loan Document that have been (or foreseeably will be) breached or violated.

7.04 Preservation of Corporate Existence, Etc. Except as otherwise excused by the Bankruptcy Code during the pendency of the Bankruptcy Cases or pursuant to an order of the Bankruptcy Court, Holdings shall, and shall cause each Subsidiary to, except in connection with transactions permitted by Section 8.03 and sales of assets permitted by Section 8.02:

- (a) preserve and maintain in full force and effect its (i) legal existence and (ii) good standing under the laws of its state or jurisdiction of incorporation or formation;
- (b) preserve and maintain in full force and effect all governmental rights, privileges, qualifications, permits, licenses and franchises necessary or desirable in the normal conduct of its business;
- (c) use reasonable efforts, in the Ordinary Course of Business, to preserve its business organization and goodwill; and
- (d) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non preservation of which could reasonably be expected to have a Material Adverse Effect.

7.05 Maintenance of Property. Except as otherwise excused by the Bankruptcy Code during the pendency of the Bankruptcy Cases or pursuant to an order of the Bankruptcy Court, Holdings shall, and shall cause each Subsidiary to, maintain, and preserve all its property which is used or useful in its business in good repair and condition (ordinary wear and tear excepted), and from time to time make necessary repairs, renewals and replacements thereto so that its property shall be preserved and maintained consistent with Holdings' or such Subsidiary's past practice.

7.06 Insurance. In addition to insurance requirements set forth in the Collateral Documents, Holdings shall maintain, and shall cause each Subsidiary to maintain, with financially sound and reputable independent insurers, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, including workers' compensation insurance, public liability and property and casualty insurance. All such insurance shall name the Administrative Agent as loss payee and as additional insured, for the benefit of the Lenders, as their interests may appear. All casualty and key man insurance maintained by Holdings shall name the Administrative Agent as loss payee and all liability insurance shall name the Administrative Agent as additional insured for the benefit of the Lenders, as their interests may appear. Upon the request of the Administrative Agent or any Lender, Holdings shall furnish the Administrative Agent, with sufficient copies for each Lender, at reasonable intervals (but not more than once per calendar year) a certificate of a Responsible Officer of Holdings (and, if requested by the Administrative Agent, any insurance broker of Holdings) setting forth the nature and extent of all insurance maintained by Holdings and its Subsidiaries in accordance with this Section 7.06 or any Collateral Documents (and which, in the case of a certificate of a broker, were placed through such broker).

7.07 Payment of Obligations. Except (i) as otherwise excused by the Bankruptcy Code during the pendency of the Bankruptcy Cases or pursuant to an order of the Bankruptcy Court, or (ii) where the failure to satisfy any of the following as they become due and payable could not reasonably be expected to result in a Material Adverse Effect, Holdings shall, and shall cause each of its Subsidiaries to, pay and discharge as the same shall become due and payable, all their respective obligations and liabilities, including:

(a) all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings and adequate reserves in accordance with GAAP are being maintained by Holdings or such Subsidiary;

(b) all lawful claims which, if unpaid, would by law become a Lien upon its property not constituting a Permitted Lien; and

(c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness (except where failure to do so would not otherwise constitute a Default hereunder).

7.08 Compliance with Laws. Holdings shall comply, and shall cause each Subsidiary to comply, with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business (including the Federal Fair Labor Standards Act), except as otherwise excused by the Bankruptcy Code during the pendency of the Bankruptcy Cases or pursuant to an order of the Bankruptcy Court, or such as may be contested in good faith or as to which a bona fide dispute may exist or where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

7.09 Compliance with ERISA. Holdings shall, and shall cause each of its ERISA Affiliates to: (a) maintain each Plan in compliance with the applicable provisions of ERISA, the Code and other federal or state law except for any noncompliance that would not reasonably be expected to have a Material Adverse Effect; (b) cause each Plan which is qualified under section 401(a) of the Code to maintain such qualification; and (c) make all required contributions to any Plan subject to section 412 of the Code.

7.10 Inspection of Property and Books and Records.

(a) Holdings shall, and shall cause each Subsidiary to, maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of Holdings and such Subsidiary. Holdings shall permit, and shall cause each Subsidiary to permit, representatives and independent contractors of the Administrative Agent or any Lender to visit and inspect any of their respective properties, to examine their respective corporate, financial, operating and other records, and make copies thereof or abstracts therefrom, and to discuss their respective affairs, finances and accounts with their respective directors, officers, and independent public accountants, all at the expense of Holdings and the Company and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to Holdings; provided, however, when an Event of Default exists the Administrative Agent or any Lender may do any of the foregoing at any time during normal business hours and without advance notice.

(b) Without limiting the generality of Section 7.10(a), as frequently as the Administrative Agent or the Majority Lenders may deem appropriate, each of Holdings and the Company will provide Administrative Agent or its designees access to Holdings', the Company's and the Subsidiaries' records and premises and allow auditors or appraisers to conduct audits and appraisals of Holdings' and its Subsidiaries' property, plant, equipment, inventory and accounts. Holdings shall pay all reasonable fees and expenses of each such audit and appraisal.

7.11 Environmental Laws.

(a) Holdings shall, and shall cause each Subsidiary to, conduct its operations and keep and maintain its property in compliance with all Environmental Laws, except to the extent the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect or is otherwise excused by the Bankruptcy Code during the pendency of the Bankruptcy Cases or pursuant to an order of the Bankruptcy Court.

(b) Upon the written request of the Administrative Agent or any Lender, Holdings shall submit and cause each of its Subsidiaries to submit, to the Administrative Agent, at Holdings' sole cost and expense, at reasonable intervals, a report providing an update of the status of any environmental, health or safety compliance, hazard or liability issue identified in any notice or report required pursuant to Section 7.03(d), that could, individually or in the aggregate, result in liability in excess of \$1,000,000.

7.12 Use of Proceeds. Holdings will use the proceeds of the Revolving Loans and the Letters of Credit solely (i) to pay fees, interest and expenses associated with this Agreement, (ii) to provide ongoing working capital and to satisfy capital expenditure needs of Holdings and its Subsidiaries during the pendency of the Bankruptcy Cases and for the purposes set forth in the DIP Budget, including the payment of fees and expenses of Professional Persons approved by the Bankruptcy Court during the pendency of the Bankruptcy Cases, (iii) to provide for other general corporate purposes of Holdings and its Subsidiaries during the pendency of the Bankruptcy Cases and for the purposes set forth in the DIP Budget, (iv) to fund the Carve-Out, and (v) to repay amounts, not to exceed \$4,000,000, owing under the Prepetition Credit Agreement's revolving credit facility. Nothing herein shall in any way prejudice or prevent the Administrative Agent or the Lenders from objecting, for any reason, to any requests, motions or applications made in the Bankruptcy Court, including any applications for interim or final allowances of compensation for services rendered or reimbursement of expenses incurred under clause (a) of Section 105, or Section 330 or 331 of the Bankruptcy Code, by any party in interest. For avoidance of doubt, no proceeds of any Revolving Loans or any cash collateral shall be available for any fees or expenses incurred in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against (i) the Administrative Agent or the Lenders or (ii) in connection with challenging, invalidating, disallowing, recharacterizing, setting aside, avoiding, subordinating, in whole or in part, or taking or attempting to take any other action to render unenforceable, the Liens, claims, interests and Adequate Protection of the Administrative Agent and the Lenders or the administrative agent and lenders under the Prepetition Credit Agreement as of the Petition Date; provided up to \$50,000 in the aggregate may be used by any statutory committee appointed in the Bankruptcy Cases for purposes of investigating the Liens, claims and interests under the Prepetition Credit Agreement.

7.13 Additional Guarantors.

(a) If a Minority Investment or Subsidiary shall at any time after the Effective Date become a U.S. Wholly-Owned Subsidiary, or if Holdings, or any U.S. Wholly-Owned Subsidiary of Holdings, otherwise shall incorporate, create or acquire any U.S. Wholly-Owned Subsidiary, Holdings shall cause such U.S. Wholly-Owned Subsidiary to furnish promptly, but in no event more than thirty (30) days thereafter, each of the following to the Administrative Agent:

(i) a duly executed notice and agreement in substantially the form of Exhibit F (an "Additional Guarantor Assumption Agreement");

(ii) (A) copies of the resolutions of the board of directors (or equivalent governing body) of such Subsidiary approving and authorizing the execution, delivery and performance by such Subsidiary of its Additional Guarantor Assumption Agreement and this Agreement, certified as of the date of such Additional Guarantor Assumption Agreement (the "Additional Guarantor Accession Date") by the Secretary or an Assistant Secretary (or other appropriate officer) of such Subsidiary; (B) a certificate of the Secretary or Assistant Secretary (or other appropriate officer) of such Subsidiary certifying the names and true signatures of the officers of such Subsidiary authorized to execute and deliver and perform, as applicable, its Additional Guarantor Assumption Agreement, this Agreement and all other Loan Documents to be delivered hereunder; (C) copies of the articles or certificate of incorporation and bylaws (or

other applicable Organization Documents) of such Subsidiary as in effect on the Additional Guarantor Accession Date, certified by the Secretary or Assistant Secretary (or other appropriate officer) of such Subsidiary as of the Additional Guarantor Accession Date; and

(iii) (A) such amendments to the schedules to the Security Agreement as shall be required in connection with the accession of such Subsidiary thereto; (B) UCC-1 financing statements for each jurisdiction in which such filing is necessary to perfect the security interest of the Administrative Agent on behalf of the Lenders in the Collateral of such Subsidiary and in which the Administrative Agent requests that such filing be made; and (C) if requested by the Administrative Agent, within ninety (90) days of such request (or such later date as the Administrative Agent may approve in its discretion), such Mortgages and other documents as may be required to create and perfect a Lien in the interests of such Subsidiary in any real property owned in fee simple by such Subsidiary having a fair market value or book value at the time of the incorporation, creation or acquisition of such Subsidiary of greater than \$1,000,000, and such title insurance policies and other documents as the Administrative Agent or the Majority Lenders may reasonably request in connection therewith.

(b) Additionally, Holdings and such Subsidiary shall have executed and delivered to the Administrative Agent such other items as reasonably requested by the Administrative Agent in connection with the foregoing, including officers' certificates, search reports, control agreements and other certificates and documents.

7.14 Additional Stock Pledges. If Holdings, directly or indirectly, incorporates, creates or acquires any additional Subsidiary, or if any Person in which Holdings, directly or indirectly, has a Minority Investment shall become a Subsidiary, then within ten (10) days thereafter, Holdings shall (i) (A) pledge the capital stock, membership interests or other equity interests of such additional Subsidiary to the Administrative Agent pursuant to the Security Agreement, if such stock, membership interest or other interest is directly owned by Holdings, or (B) if such stock, membership interest or other interest is owned by a Subsidiary, cause such Subsidiary to pledge the capital stock, membership interest or other equity interest of such additional Subsidiary to the Administrative Agent pursuant to the Security Agreement, and (ii) execute and deliver, or cause such Subsidiary to have executed and delivered, to the Administrative Agent stock transfer powers executed in blank with signatures guaranteed as the Administrative Agent shall request, such UCC-1 financing statements (as furnished by the Administrative Agent) in each jurisdiction in which such filing is necessary to perfect the security interest of the Administrative Agent in the Collateral with respect to Holdings or such Subsidiary, and (iii) deliver such other items as reasonably requested by the Administrative Agent in connection with the foregoing, including resolutions, incumbency and officers' certificates, search reports, control agreements and other certificates and documents; provided, however, that if any such additional Subsidiary is not a U.S. Subsidiary, in no event shall more than 65% of the voting capital stock (and 100% of the non-voting stock) of any such Subsidiary be required to be so pledged.

7.15 Further Assurances.

(a) Holdings shall ensure that all written information, exhibits and reports furnished to the Administrative Agent or the Lenders do not and will not contain, when

considered with all other information so furnished, any untrue statement of a material fact and do not and will not omit to state any material fact or any fact necessary to make the statements contained therein not misleading in light of the circumstances in which made, and will promptly disclose to the Administrative Agent and the Lenders and correct any material defect or error that may be discovered therein or in any Loan Document or in the execution, acknowledgement or recordation thereof, provided that to the extent any such written information, exhibit or report was based upon or constitutes a forecast or projection, Holdings shall ensure only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, exhibit or report (it being understood that forecasts and projections by their nature involve approximations and uncertainties).

(b) If at any time after the Effective Date, Holdings or any other Loan Party shall become the owner in fee simple of any real property having a fair market value or book value in excess of \$250,000, then Holdings shall promptly, and in any event within thirty (30) days following the acquisition of such real property (or such later date as the Administrative Agent may approve in its discretion), deliver to the Administrative Agent a Mortgage, in form and substance satisfactory to the Administrative Agent, in respect of such real property, duly executed by the Administrative Agent and the record owner of the real property encumbered thereby (such execution to be duly acknowledged by a notary public) and in proper form for recording in the real estate records of the county in which such real property is located. Schedule 6.20 shall be deemed amended to include as Mortgaged Property all real property as to which a Mortgage is delivered to the Administrative Agent as provided in this Section 7.15(b).

(c) Promptly upon request by the Administrative Agent or the Majority Lenders, Holdings shall (and shall cause any Guarantor to) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register, any and all such further acts, deeds, conveyances, security agreements, assignments, estoppel certificates, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments the Administrative Agent or such Lenders, as the case may be, may reasonably require from time to time in order (i) to carry out more effectively the purposes of this Agreement or any other Loan Document, (ii) to subject to the Liens created by any of the Collateral Documents any of the properties, rights or interests covered by any of the Collateral Documents, (iii) to perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and the Liens intended to be created thereby, and (iv) to better assure, convey, grant, assign, transfer, preserve, protect and confirm to the Administrative Agent and Lenders the rights granted or now or hereafter intended to be granted to the Lenders under any Loan Document or under any other document executed in connection therewith.

7.16 Financial Advisor. Holdings shall use its commercially reasonable efforts to retain Alvarez & Marsal, or another firm acceptable to the Administrative Agent, to provide financial advisory services to Holdings and to ensure the continued involvement of Steven Varner (or other Professional Person reasonably acceptable to the Administrative Agent) on behalf of Alvarez & Marsal. Such financial advisor will, among other things, coordinate and consult with management of Holdings in the preparation of the DIP Budget. Holdings may terminate the engagement of such financial advisor after obtaining the consent of the Administrative Agent.

7.17 Cash Balance; Cash Sweep. Holdings shall, and shall cause its Subsidiaries to, take all steps necessary to ensure that the Cash Balance is at all times subject to a first priority Lien in favor of the Administrative Agent for the ratable benefit of the Lenders to secure the Obligations and that the Cash Balance is held in deposit accounts or securities accounts, or any combination thereof, that are maintained by a branch office of a bank or securities intermediary located within the United States and that are subject to the control of the Administrative Agent within the meaning of Section 9-314 of the UCC. Holdings shall, and shall cause its Subsidiaries to, take all steps necessary to ensure that the Collected and Available Cash in excess of \$1,000,000 is swept to the Cash Collateral Account on a daily basis.

7.18 Bankruptcy Cases. Holdings shall use its commercially reasonable efforts to obtain an order of the Bankruptcy Court authorizing Holdings to enter into this Agreement and the other Loan Documents and deliver or cause to be delivered to the Administrative Agent and its counsel all material pleadings, motions and other documents filed on behalf of all of the Loan Parties with the Bankruptcy Court.

ARTICLE VIII.

NEGATIVE COVENANTS

So long as any Lender shall have any Revolving Commitment hereunder, or any Loan or other Obligation shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, unless the Majority Lenders waive compliance in writing:

8.01 Limitation on Liens.

(a) Holdings shall not, and shall not suffer or permit any Subsidiary to, directly or indirectly, make, create, incur, assume or suffer to exist any Lien upon or with respect to any part of its property, whether now owned or hereafter acquired, other than the following (“Permitted Liens”):

(i) any Lien existing on the Effective Date set forth in Schedule 8.01, provided that (a) such Lien shall not attach to any property or asset of Holdings or any Subsidiary other than the property or asset originally so encumbered on the Effective Date and (b) such Lien shall secure only those obligations that it secures on the Effective Date;

(ii) any Lien created under any Loan Document;

(iii) Liens for taxes, fees, assessments or other governmental charges which are not delinquent or remain payable without penalty, or which are being contested in good faith and by appropriate proceedings, if adequate reserves in accordance with GAAP are maintained by Holdings or such Subsidiary, which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(iv) carriers’, warehousemen’s, mechanics’, landlords’, materialmen’s, repairmen’s or other similar Liens arising in the Ordinary Course of Business which are not delinquent or which are being contested in good faith and by appropriate proceedings, if adequate reserves in accordance with GAAP are maintained by Holdings or such

Subsidiary, which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(v) Liens (other than any Lien imposed by ERISA and other than on the Collateral) consisting of pledges or deposits required in the Ordinary Course of Business in connection with workers' compensation, unemployment insurance and other social security legislation;

(vi) Liens securing (A) the non-delinquent performance of bids, trade contracts (other than for borrowed money), leases (other than Capital Leases), statutory obligations, (B) contingent obligations on surety and appeal bonds, and (C) other non-delinquent obligations of a like nature; in each case, incurred in the Ordinary Course of Business, provided all such Liens in the aggregate would not (even if enforced) cause a Material Adverse Effect;

(vii) Liens consisting of judgment or judicial attachment liens with respect to any judgment that does not constitute an Event of Default under Section 9.01(g);

(viii) easements, rights of way, restrictions and other similar encumbrances incurred in the Ordinary Course of Business which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the businesses of Holdings and its Subsidiaries;

(ix) Liens on specific tangible assets of Persons which become Subsidiaries after the date of this Agreement; provided, however, that (A) such Liens existed at the time the respective Persons became Subsidiaries and were not created in anticipation thereof, (B) any such Lien does not by its terms cover any assets after the time such Person becomes a Subsidiary which were not covered immediately prior thereto, (C) any such Lien does not by its terms secure any Indebtedness other than Indebtedness existing immediately prior to the time such Person becomes a Subsidiary, and (D) such Indebtedness is permitted by Section 8.05(d);

(x) purchase money Liens on any property acquired or held by Holdings or its Subsidiaries in the Ordinary Course of Business, securing Indebtedness incurred or assumed for the purpose of financing all or any part of the cost of acquiring such property; provided that (i) any such Lien attaches to such property concurrently with or within one hundred eighty (180) days after the acquisition thereof, (ii) such Lien attaches solely to the property so acquired in such transaction, (iii) the principal amount of the Indebtedness secured thereby does not exceed 100% of the cost of such property, and (iv) such Indebtedness is permitted under Section 8.05(d);

(xi) Liens securing obligations in respect of Capital Leases on assets subject to such leases, provided that such Capital Leases are otherwise permitted hereunder;

(xii) 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 as to deposit accounts or other funds maintained with a creditor depository institution; provided that (A) such deposit account is not a dedicated cash collateral account and is not subject to

restrictions against access by Holdings in excess of those set forth by regulations promulgated by the FRB, and (B) such deposit account is not intended by Holdings or any Subsidiary to provide collateral to the depository institution;

(xiii) Liens on the property of direct and indirect Subsidiaries of Holdings that are not Loan Parties in favor of Holdings created in connection with extensions of credit provided by Holdings to Subsidiaries that are not Loan Parties as permitted pursuant to Section 8.04(d), which Liens have been assigned to the Administrative Agent for the benefit of the Lenders pursuant to Section 8.04(d);

(xiv) precautionary Uniform Commercial Code financing statement filings in respect of Operating Leases entered into by Holdings or any of its Subsidiaries in the Ordinary Course of Business; and

(xv) Liens in respect of the Carve-Out and any Adequate Protection Lien pursuant to the First Day Orders.

(b) Holdings shall not, and shall not permit any of its Subsidiaries to, enter into or suffer to exist any agreement (other than this Agreement and the Prepetition Credit Agreement) prohibiting or conditioning the creation or assumption of any Lien upon any of its properties, revenues or assets, whether now owned or hereafter acquired, except (i) with respect to specific tangible assets subject to a Permitted Lien, (ii) agreements for the sale of a Subsidiary or assets, provided that (A) any such prohibition or condition on the creation or assumption of any Lien applies only to the Subsidiary or assets that are to be sold while such sale is pending and (B) such sale is permitted under Section 8.02, (iii) stockholders agreements, charter or other formation or joint venture documents relating to Non-Wholly-Owned Subsidiaries, and (iv) pursuant to customary anti-assignment or no-subletting clauses in leases, licenses or contracts entered into in the Ordinary Course of Business, which restrict only the assignment of such lease, license or contract, as applicable.

Notwithstanding the foregoing, no Liens may exist at any time on or with respect to the Pledged Collateral, except under this Agreement, the Prepetition Credit Agreement and the Carve-Out.

8.02 Disposition of Assets. Holdings shall not, and shall not suffer or permit any Subsidiary to, directly or indirectly, sell, assign, lease, convey, transfer or otherwise dispose of (whether in one or a series of transactions) any property (including accounts and notes receivable, with or without recourse), except:

(a) dispositions of inventory, all in the Ordinary Course of Business;

(b) the sale of equipment to the extent that such equipment is exchanged for credit against the purchase price of similar replacement equipment, or the proceeds of such sale are reasonably promptly applied to the purchase price of such replacement equipment;

(c) dispositions of inventory and equipment by the Company or any other Loan Party to the Company or any other Loan Party pursuant to reasonable business requirements and in the Ordinary Course of Business;

(d) the lease or sublease of real property by Holdings or any Subsidiary to other Persons in the Ordinary Course of Business;

(e) the sale of cash equivalents and other short term money market investments in the Ordinary Course of Business pursuant to Holdings' usual and customary cash management policies and procedures;

(f) dispositions pursuant to sales and leaseback transactions permitted under Section 8.13; and

(g) dispositions not otherwise permitted hereunder which are made for Fair Market Value (as determined in good faith by Holdings) and are either (i) permitted by the Bankruptcy Code or (ii) consummated pursuant to an order of the Bankruptcy Court; provided that (i) at the time of any disposition, no Event of Default shall exist or shall result from such disposition, (ii) 100% of the aggregate purchase price for such disposition shall be paid in cash or otherwise on terms reasonably acceptable to the Administrative Agent, and (iii) the Net Proceeds of such disposition shall be applied in accordance with Section 2.06(a)(iii) or Section 2.06(a)(vii), as the case may be.

8.03 Consolidations and Mergers. Holdings shall not, and shall not suffer or permit any Subsidiary to, merge, consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except:

(a) one or more Subsidiaries may merge with Holdings, provided that Holdings shall be the continuing or surviving Person, or with any one or more Subsidiaries, provided that if any transaction shall be between a Subsidiary and a Wholly-Owned Subsidiary, the Wholly-Owned Subsidiary shall be the continuing or surviving Person, and provided further that if any transaction shall be between a Subsidiary and a Loan Party, the Loan Party shall be the continuing or surviving Person;

(b) as permitted by Section 8.02; and

(c) any Subsidiary may distribute or sell all or substantially all of its assets (upon voluntary liquidation, dissolution or otherwise) to Holdings or to a Wholly-Owned Subsidiary, provided that if the Subsidiary distributing or selling its assets is a Loan Party, then the Person purchasing or otherwise receiving the assets must also be a Loan Party.

8.04 Loans and Investments. Holdings shall not purchase or acquire, or suffer or permit any Subsidiary to purchase or acquire, any capital stock, equity interest, or any obligations or other securities of, or any interest in, any Person, or make any Acquisitions, or make any advance, loan, extension of credit or capital contribution to or any other investment in, any Person including any Affiliate of Holdings (together, "Investments") except for:

(a) Investments held by Holdings or Subsidiary in the form of cash equivalents and short term money market investments in the Ordinary Course of Business pursuant to Holdings' usual and customary cash management policies and procedures;

(b) extensions of credit in the nature of accounts receivable or notes receivable arising from the sale or lease of goods or services in the Ordinary Course of Business, together with investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(c) (i) Investments by Holdings and its Subsidiaries in the equity interests of their respective Subsidiaries outstanding on the Effective Date, (ii) additional Investments by Holdings and its Subsidiaries that are Loan Parties in other Loan Parties (other than Holdings) and (iii) additional Investments by Subsidiaries of Holdings that are not Loan Parties in other Subsidiaries that are not Loan Parties;

(d) Loans, advances and other extensions of credit by Holdings or any Loan Party to any Subsidiary that is not a Loan Party outstanding on the Effective Date and set forth on Schedule 8.04(d);

(e) (i) Investments constituting Minority Investments existing on the Effective Date set forth on Schedule 8.04(e)(i), and (ii) Investments in respect of exercised Put Obligations existing on the Effective Date and set forth on Schedule 8.04(e)(ii);

(f) Payments or advances under Swap Contracts existing on the Effective Date set forth on Schedule 8.04(f);

(g) Officer, shareholder, director and employee loans and guarantees in accordance with applicable law and with Holdings' and its Subsidiaries' usual and customary practices with respect thereto in an aggregate amount not exceeding \$1,000,000 at any time outstanding; and

(h) Investments constituting non-cash consideration received by Holdings or any Subsidiary in respect of any asset dispositions permitted under Section 8.02.

8.05 Limitation on Indebtedness. Holdings shall not, and shall not suffer or permit any Subsidiary to, create, incur, assume, suffer to exist, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(a) Indebtedness incurred pursuant to this Agreement;

(b) Indebtedness consisting of Contingent Obligations permitted pursuant to Section 8.08;

(c) Indebtedness existing or deemed to exist on the Effective Date;

(d) (i) Indebtedness secured by Liens permitted by clauses (ix), (x) and (xi) of Section 8.01(a) outstanding on the Effective Date; and (ii) Indebtedness incurred after the

Effective Date secured by Liens permitted by clauses (x) or (xi) of Section 8.01(a) in an aggregate principal amount not to exceed \$5,000,000 at any time outstanding;

(e) Indebtedness of Holdings or other Loan Parties to Holdings or other Loan Parties;

(f) Indebtedness of Subsidiaries that are not Loan Parties to Holdings or any other Loan Party to the extent permitted pursuant to Section 8.04(d);

(g) Indebtedness incurred pursuant to sales and leaseback transactions permitted under Section 8.14.

Notwithstanding anything to the contrary in this Section 8.05, the Indebtedness of all Subsidiaries that are not Guarantors which is otherwise permitted under this Section 8.05 shall be limited to (i) such Indebtedness outstanding on the Effective Date and set forth on Schedule 8.05 and (ii) any Indebtedness of such Subsidiaries at any time outstanding under Section 8.05(f) or 8.05(d)(ii).

8.06 Transactions with Affiliates. Holdings shall not, and shall not suffer or permit any Subsidiary to, enter into any transaction with any Affiliate of Holdings, except upon fair and reasonable terms no less favorable to Holdings or such Subsidiary than it would obtain in a comparable arm's length transaction with a Person not an Affiliate of Holdings or such Subsidiary.

8.07 Use of Proceeds. Holdings shall not, and shall not suffer or permit any Subsidiary to, use any portion of the Loan proceeds or any Letter of Credit, directly or indirectly, (i) to purchase or carry Margin Stock, (ii) to repay or otherwise refinance indebtedness of Holdings or others incurred to purchase or carry Margin Stock, (iii) to extend credit for the purpose of purchasing or carrying any Margin Stock, except, in each case, for the purchase, redemption or other acquisition of shares of common stock of Holdings permitted under Section 8.11 in a manner that would not result in the contravention of Regulation T, U or X of the FRB, or (iv) for any use not permitted under Section 7.12.

8.08 Contingent Obligations. Holdings shall not, and shall not suffer or permit any Subsidiary to, create, incur, assume or suffer to exist any Contingent Obligations, except:

(a) endorsements for collection or deposit in the Ordinary Course of Business;

(b) Contingent Obligations in respect of Swap Contracts permitted under Section 8.04(f);

(c) Contingent Obligations of Holdings in respect of Indebtedness of any other Loan Party, or Contingent Obligations of any Loan Party in respect of Indebtedness of another Loan Party or of Holdings, in each case to the extent such Indebtedness is permitted hereunder;

(d) Contingent Obligations of any Subsidiary that is not a Loan Party in respect of Indebtedness of any other Subsidiary that is not a Loan Party, to the extent such Indebtedness is permitted hereunder;

(e) Contingent Obligations of Holdings and its Subsidiaries existing or deemed to exist as of the Effective Date;

(f) Contingent Obligations with respect to Surety Instruments incurred in the Ordinary Course of Business and not exceeding at any time \$75,000,000 in aggregate principal amount in respect of Holdings and its Subsidiaries together;

(g) Contingent Obligations of Holdings with respect to Stock Price Guaranties existing on the Effective Date set forth on Schedule 8.08(g);

(h) Contingent Obligations of Holdings and its Subsidiaries in respect of any Put Obligations existing on the Effective Date set forth on Schedule 8.04(e)(ii);

(i) Contingent Obligations consisting of normal and customary indemnities issued in the Ordinary Course of Business (including, without limitation, under professional services agreements, construction and materials supply agreements, intellectual property agreements or employment and consulting agreements) or consisting of normal and customary indemnities pursuant to the issuance and sale of securities;

(j) Contingent Obligations in respect of Operating Leases, to the extent such Operating Leases are permitted to be entered into hereby; and

(k) Contingent Obligations consisting of customary indemnification and purchase price adjustment obligations incurred in connection with asset dispositions permitted under Section 8.02.

8.09 Subsidiaries. Holdings shall not, and shall not suffer or permit any Subsidiary to, incorporate, create or acquire any Subsidiary which is not a U.S. Subsidiary.

8.10 Lease Obligations. Holdings shall not, and shall not suffer or permit any Subsidiary to, create or suffer to exist any obligations for the payment of rent for any property under any Operating Lease which exceed an aggregate amount of \$35,000,000 for all Operating Leases in any fiscal year; except for such payment obligations under any Operating Lease that has been rejected in the Bankruptcy Cases.

8.11 Restricted Payments. Holdings shall not, and shall not suffer or permit any Subsidiary to, declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any shares of any class of its capital stock or other equity interests (other than dividends or other distributions by a Subsidiary to Holdings or to a Subsidiary that is a Loan Party), or purchase, redeem or otherwise acquire for value any shares of its capital stock or other equity interests or any warrants, rights or options to acquire such shares or other equity interests, now or hereafter outstanding.

8.12 ERISA. Holdings shall not, and shall not suffer or permit any of its ERISA Affiliates to: (a) engage in a prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan which has resulted or could reasonably be expected to result in liability of Holdings in an aggregate amount in excess of \$5,000,000; or (b) engage in a transaction that could be subject to section 4069 or 4212(c) of ERISA and that would reasonably be expected to have a Material Adverse Effect.

8.13 Sales and Leasebacks. Except on terms reasonably acceptable to the Administrative Agent and the Majority Lenders, Holdings shall not, and shall not permit any of its Subsidiaries to, become liable, directly or indirectly, with respect to any lease, whether an Operating Lease or a Capital Lease, of any property (whether real, personal or mixed), whether now owned or hereafter acquired, (i) which Holdings or such Subsidiary has sold or transferred or is to sell or transfer to any other Person or (ii) which Holdings or such Subsidiary intends to use for substantially the same purposes as any other property which has been or is to be sold or transferred by Holdings or such Subsidiary to any other Person in connection with such lease.

8.14 Change in Business. Holdings shall not, and shall not suffer or permit any Subsidiary to, engage in any material line of business substantially different from those lines of business carried on by Holdings and its Subsidiaries on the date hereof and lines of business ancillary thereto.

8.15 Accounting Changes. Holdings shall not, and shall not suffer or permit any Subsidiary to, make any significant change in accounting treatment or reporting practices, except as permitted by GAAP, or change the fiscal year of Holdings or of any Subsidiary, except to change the fiscal year of a Subsidiary to conform its fiscal year to that of Holdings.

8.16 Financial Covenants.

(a) Holdings shall not permit its EBITDAR From Continuing Operations as at the end of any fiscal quarter to be less than the following amounts for the respective periods set forth below:

<u>Measurement Period</u>	<u>Minimum EBITDAR From Continuing Operations</u>
Three months ending September 30, 2009	(\$5,000,000)
Six months ending December 31, 2009	(\$10,000,000)

8.17 No Restrictions on Subsidiary Dividends. Holdings shall not, and shall not suffer or permit any Subsidiary to, enter into or be bound by any Contractual Obligation which restricts, limits or prohibits the payment of dividends by any Subsidiary or the making of any other distribution in respect of such Subsidiary's capital stock or other equity interests, except for the following:

(a) agreements of Subsidiaries that are not Loan Parties in respect of Indebtedness that is permitted to be incurred by Subsidiaries that are not Loan Parties pursuant to Section 8.05 hereof;

(b) agreements for the sale of a Subsidiary or assets, provided that (i) any such restriction, limitation or prohibition on the payment of dividends or other distributions applies only to the Subsidiary to be sold or to the Subsidiary that owns the assets to be sold, in each case, while such sale is pending and (ii) such sale is permitted under Section 8.02;

(c) shareholder agreements, charter or other formation or joint venture documents in respect of Subsidiaries that are not Loan Parties; and

(d) agreements in respect of Indebtedness permitted under Section 8.05 of any Subsidiary acquired after the Effective Date that was incurred by such Subsidiary prior to the date on which such Subsidiary was acquired (other than Indebtedness incurred as consideration for, in contemplation of, or to provide all or any portion of the funds or credit support utilized to consummate the transaction or series of related transactions pursuant to which such Subsidiary becomes a Subsidiary or was otherwise acquired).

8.18 Capital Expenditures. Holdings shall not, and shall not permit any of its Subsidiaries to, make any Capital Expenditures in excess of, on a consolidated basis, in any fiscal year the following amounts for the respective periods set forth below:

<u>Period</u>	<u>CapEx Limit</u>
Fiscal 2009	\$3,200,000
Fiscal 2010	\$5,000,000 (not to exceed \$1,250,000 per fiscal quarter)

8.19 No Opt-In to Article 8 of the UCC. Holdings shall not suffer or permit any Subsidiary which is either a limited partnership or limited liability company to amend its limited partnership agreement or limited liability company operating agreement, as the case may be, to certificate any of its limited partnership interests or membership interests, as the case may be, or opt into Article 8 of the UCC, without the prior written consent of the Administrative Agent.

8.20 Chapter 11 Claims. Holdings shall not incur, create, assume or permit to exist any administrative expense, unsecured claim, or other superpriority claim or Lien that is *pari passu* with or senior to the claims of the Administrative Agent and the Lenders against the Loan Parties hereunder, or apply to the Bankruptcy Court for authority to do so, except for the Carve-Out and Permitted Liens under Sections 8.01(a)(ix), (x) and (xi).

8.21 The Orders. Holdings shall not make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to the Financing Orders or any First Day Orders without the prior written consent

of the Administrative Agent and the Majority Lenders, except for any change, amendment or modification that would not adversely affect the Lenders (as reasonably determined by the Administrative Agent and the Majority Lenders).

ARTICLE IX.

EVENTS OF DEFAULT

9.01 Event of Default. Any of the following shall constitute an “Event of Default”:

(a) Non Payment. Holdings fails to make, (i) when and as required to be made herein, payments of any amount of principal of any Loan or of any L/C Obligation or (ii) within three (3) Business Days after the same becomes due, payment of any interest, fee or any other amount payable hereunder or under any other Loan Document; or

(b) Representation or Warranty. Any representation or warranty by any Loan Party made or deemed made herein, in any other Loan Document, or which is contained in any certificate, document or financial or other statement by any Loan Party, or any Responsible Officer, furnished at any time under this Agreement, or in or under any other Loan Document, is incorrect in any material respect on or as of the date made or deemed made; or

(c) Specific Defaults. Holdings or the Company or any other Loan Party fails to perform or observe any term, covenant or agreement contained in any of Sections 7.01(a) or 7.01(b), Sections 7.02(a) or 7.02(g) or 7.02(h), Section 7.03(a), Section 7.04(a)(i) or Section 7.12 or in Article VIII; or

(d) Other Defaults. Any Loan Party fails to perform or observe any other term or covenant contained in this Agreement or any other Loan Document, and such default shall continue unremedied for a period of twenty (20) days after the earlier of (i) the date upon which a Responsible Officer of Holdings or the Company obtained actual knowledge of such failure and (ii) the date upon which written notice thereof is given to Holdings by the Administrative Agent or any Lender; or

(e) Cross Default. (i) Unless otherwise excused or prohibited by the Bankruptcy Code or provided for in an order entered by the Bankruptcy Court (i) Holdings or any Subsidiary (A) fails to make any payment in respect of any Indebtedness or Contingent Obligation (other than the Obligations and other than in respect of Swap Contracts), in either case arising after the Petition Date and not in respect of any agreement entered into prior to the Petition Date, having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$5,000,000 when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such failure continues after the applicable grace or notice period, if any, specified in the relevant document on the date of such failure; or (B) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Indebtedness or Contingent Obligation (other than the Obligations), in either case arising after the Petition Date

and not in respect of any agreement entered into prior to the Petition Date, and such failure continues after the applicable grace or notice period, if any, specified in the relevant document on the date of such failure if the effect of such failure, event or condition is to cause, or to permit the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or administrative agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause such Indebtedness to be declared to be due and payable or to be repurchased, prepaid, defeased or redeemed prior to its stated maturity, or such Contingent Obligation to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract (other than any Swap Contract entered into prior to the Petition Date) an Early Termination Date (as defined in such Swap Contract) resulting from (1) any event of default under such Swap Contract as to which Holdings or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (2) any Termination Event (as so defined) as to which Holdings or any Subsidiary is an Affected Party (as so defined), and, in either event, the Swap Termination Value owed by Holdings or such Subsidiary as a result thereof is greater than \$5,000,000; or

(f) ERISA. (i) An ERISA Event shall occur with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of Holdings under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$5,000,000; (ii) the aggregate amount of Unfunded Pension Liability among all Pension Plans at any time exceeds \$5,000,000; or (iii) Holdings or any ERISA Affiliate shall fail to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$5,000,000; or

(g) Monetary Judgments. One or more non-interlocutory judgments, non interlocutory orders, decrees or arbitration awards is entered against Holdings or any Subsidiary involving in the aggregate a post-Petition Date liability (to the extent not covered by independent third party insurance as to which the insurer does not dispute coverage) as to any single or related or unrelated series of transactions, incidents or conditions, of \$5,000,000 or more, and the same shall remain unsatisfied, unvacated and unstayed pending appeal for a period of thirty (30) days after the entry thereof; or

(h) Non Monetary Judgments. Any non monetary judgment, order or decree is entered against Holdings or any Subsidiary which does or would reasonably be expected to have a Material Adverse Effect, and there shall be any period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(i) Guarantor Defaults. Any Guarantor fails in any material respect to perform or observe any term, covenant or agreement in its Guaranty; or any Guaranty is for any reason partially (including with respect to future advances) or wholly revoked or invalidated, or otherwise ceases to be in full force and effect, or such Guarantor or any other Person contests in any manner the validity or enforceability thereof or denies that it has any further liability or obligation thereunder; or

(j) Subordination. The Indebtedness hereunder is for any reason subordinated or does not have the priority in either case to the extent contemplated by this Agreement or the Financing Orders; or

(k) Bankruptcy Defaults.

(i) (A) The Loan Documents and the Financing Orders shall, for any reason, cease to create a valid Lien on any of the Collateral purported to be covered thereby or such Lien shall cease to be a perfected Lien having the priority provided herein pursuant to Section 364 of the Bankruptcy Code against each Loan Party, or any Loan Party shall so allege in any pleading filed in any court or any material provision of any Loan Document shall, for any reason, cease to be valid and binding on each Loan Party party thereto or any Loan Party shall so state in writing or (B) any Loan Party shall file a complaint or initiate any other action against any of the Lenders or the lenders under the Prepetition Credit Agreement or any entity shall obtain a judgment that materially and adversely affects such Lenders' or lenders' claims or the Collateral, except to the extent expressly allowed in the Interim Financing Order or the Final Financing Order; or

(ii) Any of the Bankruptcy Cases shall be dismissed (or the Bankruptcy Court shall make a ruling requiring the dismissal of the Bankruptcy Cases), suspended or converted to a case under Chapter 7 of the Bankruptcy Code, or any Loan Party shall file any pleading requesting any such relief; or an application shall be filed by any Loan Party for the approval of, or there shall arise, (A) other than the Carve-Out, any other claim having priority senior to or pari passu with the claims of the Administrative Agent and the Lenders under the Loan Documents or any other claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code (other than the Carve-Out) or (B) other than the Carve-Out, any Lien on the Collateral having a priority senior to or pari passu with the Liens and security interests granted herein, except as expressly provided herein; or

(iii) The Bankruptcy Court shall enter an order appointing (A) a Chapter 11 trustee in any of the Bankruptcy Cases or (B) a responsible officer or an examiner with powers (I) to operate or manage the financial affairs of any Loan Party or (II) beyond the duty to investigate and report, as set forth in subclauses (3) and (4) of clause (a) of Section 1106 of the Bankruptcy Code, in any of the Bankruptcy Cases; or

(iv) (A) The Interim Financing Order shall (I) not have been entered by the Bankruptcy Court within five (5) Business Days after the Petition Date or (II) once issued, cease to be in full force and effect and the Final Financing Order shall not have been entered prior to such cessation, (B) the Final Financing Order shall not have been entered by the Bankruptcy Court on or before the 45th day following the Effective Date, (C) from and after the date of entry thereof, the Final Financing Order shall cease to be in full force and effect, (D) any Loan Party shall fail to comply with the terms of the Interim Financing Order or the Final Financing Order in any material respect or (E) the Interim Financing Order or the Final Financing Order shall be amended, supplemented, stayed, reversed, vacated or otherwise modified (or any of the Loan Parties shall apply for authority to do so) without the written consent of the Administrative Agent; or

(v) Any Loan Party shall (A) pay any prepetition claim in whole or in part other than a Permitted Prepetition Claim Payment, absent consent of the Administrative Agent and the Majority Lenders or (B) file a motion seeking, or the Bankruptcy Court shall enter, an order, other than an order involving or related to the Plan of Reorganization, granting (i) a First Day Order not approved by the Administrative Agent, such approval not to be unreasonably withheld (except in the case of the Interim Financing Order), (ii) relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets having a book value in excess of \$1,000,000 in the aggregate or (iii) except to the extent the same would not constitute an Event of Default under any of the previous clauses, approval of settlements or other stipulations with any creditors of any Loan Party, other than the Administrative Agent and the Lenders, that provide for the payment, as Adequate Protection with respect to the prepetition claims of such creditors, to such creditors, individually or in the aggregate for any and all such creditors, of more than \$1,000,000, without the written consent of the Administrative Agent; or

(vi) Holdings or any Guarantor shall file a plan of reorganization that is not the Plan of Reorganization; or

(vii) claims arising under Section 506(c) of the Bankruptcy Code shall be asserted against the Lenders or other actions adverse to the Lenders or their respective rights and remedies hereunder or under any other Loan Document or any Bankruptcy Court order shall be commenced; or

(viii) the period of exclusivity in the Bankruptcy Cases terminates or exclusivity is otherwise lifted in the Bankruptcy Cases; or

(ix) Holdings and the Guarantors shall consummate a sale of all or substantially all of their respective assets that does not provide for payment in full in cash of all outstanding Loans and other non-contingent obligations hereunder and the replacement, cancellation or cash collateralization of all Letters of Credit.

9.02 Remedies. At any time after the occurrence and during the continuance of any Event of Default, without further order of, application to or action by the Bankruptcy Court:

(a) the Administrative Agent may or shall, upon instructions from the Majority Lenders, by written notice to Holdings (i) terminate the Revolving Commitments, any obligation of the L/C Issuer to make L/C Credit Extensions and the obligations of the Lenders to make Loans, (ii) require that Holdings Cash Collateralize the L/C Obligations in an amount equal to the then Effective Amount of the L/C Obligations; and/or (iii) declare all or a portion of the outstanding Obligations owed to the Lenders and payable by Holdings to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Notes to the contrary notwithstanding; and

(b) in addition, subject solely to any requirement of the giving of notice by the terms of the Interim Financing Order or the Final Financing Order, the automatic stay provided in Section 362 of the Bankruptcy Code shall be deemed automatically vacated

without further action or order of the Bankruptcy Court, and the Administrative Agent and the Lenders, upon three (3) Business Days' written notice to Holdings, the U.S. Trustee and any statutory committee appointed in the Bankruptcy Cases, shall be entitled to exercise all of their respective rights and remedies under the Loan Documents, including all rights and remedies with respect to the Collateral and the Guarantors.

In addition to the foregoing remedies, upon the occurrence or existence of any Event of Default, upon three (3) Business Days' written notice to Holdings, the U.S. Trustee and any statutory committee appointed in the Bankruptcy Cases, the Administrative Agent may exercise any other right, power or remedy available to it under any of the Loan Documents or otherwise by law, either by suit in equity or by action at law, or both.

9.03 Application of Funds. After the exercise of remedies provided for in Section 9.02, any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

(a) First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of the legal counsel and the financial advisors to the Administrative Agent and amounts payable under Article IV) payable to the Administrative Agent in its capacity as such;

(b) Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and fees payable under Section 2.09(b) and Section 3.08(a)) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer and amounts payable under Article IV), ratably among them in proportion to the respective amounts described in this clause (b) payable to them;

(c) Third, to payment of that portion of the Obligations constituting accrued and unpaid fees payable under Section 2.09(b) and Section 3.08(a) and interest on the Loans, L/C Borrowings and other Obligations, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause (c) payable to them;

(d) Fourth, (i) to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, and (ii) to Cash Collateralize that portion of the L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause (d) held by them;

(e) Fifth, to payment of all other Obligations, ratably among the Persons owed such Obligations in proportion to the respective amounts described in this clause (e) held by them; and

(f) Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to Holdings or as otherwise required by applicable law.

Subject to Section 3.03, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause (d) above shall be applied to satisfy drawings under such

Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

ARTICLE X.

THE ADMINISTRATIVE AGENT

10.01 Appointment and Authority. Each of the Lenders and the L/C Issuer hereby irrevocably appoints Wells Fargo to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither Holdings nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

10.02 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, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with Holdings or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

10.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

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

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Holdings or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the 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 11.01 and 9.02 or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by Holdings, a Lender or the L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

10.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for Holdings), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

10.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the Administrative Agent. The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

10.06 Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and Holdings. Upon receipt

of any such notice of resignation, the Majority Lenders shall have the right, in consultation with Holdings (except during the continuance of an Event of Default, in which case no consultation with Holdings shall be required), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify Holdings and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Majority Lenders appoint a successor Administrative Agent as provided for above in this Section. 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 retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by Holdings to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Holdings and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring 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 Administrative Agent was acting as Administrative Agent.

Any resignation by Wells Fargo as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (b) the retiring L/C Issuer shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

10.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it

will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

10.08 Collateral Matters.

(a) The Administrative Agent is authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action with respect to any Collateral or the Collateral Documents which may be necessary to perfect and maintain perfected the security interest in and Liens upon the Collateral granted pursuant to the Collateral Documents.

(b) The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion, to release any Lien granted to or held by the Administrative Agent upon any Collateral (i) upon termination of the Revolving Commitments and payment in full of all Loans and all other Obligations known to the Administrative Agent and payable under this Agreement or any other Loan Document; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any disposition permitted hereunder; (iii) constituting property in which Holdings or any Subsidiary owned no interest at the time the Lien was granted or at any time thereafter; (iv) constituting property leased to Holdings or any Subsidiary in a transaction permitted under this Agreement; (v) consisting of an instrument evidencing Indebtedness or other debt instrument, if the indebtedness evidenced thereby has been paid in full; (vi) if approved, authorized or ratified in writing by the Majority Lenders or all the Lenders, as the case may be, as provided in Section 11.01. Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to release particular types or items of Collateral pursuant to this Section 10.08(b), provided that the absence of any such confirmation for whatever reason shall not affect the Administrative Agent's rights under this Section 10.08.

(c) Each Lender agrees with and in favor of each other (which agreement shall not be for the benefit of Holdings or any Subsidiary) that the Obligations to such Lender under this Agreement and the other Loan Documents shall not be secured by any real property collateral now or hereafter acquired by such Lender other than the Mortgaged Properties described in the Mortgages.

10.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation 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 Holdings) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that

are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.09, 3.08 and 11.04) 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 and the L/C Issuer 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 and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents, financial advisors and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 11.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

ARTICLE XI.

MISCELLANEOUS

11.01 Amendments and Waivers.

(a) Except as otherwise provided herein or in any other Loan Document, (i) no amendment to any provision of this Agreement or any of the other Loan Documents shall in any event be effective unless the same shall be in writing and signed by Holdings (or other Loan Party thereto, as applicable), the Administrative Agent and the Majority Lenders (or the Administrative Agent with the written consent of the Majority Lenders); and (ii) no waiver of any provision of this Agreement or any other Loan Document, or consent to any departure by Holdings or other party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Administrative Agent and the Majority Lenders (or the Administrative Agent with the consent of the Majority Lenders). Any such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall do any of the following:

(i) increase the amount, or extend the stated expiration or termination date, of the Revolving Commitment of any Lender without the consent of such Lender;

(ii) reduce or forgive the principal of, or interest or rate of interest on, the Revolving Loans of any Lender or any fee or other amount payable to any Lender

hereunder without the consent of such Lender; provided, however, that only the consent of the Majority Lenders shall be necessary to change the manner of computation of any financial covenant or related definition used in determining the Applicable Margin or Applicable Fee Amount that would result in a reduction of any interest rate on any Revolving Loan or in a reduction of any Commitment Fees or Letter of Credit fees, or to amend the default rate of interest as determined under Section 2.08(c) or to waive any obligation of Holdings to pay interest at the default rate of interest;

(iii) postpone any date fixed for any payment in respect of principal of, or interest on, the Revolving Loans of any Lender or any fee or other amount payable to any Lender hereunder without the consent of such Lender;

and provided further, however, that, unless in writing and signed by all of the Lenders (or by the Administrative Agent with the written consent of all the Lenders), no amendment, waiver or consent shall do any of the following:

(iv) change the definition of “Majority Lenders” or any definition or provision of this Agreement requiring the approval of Majority Lenders or some other specified amount of Lenders;

(v) consent to the assignment or transfer by Holdings or any other Loan Party of any of its rights and obligations under the Loan Documents;

(vi) release any Guarantor or any material portion of the Collateral except as contemplated herein, in the Guaranty or in the Collateral Documents;

(vii) amend, modify or waive the provisions of Section 2.12 or Section 9.03;

(viii) amend, modify or waive the provisions of this Section 11.01(a);

provided, further, that (1) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required hereinabove to take such action, affect the rights, obligations or duties of the Administrative Agent under any Loan Document, (2) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required hereinabove to take such action, affect the rights, obligations or duties of the L/C Issuer under any Loan Document, (3) the Agency Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto and (4) Section 11.06(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification. Notwithstanding anything to the contrary herein, a Defaulting Lender shall not have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Revolving Commitment of such Lender may not be increased without its consent, nor may any amendment, waiver or consent reduce or forgive the principal of, or accrued and unpaid interest on, the outstanding Loans of such Lender or any accrued fee or other accrued amount payable to such Lender without its consent.

(b) In connection with any such proposed amendment, waiver or consent requiring the consent of all Lenders (such proposed amendment, waiver or consent, a “Proposed Change”), if the consent of the Majority Lenders is obtained, but the consent of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in this Section 11.01 being referred to as a “Non-Consenting Lender”), then, so long as the Lender that is acting as the Administrative Agent is not a Non-Consenting Lender, Holdings may replace such Non-Consenting Lender in accordance with Section 11.11.

No failure or delay by the Administrative Agent or any Lender in exercising any right under this Agreement or any other Loan Document shall operate as a waiver thereof or of any other right hereunder or thereunder nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right hereunder or thereunder. Unless otherwise specified in such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given. The Lenders may condition the giving or making of any amendment, waiver or consent of any term, covenant, agreement or condition of this Agreement or any other Loan Document on payment of a fee by Holdings.

11.02 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Holdings, the Administrative Agent or the L/C Issuer, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II or Article III if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices

under such Article by electronic communication. The Administrative Agent or Holdings may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, Etc. Each of Holdings, the Administrative Agent and the L/C Issuer may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to Holdings, the Administrative Agent and the L/C Issuer.

(d) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Notices of Borrowing) purportedly given by or on behalf of Holdings even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Holdings shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of Holdings. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. Holdings shall pay (i) all reasonable out of pocket expenses incurred by the Administrative Agent and its Affiliates (including the

reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement, the other Loan Documents, the Financing Orders, the First Day Orders, the Bankruptcy Plan and any other documentation in connection with the Bankruptcy Cases or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out of pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out of pocket expenses incurred by the Administrative Agent, any Lender or the L/C Issuer (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the L/C Issuer), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent, any Lender or the L/C Issuer, in connection with the enforcement of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder.

(b) Indemnification by Holdings. Holdings shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by Holdings or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by Holdings or any of its Subsidiaries, or any Environmental Claims related in any way to Holdings or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Holdings or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by Holdings or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if Holdings or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that Holdings for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Proportionate Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.11(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, Holdings shall not 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 Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent and the L/C Issuer, the replacement of any Lender, the termination of the Aggregate Revolving Commitment and the repayment, satisfaction or discharge of all the other Obligations.

11.05 Marshalling; Payments Set Aside. Neither the Administrative Agent nor the Lenders shall be under any obligation to marshal any assets in favor of Holdings or any other Person or against or in payment of any or all of the Obligations. To the extent that any Loan Party makes a payment to the Administrative Agent or the Lenders, or the Administrative Agent or the Lenders exercise their right of set-off, and such payment or the proceeds of such set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (a) to the extent of such recovery the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its Proportionate Share of any amount so recovered from or repaid by the Administrative Agent.

11.06 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 neither Holdings nor any other Loan 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 Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section, or (iv) to an SPC in accordance with the provisions of subsection (h) 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 subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations) at the time owing to it); provided that:

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Revolving Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Revolving Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, in the case of any assignment in respect of the Revolving Commitments, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, Holdings otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) 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 Loans or the Revolving Commitment assigned;

(iii) any assignment of a Revolving Commitment must be approved by the Administrative Agent and the L/C Issuer unless the Person that is the proposed

assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee) (each such approval not to be unreasonably withheld or delayed); and

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount, if any, required as set forth in Schedule 11.06, and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 4.01, 4.03, 4.04, and 11.04. Upon request, Holdings (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection 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 subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of Holdings, shall maintain at the Administrative Agent's Payment Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and Holdings, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by each of Holdings, the L/C Issuer and J.P. Morgan Securities, Inc. at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent, waiver or amendment to the Loan Documents is pending, any Lender may request and receive from the Administrative Agent a copy of the Register.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, Holdings or the Administrative Agent, sell participations to any Person (other than a natural person or Holdings or any of Holdings's 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 Revolving Commitment and/or the Loans (including such Lender's participations in L/C Obligations) 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) Holdings, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and

directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

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, waiver or other modification described in the provisos to Section 11.01(a) that affects such Participant. Subject to subsection (e) of this Section, Holdings agrees that each Participant shall be entitled to the benefits of Sections 4.01, 4.03 and 4.04 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.12 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 4.01 or 4.03 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Holdings's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 4.01 unless Holdings is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Holdings, to comply with Section 4.01(e) as though it were a Lender.

(f) 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 (including under its Note, if any) 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.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) Special Purpose Funding Vehicles. Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and Holdings (an "SPC") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such

Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof or, if it fails to do so, to make such payment to the Administrative Agent as is required under Section 2.11. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of Holdings under this Agreement (including its obligations under Section 4.03), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Loan by an SPC hereunder shall utilize the Revolving Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior debt of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding under the laws of the United States or any State thereof. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of Holdings and the Administrative Agent and with the payment of a processing fee in the amount of \$2,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or guarantee or credit or liquidity enhancement to such SPC.

(i) Resignation as L/C Issuer after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Wells Fargo assigns all of its Revolving Commitment and Loans pursuant to subsection (b) above, Wells Fargo may, upon 30 days' notice to Holdings and the Lenders, resign as L/C Issuer. In the event of any such resignation as L/C Issuer, Holdings shall be entitled to appoint from among the Lenders a successor L/C Issuer hereunder; provided, however, that no failure by Holdings to appoint any such successor shall affect the resignation of Wells Fargo as L/C Issuer, as the case may be. If Wells Fargo resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Revolving Loans or fund risk participations in unreimbursed drawings, pursuant to Section 3.03). Upon the appointment of a successor L/C Issuer, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Wells Fargo to effectively assume the obligations of Wells Fargo with respect to such Letters of Credit.

11.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will

be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any pledgee referred to in Section 11.06(f) or (iii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Holdings and its obligations, (g) with the consent of Holdings or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings.

For purposes of this Section, “Information” means all information received from Holdings or any Subsidiary relating to Holdings or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by Holdings or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Holdings acknowledges that (a) the Administrative Agent will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of Holdings hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on IntraLinks or another similar electronic system (the “Platform”) and (b) certain of the Lenders may be “public-side” Lenders (*i.e.*, Lenders that do not wish to receive material non-public information with respect to Holdings or its securities) (each, a “Public Lender”). Holdings hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” Holdings shall be deemed to have authorized the Administrative Agent, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to Holdings or its securities for purposes of United States Federal and state securities laws; (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Investor;” and (z) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Investor.”

11.08 Set off. If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, upon five (5) Business

Days' written notice to Holdings, the U.S. Trustee and any statutory committee appointed in the Bankruptcy Cases, 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 such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of Holdings or any other Loan Party against any and all of the obligations of Holdings or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of Holdings or such Loan Party may be contingent or unmaturing or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify Holdings 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.

NOTWITHSTANDING THE FOREGOING, NO LENDER SHALL EXERCISE, OR ATTEMPT TO EXERCISE, ANY RIGHT OF SET-OFF, BANKER'S LIEN, OR THE LIKE, AGAINST ANY DEPOSIT ACCOUNT OR PROPERTY OF HOLDINGS OR ANY SUBSIDIARY OF HOLDINGS HELD OR MAINTAINED BY THE LENDER WITHOUT THE PRIOR WRITTEN CONSENT OF THE ADMINISTRATIVE AGENT.

11.09 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Holdings that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act.

11.10 (a) Guaranty. Each of the Guarantors unconditionally and irrevocably, jointly and severally, guarantees to the Administrative Agent, the L/C Issuer and the Lenders, and their respective successors, endorsers, transferees and assigns (the "Guaranteed Persons"), the full and prompt payment when due (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise) and performance of all indebtedness, liabilities and other obligations of Holdings to any Guaranteed Person, whether arising out of or in connection with this Agreement, any other Loan Document or otherwise, including all unpaid principal of the Loans, all L/C Obligations, all interest accrued thereon, all fees due under this Agreement and all other amounts payable by Holdings to any Guaranteed Person thereunder or in connection therewith. The terms "indebtedness," "liabilities" and "obligations" are used herein in their most comprehensive sense and include any and all advances, debts, obligations and liabilities, now existing or hereafter arising, whether voluntary or involuntary and whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether recovery upon such indebtedness, liabilities and obligations may be or hereafter

become unenforceable or shall be an allowed or disallowed claim under the Bankruptcy Code or other applicable law. The foregoing indebtedness, liabilities and other obligations of Holdings shall hereinafter be collectively referred to as the “Guaranteed Obligations.” The Guaranteed Obligations include interest which, but for an Insolvency Proceeding, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Holdings for such interest in any such Insolvency Proceeding.

(b) Separate Obligation. Each Guarantor acknowledges and agrees (i) that the Guaranteed Obligations are separate and distinct from any indebtedness, obligations or liabilities arising under or in connection with any other agreement, instrument or guaranty, including under any provision of this Agreement other than this Section 11.10, executed at any time by such Guarantor in favor of any Guaranteed Person, and (ii) such Guarantor shall pay and perform all of the Guaranteed Obligations as required under this Section 11.10, and each Guaranteed Person may enforce any and all of its rights and remedies hereunder, without regard to any other agreement, instrument or guaranty, including any provision of this Agreement other than this Section 11.10, at any time executed by such Guarantor in favor of any Guaranteed Person, regardless of whether or not any such other agreement, instrument or guaranty, or any provision thereof or hereof, shall for any reason become unenforceable or any of the indebtedness, obligations or liabilities thereunder or hereunder shall have been discharged, whether by performance, avoidance or otherwise. Each Guarantor acknowledges that in providing benefits to Holdings and such Guarantor, the Guaranteed Persons are relying upon the enforceability of this Section 11.10 and the Guaranteed Obligations as separate and distinct indebtedness, obligations and liabilities of such Guarantor, and each Guarantor agrees that each Guaranteed Person would be denied the full benefit of their bargain if at any time this Section 11.10 or the Guaranteed Obligations were treated any differently. The fact that the Guaranty of each Guarantor is set forth in this Agreement rather than in a separate guaranty document is for the convenience of Holdings and the Guarantors and shall in no way impair or adversely affect the rights or benefits of any Guaranteed Person under this Section 11.10. Each Guarantor agrees to execute and deliver a separate agreement, immediately upon request at any time of any Guaranteed Person, evidencing such Guarantor’s obligations under this Section 11.10. Upon the occurrence of any Event of Default, a separate action or actions may be brought against each Guarantor, whether or not Holdings or any other Guarantor or Person is joined therein or a separate action or actions are brought against Holdings or any other Guarantor or Person.

(c) Limitation of Guaranty. To the extent that any court of competent jurisdiction shall impose by final judgment under applicable law (including the California Uniform Fraudulent Transfer Act and §§544 and 548 of the Bankruptcy Code) any limitations on the amount of any Guarantor’s liability with respect to the Guaranteed Obligations which any Guaranteed Person can enforce under this Section 11.10, each Guaranteed Person by its acceptance hereof accepts such limitation on the amount of such Guarantor’s liability hereunder to the extent needed to make this Section 11.10 fully enforceable and nonavoidable.

(d) Liability of Guarantor. The liability of each Guarantor under this Section 11.10 shall be irrevocable, absolute, independent and unconditional, and shall not be affected by any circumstance which might constitute a discharge of a surety or guarantor other than the indefeasible payment and performance in full of all Guaranteed Obligations. In

furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(i) such Guarantor's liability hereunder shall be the immediate, direct, and primary obligation of such Guarantor and shall not be contingent upon any Guaranteed Person's exercise or enforcement of any remedy it may have against Holdings or any other Person, or against any collateral or other security for any Guaranteed Obligations;

(ii) this Guaranty is a guaranty of payment when due and not merely of collectibility;

(iii) such Guarantor's payment of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge such Guarantor's liability for any portion of the Guaranteed Obligations remaining unsatisfied; and

(iv) such Guarantor's liability with respect to the Guaranteed Obligations shall remain in full force and effect without regard to, and shall not be impaired or affected by, nor shall such Guarantor be exonerated or discharged by, any of the following events:

(A) any Insolvency Proceeding;

(B) any limitation, discharge, or cessation of the liability of Holdings or any other guarantor or Person for any Guaranteed Obligations due to any statute, regulation or rule of law, or any invalidity or unenforceability in whole or in part of any of the Guaranteed Obligations or the Loan Documents;

(C) any merger, acquisition, consolidation or change in structure of Holdings or any other Guarantor or Person, or any sale, lease, transfer or other disposition of any or all of the assets or shares of Holdings or any other Guarantor or other Person;

(D) any assignment or other transfer, in whole or in part, of any Guaranteed Person's interests in and rights under this Guaranty or the other Loan Documents;

(E) any claim, defense, counterclaim or set-off, other than that of prior performance, that Holdings, such Guarantor, any other guarantor or other Person may have or assert, including any defense of incapacity or lack of corporate or other authority to execute any of the Loan Documents;

(F) any Guaranteed Person's amendment, modification, renewal, extension, cancellation or surrender of any Loan Document or any Guaranteed Obligations;

(G) any Guaranteed Person's exercise or nonexercise of any power, right or remedy with respect to any Guaranteed Obligations or any collateral;

(H) any Guaranteed Person's vote, claim, distribution, election, acceptance, action or inaction in any Insolvency Proceeding; or

(I) any other guaranty, whether by any Guarantor or any other Person, of all or any part of the Guaranteed Obligations or any other indebtedness, obligations or liabilities of any Guaranteed Person.

(e) Consents of Guarantor. Each Guarantor hereby unconditionally consents and agrees that, without notice to or further assent from such Guarantor:

(i) the principal amount of the Guaranteed Obligations may be increased or decreased and additional indebtedness or obligations of Holdings under the Loan Documents may be incurred and the time, manner, place or terms of any payment under any Loan Document be extended or changed, by one or more amendments, modifications, renewals or extensions of any Loan Document or otherwise;

(ii) the time for Holdings' (or any other Person's) performance of or compliance with any term, covenant or agreement on its part to be performed or observed under any Loan Document may be extended, or such performance or compliance waived, or failure in or departure from such performance or compliance consented to, all in such manner and upon such terms as any Guaranteed Person (or the Majority Lenders, as the case may be) may deem proper;

(iii) each Guaranteed Person may request and accept other guarantees and may take and hold other security as collateral for the Guaranteed Obligations, and may, from time to time, in whole or in part, exchange, sell, surrender, release, subordinate, modify, waive, rescind, compromise or extend such other guaranties or security and may permit or consent to any such action or the result of any such action, and may apply such security and direct the order or manner of sale thereof;

(iv) each Guaranteed Person may exercise, or waive or otherwise refrain from exercising, any other right, remedy, power or privilege even if the exercise thereof affects or eliminates any right of subrogation or any other right of such Guarantor against Holdings.

(f) Guarantor's Waivers. Each Guarantor waives and agrees not to assert:

(i) any right to require the Administrative Agent, the L/C Issuer or any Lender to marshal assets in favor of Holdings, the Guarantors, any other guarantor or any other Person, to proceed against Holdings, any other guarantor or any other Person, to proceed against or exhaust any of the Collateral, to give notice of the terms, time and place of any public or private sale of personal property security constituting the Collateral or other collateral for the Guaranteed Obligations or comply with any other provisions of Chapter 6 of Division 9 of the UCC (or any equivalent provision of any other applicable law) or to pursue any other right, remedy, power or privilege of the Administrative Agent, the L/C Issuer or any Lender whatsoever;

(ii) the defense of the statute of limitations in any action hereunder or for the collection or performance of the Guaranteed Obligations;

- (iii) any defense arising by reason of any lack of corporate or other authority or any other defense of Holdings, such Guarantor or any other Person;
- (iv) any defense based upon any Guaranteed Person's errors or omissions in the administration of the Guaranteed Obligations;
- (v) any rights to set-offs and counterclaims;
- (vi) without limiting the generality of the foregoing, to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties, or which may conflict with the terms of this Section 11.10;
- (vii) any defense based upon an election of remedies (including, if available, an election to proceed by nonjudicial foreclosure) which destroys or impairs the subrogation rights of such Guarantor or the right of such Guarantor to proceed against Holdings or any other obligor of the Guaranteed Obligations for reimbursement;
- (viii) without limiting the generality of the foregoing, to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties, or which may conflict with the terms of this Section 11.10, including any and all benefits that otherwise might be available to such Guarantor under California Civil Code §§1432, 2809, 2787 to 2855, inclusive, 2899 and 3433 and California Code of Civil Procedure §§580a, 580b, 580d and 726 or Texas Property Code §§51.003 – 51.005. Accordingly, each Guarantor waives all rights and defenses that such Guarantor may have because Holdings' debt is secured by real property. This means, among other things: (A) the Administrative Agent, the L/C Issuer and the Lenders may collect from such Guarantor without first foreclosing on any real or personal property Collateral pledged by Holdings or such Guarantor; and (B) if the Administrative Agent forecloses on any real property Collateral pledged by Holdings or such Guarantor: (1) the amount of the debt may be reduced only by the price for which that Collateral is sold at the foreclosure sale, even if the Collateral is worth more than the sale price, and (2) the Administrative Agent, the L/C Issuer and the Lenders may collect from such Guarantor even if the Administrative Agent, by foreclosing on the real property Collateral, has destroyed any right such Guarantor may have to collect from Holdings. This is an unconditional and irrevocable waiver of any rights and defenses such Guarantor may have because Holdings' debt is secured by real property. These rights and defenses include, but are not limited to, any rights of defenses based upon section 580a, 580b, 580d or 726 of the California Code of Civil Procedure or sections 51.003 – 51.005 of the Texas Property Code; and
- (ix) any and all notice of the acceptance of this Guaranty, and any and all notice of the creation, renewal, modification, extension or accrual of the Guaranteed Obligations, or the reliance by any Guaranteed Person upon this Guaranty, or the exercise of any right, power or privilege hereunder. The Guaranteed Obligations shall conclusively be deemed to have been created, contracted, incurred and permitted to exist in reliance upon this Guaranty. Each Guarantor waives promptness, diligence, presentment, protest, demand for payment, notice

of default, dishonor or nonpayment and all other notices to or upon Holdings, such Guarantor or any other Person with respect to the Guaranteed Obligations.

(g) Financial Condition of Holdings. No Guarantor shall have any right to require any Guaranteed Person to obtain or disclose any information with respect to: the financial condition or character of Holdings or the ability of Holdings to pay and perform the Guaranteed Obligations; the Guaranteed Obligations; any collateral or other security for any or all of the Guaranteed Obligations; the existence or nonexistence of any other guarantees of all or any part of the Guaranteed Obligations; any action or inaction on the part of any Guaranteed Person or any other Person; or any other matter, fact or occurrence whatsoever. Each Guarantor hereby acknowledges that it has undertaken its own independent investigation of the financial condition of Holdings and the other Loan Parties and all other matters pertaining to this Guaranty and further acknowledges that it is not relying in any manner upon any representation or statement of any Guaranteed Person with respect thereto.

(h) Subrogation. Until the Guaranteed Obligations shall be satisfied in full and the Revolving Commitments shall be terminated, each Guarantor shall not have, and shall not directly or indirectly exercise (i) any rights that it may acquire by way of subrogation under this Section 11.10, by any payment hereunder or otherwise, (ii) any rights of contribution, indemnification, reimbursement or similar suretyship claims arising out of this Section 11.10 or (iii) any other right which it might otherwise have or acquire (in any way whatsoever) which could entitle it at any time to share or participate in any right, remedy or security of any Guaranteed Person as against Holdings or other guarantors, whether in connection with this Section 11.10, any of the other Loan Documents or otherwise. If any amount shall be paid to any Guarantor on account of the foregoing rights at any time when all the Guaranteed Obligations shall not have been paid in full, such amount shall be held in trust for the benefit of each Guaranteed Person and shall forthwith be paid to the Administrative Agent to be credited and applied to the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of the Loan Documents.

(i) Continuing Guaranty. This Guaranty is a continuing guaranty and agreement of subordination and shall continue in effect and be binding upon each Guarantor until termination of the Revolving Commitments and payment and performance in full of all Guaranteed Obligations, including Guaranteed Obligations which may exist continuously or which may arise from time to time under successive transactions, and each Guarantor expressly acknowledges that this Guaranty shall remain in full force and effect notwithstanding that there may be periods in which no Guaranteed Obligations exist.

(j) Reinstatement. This Guaranty shall continue to be effective or shall be reinstated and revived, as the case may be, if, for any reason, any payment of the Guaranteed Obligations by or on behalf of Holdings (or receipt of any proceeds of collateral) shall be rescinded, invalidated, declared to be fraudulent or preferential, set aside, voided or otherwise required to be repaid to Holdings, its estate, trustee, receiver or any other Person (including under the Bankruptcy Code or other state or federal law), or must otherwise be restored by any Guaranteed Person, whether as a result of Insolvency Proceedings or otherwise. All losses, damages, costs and expenses that any Guaranteed Person may suffer or incur as a

result of any voided or otherwise set aside payments shall be specifically covered by the indemnity in favor of the Lenders and the Administrative Agent contained in Section 11.04.

(k) Substantial Benefits. The funds that have been borrowed from the Lenders by Holdings have been and are to be contemporaneously used for the direct or indirect benefit of Holdings and each Guarantor. It is the position, intent and expectation of the parties that Holdings and each Guarantor have derived and will derive significant and substantial direct or indirect benefits from the accommodations that have been made by the Lenders under the Loan Documents.

(l) Knowing and Explicit Waivers. EACH GUARANTOR ACKNOWLEDGES THAT IT EITHER HAS OBTAINED THE ADVICE OF LEGAL COUNSEL OR HAS HAD THE OPPORTUNITY TO OBTAIN SUCH ADVICE IN CONNECTION WITH THE TERMS AND PROVISIONS OF THIS SECTION 11.10. EACH GUARANTOR ACKNOWLEDGES AND AGREES THAT EACH OF THE WAIVERS AND CONSENTS SET FORTH HEREIN ARE MADE WITH FULL KNOWLEDGE OF THEIR SIGNIFICANCE AND CONSEQUENCES, AND THAT ALL SUCH WAIVERS AND CONSENTS HEREIN ARE EXPLICIT AND KNOWING AND WHICH EACH GUARANTOR EXPECTS TO BE FULLY ENFORCEABLE.

(m) Release of Subsidiary Guarantors. Holdings may at any time deliver to the Administrative Agent a certificate from a Responsible Officer of Holdings certifying as of the date of the certificate that, after the consummation of the transaction or series of transactions described in such certificate (which certification shall also state that such transactions, individually or in the aggregate, will be in compliance with the terms and conditions of this Agreement, including to the extent applicable Section 8.02 and Section 8.03, and that no Event of Default existed, exists or will exist, as the case may be, immediately before, as a result of or immediately after giving effect to such transaction or transactions and termination), the Guarantor identified in such certification will no longer be a Subsidiary of Holdings. Effective upon the consummation of the transaction or series of transactions described in such certificate effected in compliance with this Agreement, the Subsidiary identified in such certification shall thereupon automatically cease to be a Guarantor hereunder and shall cease to be a party hereto and shall thereupon automatically be released from its obligations under this Section 11.10 and under the Security Agreement, and all Liens in favor of the Administrative Agent and the Lenders under the Collateral Documents in respect of the property of such Subsidiary shall thereupon terminate. Holdings shall promptly notify the Administrative Agent of the consummation of any such transaction or series of transactions. The Administrative Agent, on behalf of the Lenders, shall, at Holdings' expense, execute and deliver such instruments as Holdings may reasonably request to evidence such release and Lien termination.

(n) Subordination. All payments on account of all indebtedness, liabilities and other obligations of Holdings to each Guarantor, whether created under, arising out of or in connection with any documents or instruments evidencing any credit extensions to Holdings or otherwise, including all principal on any such credit extensions, all interest accrued thereon, all fees and all other amounts payable by Holdings to such Guarantor in connection therewith, whether now existing or hereafter arising, and whether due or to become due, absolute or contingent, liquidated or unliquidated, determined or undetermined shall be subject,

subordinate and junior in right of payment and exercise of remedies to the prior payment in full in cash or cash equivalents of the Guaranteed Obligations.

11.11 Replacement of Lenders. If any Lender requests compensation under Section 4.03, or if Holdings is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.01, or if any Lender is a Defaulting Lender or if any other circumstance exists hereunder that gives Holdings the right to replace a Lender as a party hereto (including pursuant to Section 11.01(b)), then Holdings may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) Holdings shall have paid to the Administrative Agent the assignment fee specified in Section 11.06;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 4.04) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Holdings (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 4.03 or payments required to be made pursuant to Section 4.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with any Requirement of Law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Holdings to require such assignment and delegation cease to apply.

11.12 Notification of Addresses, Lending Offices, Etc. Each Lender shall notify the Administrative Agent in writing of any changes in the address to which notices to such Lender should be directed, of addresses of any Lending Office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as the Administrative Agent shall reasonably request.

11.13 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by the

Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or by email in pdf format shall be effective as delivery of a manually executed counterpart of this Agreement.

11.14 Severability. Whenever possible, each provision of the Loan Documents shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of any of the Loan Documents shall be prohibited by or invalid under any such law or regulation in any jurisdiction, it shall, as to such jurisdiction, be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of such Loan Document, or the validity or effectiveness of such provision in any other jurisdiction.

11.15 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and legal benefit of Holdings, the Company and the other Loan Parties, the Lenders, the Administrative Agent and the Administrative Agent-Related Persons, the Indemnitees and their respective permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents.

11.16 Governing Law; Jurisdiction, Etc.

(a) GOVERNING LAW; SUBMISSION TO JURISDICTION. EXCEPT TO THE EXTENT GOVERNED BY THE BANKRUPTCY CODE, THIS AGREEMENT SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE INTERNAL LAWS (AS OPPOSED TO THE CONFLICT OF LAWS PROVISIONS PROVIDED THAT ISSUES WITH RESPECT TO CREATION, PERFECTION OR ENFORCEMENT OF LIENS UNDER ARTICLE 9 OF THE UCC MAY GIVE EFFECT TO APPLICABLE CHOICE OR CONFLICT OF LAW RULES SET FORTH IN ARTICLE 9 OF THE UCC) OF THE STATE OF CALIFORNIA; PROVIDED THAT THE ADMINISTRATIVE AGENT AND THE LENDERS SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW (INCLUDING THE BANKRUPTCY CODE).

IN THE EVENT THE BANKRUPTCY COURT DOES NOT HAVE OR REFUSES TO EXERCISE JURISDICTION WITH RESPECT THERETO, ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF CALIFORNIA, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE ADMINISTRATIVE AGENT, EACH LENDER, AND EACH LOAN PARTY, CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF THE ADMINISTRATIVE AGENT, EACH LENDER, AND EACH LOAN PARTY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH

JURISDICTION IN RESPECT OF THIS AGREEMENT OR ANY DOCUMENT RELATED HERETO.

(b) WAIVER OF VENUE. HOLDINGS AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (A) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

11.17 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered in San Francisco, California, by their proper and duly authorized officers as of the day and year first above written.

THE BORROWER

BUILDING MATERIALS HOLDING CORPORATION

By Mark R. Kailer
Name: Mark R. Kailer
Title: Vice President and Treasurer

THE GUARANTORS

BMC WEST CORPORATION

By Mark R. Kailer
Name: Mark R. Kailer
Title: Vice President and Treasurer

SELECTBUILD CONSTRUCTION, INC.

By Mark R. Kailer
Name: Mark R. Kailer
Title: Vice President and Treasurer

SELECTBUILD NORTHERN CALIFORNIA, INC.

By Mark R. Kailer
Name: Mark R. Kailer
Title: Vice President and Treasurer

C CONSTRUCTION, INC.

By Mark R Kailer
Name: Mark R. Kailer
Title: Vice President and Treasurer

TWF CONSTRUCTION, INC.

By Mark R Kailer
Name: Mark R. Kailer
Title: Vice President and Treasurer

H.N.R. FRAMING SYSTEMS INC.

By Mark R Kailer
Name: Mark R. Kailer
Title: Vice President and Treasurer

SELECTBUILD SOUTHERN CALIFORNIA, INC.

By Mark R Kailer
Name: Mark R. Kailer
Title: Vice President and Treasurer

SELECTBUILD NEVADA, INC.

By Mark R Kailer
Name: Mark R. Kailer
Title: Vice President and Treasurer

SELECTBUILD ARIZONA, LLC

By Mark R Kailer
Name:
Title: Mark R. Kailer
Vice President and Treasurer

SELECTBUILD ILLINOIS, LLC

By Mark R. Kailer
Name: Mark R. Kailer
Title: Vice President and Treasurer

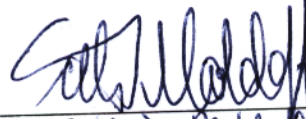
ILLINOIS FRAMING, INC.

By Mark R. Kailer
Name: Mark R. Kailer
Title: Vice President and Treasurer

WELLS FARGO BANK, NATIONAL
ASSOCIATION,

as Administrative Agent, L/C Issuer and Lender

By



Name:

Seth D. Moldoff

Title:

Senior Vice President

EXHIBIT C

TO BE PROVIDED