

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE:

CITATION CORPORATION, et al.,¹

Debtors.

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Chapter 11

Case No. _____

DEBTORS MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS (A) TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§105, 361, 362, 364(C)(1), 364(C)(2), 364(C)(3), 364(D)(1) AND 364(E) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. §363, (II) GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364 AND (III) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(B) AND (C)

COME NOW, Citation Corporation ("Citation"), its holding company, and certain of its direct and indirect subsidiaries (the "Subsidiaries"), as debtors and debtors in possession (collectively, the "Debtors"), and move this Court (this "Motion") for the relief as set forth in an interim order, in the form attached hereto as Exhibit A (the "Interim Order"), and a final order (the "Final Order") pursuant to §§ 105, 361, 362, 363(c), 364(c)(1)-(3) and 364(d) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

¹ In addition to the Citation Corporation, the Debtors include the following entities: (i) Citation Holding Company, (ii) Berlin Foundry Corporation, (iii) Bohn Aluminum, Inc., (iv) Castwell Products, Inc., (v) Citation Precision, Inc., (vi) HI-TECH, Inc., (vii) Iroquois Foundry Corporation, (viii) ISW Texas Corporation, (ix) Mansfield Foundry Corporation, (x) OBI Liquidating Corp., (xi) Texas Steel Corporation, (xii) TSC Texas Corporation, (xiii) Citation Aluminum, LLC, (xiv) Citation Castings, LLC, (xv) Citation Grand Rapids, LLC, (xvi) Citation Lake Zurich, LLC, (xvii) Citation Michigan, LLC, (xviii) Citation Wisconsin Forging, LLC, (xix) Citation Wisconsin, LLC, (xx) ITM Holding Co., LLC, (xxi) Interstate Southwest, Ltd., (xxii) Texas Foundries, Ltd., and (xxiii) MFC Liquidating Company, Ltd.

JURISDICTION AND VENUE

1. On September ~~16~~¹⁷, 2004 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Clerk of this Court. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to §§ 1107(a) and 1108. The Debtors have moved this Court for joint administration of these chapter 11 cases.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Debtors' chapter 11 cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code §§ 105, 361, 362, 363(c), 364(c)(1)-(3) and 364(d) and Rules 2002, 4001 and 9014 of the Bankruptcy Rules.

FACTUAL BACKGROUND

3. Facing its biggest challenges of all -- a sluggish industry and skyrocketing materials costs -- Citation and its affiliated companies have filed for chapter 11 bankruptcy in the U.S. Bankruptcy Court in Birmingham, Alabama. This action was taken to reorganize Citation's businesses into a profitable company that will continue to serve its customers. The Citation companies continue to operate their businesses and manage their properties as debtors in possession in accordance with the Bankruptcy Code.

4. Since its inception in 1974, Citation has forged a name for itself within the metal components industry by focusing on one overriding goal; total customer satisfaction. Citation has done this by acquiring capable leadership, loyal production workers and responsive suppliers.

5. Like every action Citation has taken over the years, chapter 11 was undertaken with customers in mind. Citation is confident that a court-guided reorganization will give

Citation the breathing room it needs to improve cash flow and emerge as a profitable company serving its many customers. The Citation companies will continue to use sound management practices to operate their businesses and manage their properties as debtors in possession in accordance with the Bankruptcy Code.

6. Citation is a privately held Delaware corporation headquartered in the Birmingham, Alabama metropolitan area. Through its wholly-owned subsidiaries, Citation designs, develops and manufactures high quality cast, forged, and machined components for the capital and durable goods industries. The products Citation manufactures are made primarily from iron, steel and aluminum materials. Citation's attention to quality, delivery and cost have allowed it to grow its customer base over the years. Citation has also grown its business through a series of acquisitions. The Citation companies now own and operate sixteen facilities located in Alabama, Indiana, Wisconsin, Michigan, Illinois, Texas, and North Carolina. The Citation companies employ approximately 5,100 employees, some of whom are unionized.

7. Citation manufactures products for several market segments including the automotive, heavy truck, construction, aerospace, agricultural and commercial industries. Citation produces aluminum and iron castings. Its steel forgings are used in a wide variety of applications including braking, steering, engine and drive train parts for passenger cars and light trucks; suspension and transmission parts for heavy trucks; ground engaging tools for construction equipment; parts for aircraft engines, landing gear and structural airframes; and thousands of other critical parts for capital and durable goods. Citation sells its castings and forgings to customers throughout the United States. Several of its largest customers are very large tier-one suppliers who make, assemble, and supply parts to automobile manufacturers.

8. Through the 1990s, Citation was a publicly traded company. In December 1999, Citation was taken private by an investment firm based in New York. A fund managed by the same firm continues to own virtually all of the shares of Citation's parent corporation.

9. Citation's cash flow challenges are typical of the industry today. All purchasers of steel have been suffering from the onslaught of record steel price increases. In the last 18 months, the price of steel scrap escalated from its traditional price of \$150 per ton to more than \$400 per ton. Other raw materials prices have also suffered dramatic price increases.

10. Ductile products account for half of Citation's sales. Steel scrap is the primary raw material used to make ductile products. Due to the unprecedented and unexpected price escalations for the purchase of steel scrap, Citation has found it difficult to maintain sufficient operating capital. Although some of Citation's customer relationships include provisions for sharing cost increases for steel scrap, Citation's relationships with several of its largest customers have no such provisions. Although Citation continues to work with customers to maintain positive, mutually beneficial relationships, Citation to date has been forced to bear the full burden of the increased price of steel scrap in many of its relationships. Citation's aluminum and other divisions have fared better, largely due to their ability to pass on the raw materials price increases.

11. In addition to the escalating price of steel scrap, Citation -- like numerous U.S. companies that provide employees with healthcare benefits -- has incurred heavy increases in the cost of health care for Citation's employees. This and an increase in the cost of utilities has further hampered Citation's cash flow.

12. Citation has a strong market share of the North American ductile iron parts industry, competing primarily with North American companies only. This is because the weight,

size, and shapes of the materials and product and heavy industry's requirements for just-in-time or staged delivery generally require the ductile iron foundries to be located on the same continent as the customers. Nonetheless, there is foreign competition, primarily from China and India.

13. The entire North American ductile iron parts industry finds itself in the same predicament as Citation. Some companies have recently exited this business altogether while a few competitors are better capitalized. Citation is determined to stay in business, and to continue serving the customers, employees and suppliers who have come to rely on Citation as a partner in success. Citation's management sees chapter 11 as a positive step to better position itself until the price of steel and other raw materials can reach an equilibrium within the industry and the true cost of materials can be passed through to the end user of the product.

14. As already mentioned, one of the most significant costs to Citation has been the unprecedented increase in the price of steel scrap. Combined with Citation's debt load, this has resulted in a shortage of cash flow. For the fiscal year ended September 28, 2003, Citation and its subsidiaries reported net sales of approximately \$640,000,000 and a net loss of approximately \$120,000,000.

15. Citation and its subsidiaries are indebted under a bank debt facility in the approximate amount of \$325,000,000. This indebtedness is secured by a first lien on virtually all of the Debtors' assets. Citation's parent corporation is separately indebted under a different debt facility to a different set of creditors in the approximate amount of \$140,000,000. Citation generally has trade debt of approximately \$60,000,000.

16. Citation is owed receivables from its customers that generally total around \$90,000,000. Citation maintains inventory that has a book value of approximately \$45,000,000.

Citation owns property, plants, and equipment of substantial value. Its greatest assets, however, are Citation's strong customer base and its many loyal employees.

17. As a part of its ongoing strategic review and assessment of their financial condition, Citation has determined to take advantage of its strong market share position, to strengthen the balance sheet, and to operate successfully in today's competitive environment, it must reduce its existing debt burden and increase operating efficiencies. Citation seeks protection under chapter 11 of the Bankruptcy Code to provide the necessary time to stabilize its finances and to develop and to implement a strategic plan to return its business to sustained profitability.

18. Citation filed bankruptcy with four primary goals in mind: (a) to reshape the Debtors' capital structure; (b) to improve cost efficiencies; (c) to maintain product manufacture and delivery; and (d) to negotiate with its key customers to pass on raw materials price increases. During its stay as a debtor-in-possession in chapter 11, Citation will continue to serve its customers by manufacturing high quality products at Citation's many locations throughout the United States. Once these four key goals are sufficiently met by the bankruptcy proceedings, Citation will emerge from this process as a strong, viable, and independent business positioned for increased competitiveness and sustained profitability.

THE DEBTORS' PRIMARY PREPETITION LIABILITIES

19. The Pre-Petition Credit Agreement. On or about November 30, 1999, Citation entered into a Pre-Petition Credit Agreement in the aggregate amount of \$360,000,000 with JPMorgan Chase Bank ("JPMC"), as administrative agent, and certain other lenders (collectively, the "Pre-Petition Secured Parties") providing for (i) Tranche A term loans in the amount of \$50,000,000; (ii) Tranche B term loans in the amount of \$210,000,000; and (iii) a revolving

credit facility in the amount of \$100,000,000 (the "Pre-Petition Revolving Credit Facility") (as amended, supplemented or otherwise modified, the "Pre-Petition Credit Agreement"). These amounts were adjusted as part of a refinancing in 2001, which included a \$10,000,000 pro rata redemption of the Tranche A and Tranche B term loans and a reduction in the Pre-Petition Revolving Credit Facility to \$90,000,000. The obligations under the Pre-Petition Credit Agreement are guaranteed by each of the Subsidiaries. Pursuant to that certain Security Agreement, dated as of November 30, 1999, as reaffirmed and amended as of December 15, 2003, between Citation and JPMC, as administrative agent (the "Pre-Petition Agent") (the "Security Agreement" and together with the Pre-Petition Credit Agreement, the mortgages and all other documentation executed in connection therewith (including any Hedging Agreement as defined in the Pre-Petition Credit Agreement), the "Existing Agreements"), the Pre-Petition Credit Agreement and the guarantees are collateralized by substantially all of the assets of the Debtors.

20. The Subordinated Notes. In 2001, Citation entered into notes in an aggregate approximate amount of \$101,282,388 with JPMC, Citation Funding, Inc., Wachovia Capital Investments, Inc. (f/k/a First Union Investors, Inc.) and Magnetite Asset Investors (collectively, the "Subordinated Notes"). The Subordinated Notes were subordinate and junior in right of payment to all senior debt, including the Pre-Petition Credit Agreement.

21. The Liquidity Facility. On or about May 7, 2003, Citation, as borrower, entered into a liquidity credit facility in the aggregate amount of \$19,500,000 (the "Liquidity Facility") with JPMC, as administrative agent, and certain lenders (collectively, the "Liquidity Facility Lenders"). The Liquidity Facility was guaranteed by Citation's primary stockholder (the "Liquidity Guarantor").

22. December 2003 Restructuring. In December 2003, Citation and the holders of the Subordinated Notes and Liquidity Facility Lenders entered into discussions to restructure both the Subordinated Notes and the Liquidity Facility. As a result of these discussions, Citation Holdings Company ("Holdings") was formed and Citation was restructured in a manner that resulted in Citation becoming a wholly owned subsidiary of Holdings. The ownership of the equity interests in Holdings is the same as the ownership of the equity interests of Citation immediately prior to the restructuring.

23. On December 15, 2003, all of the Subordinated Notes were terminated as a result of the issuance of new subordinated notes (the "New Notes") between Holdings and the holders of the Subordinated Notes and Citation, and the Subsidiaries were relieved of all liability for the Subordinated Notes. The New Notes are collateralized only by all of Holdings' right, title and interest in the capital stock of Citation.

24. On that same day, Holdings issued a note (the "New Liquidity Note") to the Liquidity Guarantor for \$19,500,000. The proceeds from the New Liquidity Note were contributed by Holdings to Citation as a capital contribution. The proceeds from this capital contribution were used by Citation to repay the outstanding obligation under the Liquidity Facility of \$19,500,000. The repayment in full of the Liquidity Facility satisfied all terms of the Liquidity Facility including the guarantee by the Liquidity Guarantor for the Liquidity Facility.

25. On December 15, 2003, Citation and the Pre-Petition Secured Parties agreed to amend the Pre-Petition Credit Agreement to, among other things, (1) reduce the Pre-Petition Revolving Credit Facility from \$90,000,000 to \$35,000,000, and (2) convert \$55,000,000 of the Pre-Petition Revolving Credit Facility to Tranche R term notes.

26. As of the Petition Date, the Debtors were indebted and liable to the Pre-Petition Secured Parties in the aggregate principal amount of approximately \$310,000,000 in respect of loans made (including capitalized interest) and the aggregate principal amount of approximately \$14,000,000 in respect of letters of credit issued, by the Pre-Petition Secured Parties or issuing bank thereunder, in each case, pursuant to, and in accordance with the terms of the Existing Agreements, plus interest thereon and fees (including any attorneys', accountants', appraisers' and financial advisors' fees and expenses), charges and other obligations incurred in connection therewith as provided in the Existing Agreements (collectively, the "Pre-Petition Debt").

27. The Debtors believe that the Prepetition Secured Lenders currently have valid, binding, perfected, and enforceable first priority liens and security interests in substantially all the Debtors' assets, subject to permitted liens under the Existing Agreements.

THE PROPOSED DEBTOR IN POSSESSION FACILITY²

28. Following extensive negotiations with certain financial institutions, many of whom are also Pre-Petition Secured Parties, the Debtors and JPMC acting as Administrative Agent and Issuing Bank (in such capacities, the "Agent"), for itself and a syndicate of financial institutions (together with JPMC, the "DIP Lenders") have agreed to the terms of a facility for Citation to obtain post-petition financing (the "Financing") and for all of the other Debtors (the "Guarantors") to guaranty the payment of Citation's obligations under the Financing, up to an aggregate principal amount not to exceed \$45,000,000 (the actual available principal amount at any time being subject to those conditions set forth in the DIP Documents (as defined below)).

29. The Debtors have determined that the Financing is necessary for the Debtors to operate their businesses in Chapter 11 and for the Debtors' successful reorganization. Because

² Hereafter, all capitalized terms, not otherwise defined, shall have the meaning assigned to them in the DIP Credit Agreement, attached hereto as Exhibit B.

the Debtors' existing cash on hand and projected operating revenues will not be sufficient to fund the completion of their restructuring process, the Debtors concluded that obtaining a firm commitment for postpetition financing at the outset of these cases is necessary and in the best interest of these estates.

30. The Debtors have an immediate need to obtain the Financing and use Cash Collateral (as defined in the proposed Interim Order) 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 needs. The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral, incurrence of new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors.

31. Prior to the Petition Date, the Debtors solicited postpetition financing proposals from other lenders, but were unable to obtain postpetition financing in the form of unsecured credit allowable as an administrative expense under § 503(b)(1) of the Bankruptcy Code, unsecured credit allowable under §§ 364(a) and (b) of the Bankruptcy Code, or credit secured by liens on the Debtors' assets junior to the liens of the Pre-Petition Secured Parties, as in contemplated by § 364(c) of the Bankruptcy Code.

32. The Debtors therefore determined, in the exercise of their sound business judgment, that the proposal for the Financing provided by the Agent and the DIP Lenders is the most favorable under the circumstances and addresses the Debtors' working capital needs. Indeed, the Debtors were unable to obtain proposals for postpetition financing on terms and

conditions more favorable to the Debtors' estates than those offered by the Agent and the DIP Lenders pursuant to the DIP Credit Agreement (as defined below).

33. Before determining to enter into the Financing upon the terms of the DIP Credit Agreement, the Debtors and the Agent conducted vigorous and lengthy, arm's-length, and good faith negotiations.

34. The Agent and the DIP Lenders are willing to make the Financing available to the Debtors upon the terms and conditions set forth in the DIP Credit Agreement, the Interim Order and the Final Order.

35. A copy of the DIP Credit Agreement to be executed (the "DIP Credit Agreement"), among Citation, as borrower, the financial institutions parties hereto as lenders (the "DIP Lenders"), and JPMC, as administrative agent for itself and the other DIP Lenders party thereto (in such capacity, the "Agent"), is attached hereto as Exhibit B. The pertinent provisions of the Financing, as set forth in the DIP Credit Agreement and the other DIP Documents, are as follows:³

- (a) Borrower: Citation, as debtor in possession herein.
- (b) Guarantors: Holdings and each of Citation's existing and future subsidiaries, that is a debtor in possession herein, including: (i) Berlin Foundry Corporation, (ii) Bohn Aluminum, Inc., (iii) Castwell Products, Inc., (iv) Citation Camden Casting Center, Inc., (v) Citation Precision, Inc., (vi) HI-TECH, Inc., (vii) Iroquois Foundry Corporation, (viii) ISW Texas Corporation, (ix) Mansfield Foundry Corporation, (x) OBI

³ The following description of the terms of the Financing is intended solely to provide the Court and interested parties with a brief overview of the significant terms thereof. For a complete description of the terms and conditions of the Financing, reference should be made to the loan documents and any exhibits attached thereto, including without limitation, the DIP Credit Agreement, the security documents, any mortgages contemplated thereby, and any letter agreements made between the parties in connection with the Financing (collectively, the "DIP Documents"). This summary is qualified in its entirety by reference to the DIP Documents. In the event of any conflict or inconsistency between the provisions of this Motion and the DIP Documents, the DIP Documents shall control in all respects.

Liquidating Corp., (xi) Texas Steel Corporation, (xii) TSC Texas Corporation, (xiii) Citation Aluminum, LLC, (xiv) Citation Castings, LLC, (xv) Citation Grand Rapids, LLC, (xvi) Citation Lake Zurich, LLC, (xvii) Citation Michigan, LLC, (xviii) Citation Wisconsin Forging, LLC, (xix) Citation Wisconsin, LLC, (xx) ITM Holding Co., LLC, (xxi) Interstate Southwest, Ltd., (xxii) Texas Foundries Ltd., and (xxiii) MFC Liquidating Company, Ltd.

- (c) Administrative Agent and Lenders: JPMC will serve as the administrative agent for the DIP Lenders, the syndication of which will be arranged by J.P. Morgan Securities, Inc.
- (d) The Facility: The Financing shall consist of a debtor-in-possession revolving line of credit and letter of credit facility in a maximum amount not to exceed \$45,000,000 (the actual available principal amount at any time being subject to those conditions set forth in the DIP Credit Agreement, including the "Available Amount" described below) with a sublimit for letters of credit in the face amount of \$5,000,000.
- (e) Borrowing Base: The borrowing base will consist of 80% of Eligible Receivables (as set forth in the DIP Credit Agreement) minus the amount of the Carve-Out (as defined below). The Borrowing Base, any component thereof, and the Availability Block are subject to modification and adjustment as specified in the Revolving Credit Agreement.
- (f) Available Amount: The Available Amount will be the least of (i) the Borrowing Base then in effect at such time, minus the Availability Block at such time (ii) until the Final Order Closing Date, \$25,000,000, and from and after the Final Order Closing Date, \$45,000,000, and (iii) the aggregate amount of the Revolving Commitments at such time.
- (g) Termination: Unless previously terminated, the Revolving Commitments shall terminate on the earliest to occur of: (i) the Maturity Date (March 31, 2005), (ii) the Consummation Date, (iii) the acceleration of the Loans and the termination of the Revolving Commitments in accordance with the terms of the DIP Credit Agreement and (iv) 30 days after the entry of the Interim Order by the Bankruptcy Court if the Final Order has not been entered by the Bankruptcy Court prior to the expiration of such 30-day period (the "Termination Date").
- (h) Interest: The loans comprising each ABR Borrowing (including each Swingline Loan) shall bear interest at the Alternate Base Rate plus 2% per annum. The loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus 3% per annum. In either case, interest is payable periodically in arrears and in the case of the Revolving Commitments, upon the end of their term. However, an alternate rate of interest may be

assessed for any Interest Period of a Eurodollar Borrowing under certain circumstances.

(i) Fees: In addition to the costs and expenses of the Agent and DIP Lenders payable by the Debtors, the DIP Credit Agreement provides for the following fees to be paid by the Debtors:

- (1) Commitment Fee. 0.25% on the average daily unused amount of the Revolving Commitment.
- (2) Letter of Credit Fees: A Participation Fee and Fronting Fee, as defined below, related to the Letters of Credit.
 - a. Participation Fee. Same Applicable Rate as interest on Eurodollar Revolving Loans on the average daily amount of the LC exposure.
 - b. Fronting Fee. Rate or rates per annum separately agreed upon with Issuing Bank on the average daily amount of the LC exposure.
- (3) Upfront Fee. 0.50% of the Revolving Commitment.
- (4) Certain other fees payable to the Agent and the Lead Arranger in the amounts and at the times separately agreed upon in writing among the Borrower, the Agent and the Lead Arranger.

(j) Priority and Liens: All borrowings, reimbursement obligations and all other obligations of the Debtors arising out of the DIP Documents shall at all times:

- (1) Pursuant to § 364(c)(1) of the Bankruptcy Code, be entitled to super priority claim status, subject to the Carve Out (defined below);
- (2) Pursuant to § 364(c)(2) of the Bankruptcy Code, be secured by a perfected first priority lien on all unencumbered property of the Debtors. Unencumbered property shall include the Debtors' claims and causes of action under §§ 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code, and any proceeds thereof, subject to the Carve Out and Senior Permitted Liens;
- (3) Pursuant to § 364(c)(3) of the Bankruptcy Code, be secured by a perfected junior lien on all pre- and post-petition property of the Debtors that is subject to valid, perfected

and unavoidable liens in existence immediately prior to the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by § 546(b) of the Bankruptcy Code, subject to the Carve Out and Senior Permitted Liens; and

- (4) Pursuant to § 364(d)(1) of the Bankruptcy Code, be secured by a first priority senior priming security interest in and lien upon all pre- and post-petition property of the Debtors that is subject to the existing liens presently securing the Pre-Petition Debt, subject to the Carve Out and Senior Permitted Liens. Such security interests and liens shall be senior in all respects to the interests in such property of the Pre-Petition Secured Parties arising from current and future liens of the Pre-Petition Secured Parties but shall not be senior to any valid, perfected and unavoidable interests of other parties arising out of liens, if any, on such property existing immediately prior to the Petition Date, or to any valid, perfected and unavoidable interests in such property arising out of liens to which the liens of the Pre-Petition Secured Parties become subject subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.
- (k) Carve Out: (i) All fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the Bankruptcy Administrator under § 1930(a) of title 28 of the United States Code and (ii) after the occurrence and during the continuance of an Event of Default, an amount not exceeding \$1,500,000 in the aggregate, which amount may be used, subject to the terms of the Order, to pay fees or expenses incurred by any Loan Parties and any Committee in respect of (A) allowances of compensation for services rendered or reimbursement of expenses awarded by the Bankruptcy Court to the Loan Parties' or any Committee's professionals and (B) the reimbursement of expenses allowed by the Bankruptcy Court incurred by Committee members in the performance of their duties (but excluding fees and expenses of third party professionals employed by such members); provided however, the dollar limitation on fees and disbursements shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to 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 Issuing Bank or any Lender or their respective attorneys and agents under the DIP Credit Agreement or otherwise. If any of the reimbursed expenses are paid out of the Carve Out, the claim of each reimbursed party against the Debtors shall survive and be deemed assigned to the Agent and the Pre-Petition Agent. The

distributions payable from the estate in respect of such claims, as administrative expenses, shall be deemed to be Collateral and shall be paid to the DIP Lenders and the Pre-Petition Secured Parties.

(1) Adequate Protection: The Pre-Petition Secured Parties will receive the following as adequate protection for their interest in the Pre-Petition Collateral, including Cash Collateral (collectively, the “Adequate Protection Obligations”):

- (1) a super priority claim as contemplated by § 507(b) of the Bankruptcy Code immediately junior to the claims under § 364(c)(1) of the Bankruptcy Code held by the Agent and the DIP Lenders, which shall be subject to the Carve Out;
- (2) the Pre-Petition Agent is granted a replacement security interest in and lien upon all the Collateral (as defined in the proposed Interim Order), subject and subordinate only to (i) the security interests and liens granted to the Agent for the benefit of the DIP Lenders and pursuant to the DIP Documents and any liens on the Collateral to which such liens so granted to the Agent are junior and (ii) the Carve Out;
- (3) (a) immediate cash payment in an amount equal to all accrued and unpaid interest on the Pre-Petition Debt (other than Supplemental Interest) and letter of credit fees at the non-default rates provided for in the Existing Agreements, and all other accrued and unpaid fees and disbursements (including, but not limited to, fees owed to the Pre-Petition Agent) owing to the Pre-Petition Agent under the Existing Agreements and incurred prior to the Petition Date, (b) current cash payments of all fees and expenses payable to the Pre-Petition Agent under the Existing Agreements, including, but not limited to, the reasonable fees and disbursements of counsel, financial and other consultants for the Pre-Petition Agent and (c) on the first business day of each month, an amount equal to all accrued but unpaid interest on the Pre-Petition Debt (other than Supplemental Interest), and letter of credit and other fees at the non-default contract rate applicable on the Petition Date (including LIBOR pricing options) under the Existing Agreements; provided that (A) the Pre-Petition Secured Lenders reserve their rights to assert claims for the payment of post-petition interest calculated at any applicable rate of interest (including, without limitation, default rates), or on any other basis, provide for in the Existing Agreements and (B) other parties reserve their right to assert that the

adequate protection payments made pursuant to this Order should be applied to the principal of, and not to post-petition interest on, the Pre-Petition Debt;

- (4) if any Debtor is obligated to pay to any Pre-Petition Secured Party any amount upon the termination of any Hedging Agreement (as defined in the Pre-Petition Credit Agreement) (a "Termination Amount"), such Pre-Petition Secured Party shall receive from the relevant Debtor, on the first business day of each month, an amount equal to all accrued but unpaid interest on such Termination Amount at the rate such Pre-Petition Secured Party is entitled to pursuant to the terms of such Hedging Agreement;
- (5) the Debtors shall provide the Pre-Petition Agent with any written financial information or periodic reporting that is provided to, or required to be provided to, the Agent or the DIP Lenders;
- (6) the Pre-Petition Secured Parties shall be permitted to retain expert consultants and financial advisors at the expense of the Debtors, which consultants and advisors shall be given reasonable access for purposes of monitoring the business of the Debtors and the value of the Pre-Petition Collateral;
- (7) the Debtors are authorized and directed to pay to the Pre-Petition Agent, for the benefit of the Pre-Petition Secured Parties, 100% of the Net Proceeds (as defined in the DIP Credit Agreement), in each case limited to the Net Proceeds that are not required to be paid in respect of the DIP Obligations; and
- (8) JPMC shall be permitted to exercise its rights of termination with respect to any Hedging Agreement entered into between JPMC and any Debtor and its right of setoff (subject to the sharing provisions of the Pre-Petition Credit Agreement) pursuant to the Existing Agreements, to setoff any obligations owed by JPMC to such Debtor upon such termination in accordance with the provisions thereof against an equal amount of Pre-Petition Obligations (as defined in the proposed Interim Order) owed by such Debtor to JPMC pursuant to the Existing Agreements and as a result of such setoff the Pre-Petition Obligations then outstanding would be reduced by such amount on a dollar for dollar basis, and the automatic stay is hereby modified and vacated to the extent necessary to permit such setoff.

- (m) Conditions of Effective Date: The conditions precedent for the occurrence of the DIP Credit Agreement's Effective Date include, but are not limited to: (i) the Agent's receipt of copy of the signed Interim Order, (ii) all of the First Day Orders shall be satisfactory in form and substance to the Agent and the DIP Lenders in their sole discretion, (iii) receipt by the Agent of closing documents, executed copies of the DIP Documents, organizational documents, a Borrowing Base Certificate, financial statements, financial projections, a 13-Week Cash Forecast, a Perfection Certificate, the results of a field examination of the Accounts of the Debtors, (iv) receipt of legal opinions of counsel to the Debtors, (v) the DIP Lenders' right to inspect reports, audits and other internal information relating to environmental matters, and (vii) the Debtors' payment of all accrued and unpaid fees due and owing under the DIP Credit Agreement.
- (n) Conditions of Each Extension of Credit: The obligations to provide each extension of credit shall be subject to the satisfaction of certain conditions including: (i) the representations and warranties of the Debtors set forth in the DIP Documents shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable; (ii) at the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing, and (iii) all First Day Orders entered after the Effective Date shall, when entered by the Bankruptcy Court, be satisfactory to the Agent and the DIP Lenders in their sole discretion.
- (o) Events of Default: Upon the occurrence and continuation of an Event of Default, the Agent may, either at the same or different times: (a) terminate the Revolving Commitments, and thereupon the Revolving Commitments shall terminate immediately, (b) declare the Loans then outstanding to be due and payable in whole or in part, and (c) upon the occurrence and during the continuance of an Event of Default and the giving of five business days prior written notice, exercise all rights and remedies against the Collateral provided for in the DIP Documents.

RELIEF REQUESTED

36. By this Motion, the Debtors request the Court to enter an order granting the relief as set forth in the proposed Interim Order, attached hereto as Exhibit A.

BASIS FOR RELIEF

37. Approval of Financing. If a debtor is unable to obtain unsecured credit allowable as an administrative expense under § 503(b)(1) of the Bankruptcy Code, then the Court, after notice and a hearing, may authorize the debtor to obtain credit or incur debt:

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

38. In the event the debtor is unable to obtain credit under the provisions of § 364(c) of the Bankruptcy Code, the debtor may obtain credit secured by a senior or equal lien on property of the estate that is already subject to a lien, commonly called a “priming lien.” 11 U.S.C. § 364(d). Such relief may be granted so long as there is adequate protection of the interests of the holder of the lien on the property on which the senior lien is proposed to be granted. *Id.*

39. The Debtors have been unable to procure the required funds in the form of unsecured credit or unsecured debt with an administrative priority. In addition, the Debtors have been unable to procure the required funds solely under §§ 364(c) and (d) of the Bankruptcy Code. The Debtors negotiated the Financing at arm’s-length and pursuant to the Debtors’ business judgment. The terms and provisions of the Financing are fair and reasonable under the circumstances and reflect the most favorable terms upon which the Debtors could obtain postpetition financing.

40. The terms and conditions of the DIP Credit Agreement are fair and reasonable and were negotiated by the parties in good faith and at an arm's length. Accordingly, the DIP

Lenders should be accorded the benefits of § 364(e) of the Bankruptcy Code in respect of the Postpetition Financing.

41. The Financing will enable the Debtors, among other things, to (a) maintain the continuity of their operations, (b) maximize the value of their businesses and properties for the benefit of the Debtors' estates and creditors, and (c) give the Debtors' vendors, suppliers, and customers the necessary confidence to continue ongoing relationships with the Debtors which relationships are essential to the successful reorganization of the Debtors' businesses.

42. Use of Cash Collateral and Adequate Protection. Section 363(c)(2) of the Bankruptcy Code provides that a debtor "may not use, sell, or lease cash collateral...unless (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c). Section 363(e) of the Bankruptcy Code provides that upon request of an entity that has an interest in property to be used by a debtors, the court shall prohibit or condition such use as is necessary to provide adequate protection of such interest. 11 U.S.C. § 363(e).

43. A debtor has the burden to establish that the holder of a lien to be subordinated, or whose cash collateral will be used, has adequate protection. 11 U.S.C. § 363(o)(1); *see also In re Swedeland Development, Co., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994). Adequate protection must be determined on a case-by-case basis, permitting a debtor maximum flexibility in structuring its adequate protection proposal. *Id.*; *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985); *In re George Ruggerie Chrysler-Plymouth, Inc.*, 727 F.2d 1017, 1019 (11th Cir. 1984). Nonetheless, "[a] debtor, attempting to reorganize a business under Chapter 11, clearly has a compelling need to use 'cash collateral' in its effort to rebuild." *George Ruggerie*, 727 F.2d at 1019.

44. Where a debtor's proposed use of cash collateral augments the value of the secured creditor's collateral, adequate protection exists. *See e.g., In re Waltham Watch Co.*, 185 F.2d 791, 797 (1st Cir. 1950); *In re Ralar Distributions, Inc.*, 166 B.R. 3, 6 (Bankr. D. Mass. 1994) (creditor had adequate protection where debtor's use of collateral allowed realization of more than liquidation value); *In re Pine Lake Village Apartment*, 19 B.R. 819, 826 (Bankr. S.D. N.Y. 1982).

45. The Debtors need immediate authority to use the Cash Collateral to obtain the Financing and to fund the Debtors' day-to-day operations. Indeed, absent such relief, the Debtors will be compelled to shut down manufacturing production and bring the Debtors' businesses to a halt. In sum, the failure to obtain authorization for the use of the Cash Collateral will be fatal to the Debtors and disastrous to their creditors, both secured and unsecured.

46. The Debtors believe that the proposed adequate protection is fair and reasonable and sufficient to satisfy any diminution in value of the Prepetition Collateral. This Court has previously authorized debtors to obtain post-petition similar relief. *In re Meadowcraft, Inc.*, Case No. 02-06910-TOM (Bankr. N.D. Ala. Sep. 20, 2002); *In re Décor Gravure Corp.*, Case No. 02-00895-TOM (Bankr. N.D. Ala. Feb. 6, 2002); *In re Hal Roach Construction, Inc.*, Case No. 00-03118-TBB (Bankr. N.D. Ala. May 24, 2000); *In re Gulf States Steel Inc. of Alabama*, Case No. 99-41958-JSS (Bankr. N.D. Ala. July 7, 1999); *In re Alabaster Industries, Inc.*, Case No. 98-02220-BGC (Bankr. N.D. Ala. April 6, 1998).

47. Interim Approval Should Be Granted. Rules 4001(b) and 4001(c) of the Federal Rules of Bankruptcy Procedure provide that a final hearing on a motion to use cash collateral pursuant to § 363 and to obtain credit pursuant to § 364 may not be commenced earlier than fifteen (15) days after the service of such motion. Upon request, however, the court is

empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

48. Pursuant to Rule 4001(b) and 4001(c), the Debtors request that the Court conduct an expedited preliminary hearing on the Motion (the "Interim Hearing") and grant the relief requested in the proposed Interim Order in order to (a) maintain the Debtors' ongoing operations and (b) avoid the immediate and irreparable harm and prejudice to the Debtors' estates and all parties in interest that would otherwise ensue.

49. The Debtors have an urgent and immediate need for cash to continue to operate. The Debtors will be immediately and irreparably harmed absent authorization from the Court to use cash collateral and obtain secured credit as requested on an interim basis pending a Final Hearing on the Motion. In the short-term, if the Debtors are unable to provide customers with a continuous supply of product, competitors will capitalize on its inability to promptly fulfill the demand of its customer base, which likely will have a long-term negative impact on the value of the Debtors' businesses, to the detriment of all parties in interest.

REQUEST FOR FINAL HEARING

50. To avoid an Event of Default under the DIP Credit Agreement, the Debtors also request that the Court schedule the final hearing during the week that is three weeks after the date of this Motion, with objections, if any, to the Final Financing Order being due in writing on or before the date that is at least five (5) business days prior to the Final Hearing.

NOTICE AND PRIOR MOTIONS

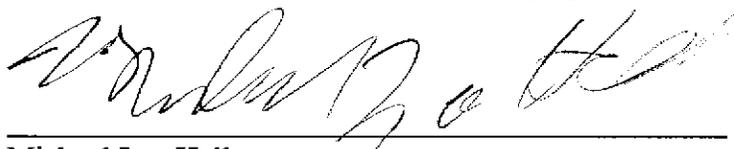
51. Notice of this Motion has been provided to (1) the Office of the Bankruptcy Administrator for the United States Bankruptcy Court for the Northern District of Alabama, Southern Division; (2) counsel to JPMorgan Chase Bank as Administrative Agent for the

Debtors' prepetition lenders; (3) counsel to JPMorgan Chase Bank as Administrative Agent for the Debtors' proposed postpetition lenders; (4) the Debtors' twenty (20) largest unsecured creditors (on a consolidated basis); and (5) the District Director of the Internal Revenue Service for the Northern District of Alabama. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary or required.

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

WHEREFORE, the Debtors request this Court enter an order substantially similar to the one attached hereto as Exhibit "A" and such other and further relief as is just and proper.

Dated September 18, 2004.



Michael Leo Hall
Robert B. Rubin
Rita H. Dixon

Attorneys for Debtors and Debtors in Possession

OF COUNSEL:
BURR & FORMAN LLP
3100 SOUTHTRUST TOWER
420 NORTH 20TH STREET
BIRMINGHAM, ALABAMA 35203
TELEPHONE: (205) 251-3000
FACSIMILE: (205) 458-5100

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re)	
)	
CITATION CORPORATION, <i>et al.</i> ,)	Chapter 11
)	
Debtors.)	Case No. ___-___(___)
)	(Jointly Administered)
)	
)	

INTERIM ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. §363, (II) GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364 AND (III) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c)

Upon the motion (the “**Motion**”), dated September __, 2004, of Citation Corporation (the “**Borrower**”) and its affiliated debtors, each as debtor and debtor-in-possession (collectively, the “**Debtors**”), in the above-captioned cases (the “**Cases**”) pursuant to sections 105, 361, 362, 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) of title 11 of the United States Code, 11 U.S.C. §§101, et seq. (the “**Bankruptcy Code**”), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), seeking, among other things:

- (1) authorization for the Borrower to obtain post petition financing (the “**Financing**”), and for all of the other Debtors (the “**Guarantors**”) to guaranty the Borrower’s obligations in connection with the Financing, up to the aggregate principal amount of \$45,000,000 (the actual available principal amount at any time being subject to those

conditions set forth in the DIP Documents (as defined below)), from JPMorgan Chase Bank (“**JPMC**”), acting as Administrative Agent and Issuing Bank (in such capacities, the “**Agent**”), for itself and a syndicate of financial institutions (together with JPMC, the “**DIP Lenders**”) to be arranged by J.P. Morgan Securities Inc.;

(2) authorization for the Debtors to execute and enter into the DIP Documents and to perform such other and further acts as may be required in connection with the DIP Documents;

(3) the granting of adequate protection to the “Secured Parties” (as defined in the Pre-Petition Credit Agreement), including, without limitation, the lenders (in their capacities as such, the “**Pre-Petition Secured Lenders**”, and together with the other “Secured Parties”, in their capacities as such, the “**Pre-Petition Secured Parties**”) under or in connection with that certain Credit Agreement, dated as of November 30, 1999, as amended and restated as of December 15, 2003, (as heretofore amended, supplemented or otherwise modified, the “**Pre-Petition Credit Agreement**”), among the Borrower, the lenders party thereto and JPMC, as administrative agent for the Pre-Petition Secured Lenders (in its capacity as such, the “**Pre-Petition Agent**”), and that certain Security Agreement, dated as of November 30, 1999, as reaffirmed and amended as of December 15, 2003, between Borrower and JPMC as Administrative Agent (as heretofore amended, supplemented or otherwise modified, the

“**Security Agreement**” and, collectively with the Pre-Petition Credit Agreement, and the mortgages and all other documentation executed in connection therewith (including any Hedging Agreement as defined in the Pre-Petition Credit Agreement), the “**Existing Agreements**”), whose liens and security interests are being primed by the Financing;

(4) authorization for the Debtors to use cash collateral (as such term is defined in the Bankruptcy Code) in which the Pre-Petition Secured Parties have an interest, and the granting of adequate protection to the Pre-Petition Secured Parties with respect to, inter alia, such use of their cash collateral and all use and diminution in the value of the Pre-Petition Collateral (as defined below);

(5) the granting of superpriority claims to the DIP Lenders payable from, and having recourse to, all pre-petition and post-petition property of the Debtors’ estates (including any Avoidance Actions (as defined below)) and all proceeds thereof, subject to the Carve Out (as defined below);

(6) pursuant to Bankruptcy Rule 4001, that an interim hearing (the “**Interim Hearing**”) on the Motion be held before this Court to consider entry of the proposed interim order annexed to the Motion (the “**Interim Order**”) (a) authorizing the Borrower, on an interim basis, to forthwith borrow revolving loans or obtain letters of credit from the DIP Lenders under the DIP Documents up to an aggregate principal or face

amount not to exceed \$25,000,000 (subject to any limitations of borrowings under the DIP Documents), (b) authorizing the Debtors' use of cash collateral, and (c) granting the adequate protection described herein; and

(7) that this Court schedule a final hearing (the "**Final Hearing**") to be held within 30 days of the entry of the Interim Order to consider entry of a final order authorizing the balance of the borrowings and letter of credit issuances under the DIP Documents on a final basis, as set forth in the Motion and the DIP Documents filed with this Court.

Due and appropriate notice of the Motion, the relief requested therein and the Interim Hearing having been served by the Debtors on the Debtors' twenty largest unsecured creditors (on a consolidated basis), on the Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Secured Lenders and on the Office of the Bankruptcy Administrator for the United States Bankruptcy Court for the Northern District of Alabama, Southern Division.

The Interim Hearing having been held by this Court on September __, 2004.

Upon the record made by the Debtors at the Interim Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Jurisdiction.* This Court has core jurisdiction over the Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. *Notice.* Under the circumstances, the notice given by the Debtors of the Motion and the Interim Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (c).

3. *Debtors' Stipulations.* Without prejudice to the rights of any other party (but subject to the limitations thereon contained in paragraph 18 below), the Debtors admit, stipulate and agree that:

(a) (i) as of the filing of the Debtors' chapter 11 petitions (the "**Petition Date**"), the Borrower was indebted and liable to the Pre-Petition Secured Lenders, without defense, counterclaim or offset of any kind, in the aggregate principal amount of approximately \$310,000,000 in respect of loans made (including capitalized interest) and in the aggregate principal amount of approximately \$14,000,000 in respect of letters of credit issued (the "**Pre-Petition Letters of Credit**"), in each case, by the Pre-Petition Secured Lenders or Issuing Bank thereunder pursuant to, and in accordance with the terms of, the Existing Agreements, plus, in each case, interest thereon and fees (including any attorneys', accountants', appraisers' and financial advisors' fees and expenses), charges and other obligations incurred in connection therewith as provided in the Existing Agreements (collectively, the "**Pre-Petition Debt**"), (ii) the Pre-Petition Debt constitutes the legal, valid and binding obligation of the Debtors, enforceable in accordance with its terms (subject to the stay of enforcement arising from section 362 of the Bankruptcy Code), (iii) no portion of the Pre-Petition Debt is subject to avoidance, recharacterization, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law and (iv) the Debtors do not have any claims,

counterclaims, causes of action, defenses or setoff rights, whether arising under the Bankruptcy Code or otherwise, against the Pre-Petition Secured Parties, the Pre-Petition Agent and their respective affiliates, agents, officers, directors, employees and attorneys; and

(b) the liens and security interests granted to the Pre-Petition Agent pursuant to and in connection with the Existing Agreements (including, without limitation, all security agreements, pledge agreements, mortgages, deeds of trust and other security documents executed by any of the Debtors in favor of the Pre-Petition Agent, for its benefit and for the benefit of the Pre-Petition Secured Parties) in connection with the Existing Agreements, are (i) valid, binding, perfected, enforceable, first-priority liens and security interests in the personal and real property described in the Existing Agreements (the “**Pre-Petition Collateral**”), (ii) not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law and (iii) subject and subordinate only to (A) the DIP Liens (as defined below), (B) the Senior Permitted Liens (as defined in the DIP Credit Agreement), (C) the Carve Out (as defined below) to which the DIP Liens are subject and (D) valid, perfected and unavoidable liens permitted under the Existing Agreements to the extent such permitted liens are senior to or pari passu with the liens of the Pre-Petition Agent on the Pre-Petition Collateral.

4. *Findings Regarding the Financing.*

(a) Good cause has been shown for the entry of this Interim Order.

(b) The Debtors have an immediate need to obtain the Financing and use Cash Collateral (as defined below) 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 needs. The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral, incurrence of new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors.

(c) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Debtors granting to the Agent (for its benefit and for the benefit of the Secured Parties as defined in the DIP Credit Agreement (defined below), the “**DIP Secured Parties**”), subject to the Carve Out as provided for herein, the DIP Liens and the Superpriority Claims (as defined below) under the terms and conditions set forth in this Order and in the DIP Documents.

(d) The terms of the Financing and the use of Cash Collateral are fair and reasonable, reflect the Debtors’ exercise of prudent business judgment consistent

with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(e) The Financing has been negotiated in good faith and at arm's length among the Debtors, the Agent and the DIP Lenders, and all of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the Financing and the DIP Documents, including without limitation, (i) all loans made to, and all letters of credit issued for the account of, the Debtors pursuant to the Revolving Credit Agreement substantially in the form attached as Exhibit A to the Motion (the "**DIP Credit Agreement**"), and (ii) any "Obligations" (as defined in the DIP Credit Agreement), including credit extended in respect of overdrafts and related liabilities and other depository, treasury, and cash management services and other clearing services provided by JPMC or its affiliates (all of the foregoing in clauses (i) and (ii) collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the Agent, the Issuing Bank, the DIP Lenders and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(f) The Debtors have requested entry of this Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent granting the relief sought by this Order, the Debtors' estates will be immediately and irreparably harmed. Consummation

of the Financing and the use of Cash Collateral in accordance with this Order and the DIP Documents is therefore in the best interest of the Debtors' estates.

5. *Authorization of the Financing and the DIP Documents.*

(a) The Debtors are hereby authorized to enter into the DIP Documents. The Borrower is hereby authorized to borrow money and obtain letters of credit pursuant to the DIP Credit Agreement, and the Guarantors are hereby authorized to guaranty such borrowings and the Borrower's obligations with respect to such letters of credit, up to an aggregate principal or face amount of \$25,000,000 (plus interest, fees and other expenses and amounts provided for in the DIP Documents), in accordance with the terms of this Order and the DIP Documents, which shall be used for all purposes permitted under the DIP Documents, including, without limitation, to provide working capital for the Borrower and the Guarantors and to pay interest, fees and expenses in accordance with this Order and the DIP Documents. In addition to such loans and obligations, the Debtors are authorized to incur overdrafts and related liabilities arising from treasury, depository and cash management services including any automated clearing house fund transfers provided to or for the benefit of the Debtors by JPMC or any of its affiliates; *provided, however*, that nothing herein shall require JPMC or any other party to incur overdrafts or to provide any such services or functions to the Debtors.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and to pay all

fees, that may be reasonably required or necessary for the Debtors' performance of its obligations under the Financing, including, without limitation:

(i) the execution, delivery and performance of the Loan Documents (as defined in the DIP Credit Agreement) and any exhibits attached thereto, including, without limitation, the DIP Credit Agreement, the Guarantee Agreements, the Security Documents (each as defined in the DIP Credit Agreement) and any mortgages contemplated thereby (collectively, and together with the letter agreements referred to in clause (iii) below, the "**DIP Documents**"),

(ii) the execution, delivery and performance of one or more amendments to the DIP Credit Agreement for, among other things, the purpose of adding additional financial institutions as DIP Lenders and reallocating the commitments for the Financing among the DIP Lenders, in each case in such form as the Debtors, the Agent and the DIP Lenders may agree (it being understood that no further approval of the Court shall be required for amendments to the DIP Credit Agreement that do not shorten the maturity of the extensions of credit thereunder or increase the commitments, the rate of interest or the letter of credit fees payable thereunder),

(iii) the non refundable payment to the Agent or the DIP Lenders, as the case may be, of the fees referred to in the DIP Credit Agreement (and in any separate letter agreements between them in connection with the Financing) and reasonable costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained as provided for in the DIP Documents, and

(iv) the performance of all other acts required under or in connection with the DIP Documents.

(c) Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with the terms of the DIP Documents. No obligation, payment, transfer or grant of security under the DIP Documents or this Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, setoff, recoupment or counterclaim.

6. *Superpriority Claims.*

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall (i) constitute allowed claims against the Debtors with priority over any and all administrative expenses, diminution claims (including all Adequate Protection Obligations (as defined below)) and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever ("**Superpriority Claims**"), including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment and (ii) be payable from and have recourse to all pre- and post-petition

property of the Debtors and all proceeds thereof, subject only to the payment of the Carve Out to the extent specifically provided for herein.

(b) For purposes hereof, the “**Carve Out**” means (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the Bankruptcy Administrator under section 1930(a) of title 28 of the United States Code and (ii) after the occurrence and during the continuance of an Event of Default (as defined in the DIP Credit Agreement) an amount not exceeding \$1,500,000 in the aggregate, which amount may be used subject to the terms of this Order, including, without limitation, paragraph 18 hereof, to pay any fees or expenses incurred by the Debtors and any statutory committees appointed in the Cases (each, a “**Committee**”) in respect of (A) allowances of compensation for services rendered or reimbursement of expenses awarded by the Bankruptcy Court to the Debtors’ or any Committee’s professionals and (B) the reimbursement of expenses allowed by the Bankruptcy Court incurred by Committee members in the performance of their duties (but excluding fees and expenses of third party professionals employed by such members) ((A) and (B) collectively, the “**Reimbursed Expenses**”); *provided, however*, (x) that the dollar limitation in this clause 6(b)(ii) on fees and disbursements shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to 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 Issuing Bank or any Lender or their respective attorneys and agents under the DIP Credit Agreement or otherwise, (y) that nothing herein shall be construed to impair the ability of

any party to object to the allowance of any of the fees, expenses, reimbursement or compensation described in clauses (A) and (B) above, and (z) that cash or other amounts on deposit in the Letter of Credit Collateral Account (as defined in the DIP Credit Agreement), shall not be subject to the Carve Out. If any of the Reimbursed Expenses are paid out of the Carve Out, the claim of each reimbursed party against the Debtors shall survive and be deemed assigned to the Agent and the Pre-Petition Agent. The distributions payable from the estate in respect of such claims, as administrative expenses, shall be deemed to be Collateral and shall be paid to the DIP Secured Parties and the Pre-Petition Secured Parties in accordance with this Order.

7. *DIP Liens.*

As security for the DIP Obligations, effective and perfected upon the date of this Order and without the necessity of the execution, delivery or recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Agent of, or over, any Collateral (as defined below), the following security interests and liens are hereby granted to the Agent for its own benefit and the benefit of the DIP Secured Parties (all property identified in clauses (a), (b) and (c) below being collectively referred to as the “**Collateral**”), subject to (x) the Senior Permitted Liens and (y) only in the event of the occurrence and during the continuance of an Event of Default, the payment of the Carve Out (all such liens and security interests granted to the Agent, for its benefit and for the benefit of the DIP Secured Parties, pursuant to this Order and the DIP Documents, the “**DIP Liens**”):

(a) First Lien on Cash Balances and Unencumbered Property.

Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all pre- and post-petition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens (collectively, “**Unencumbered Property**”), including without limitation, all cash and cash collateral of the Debtors (whether maintained with the Agent or otherwise) and any investment of such cash and cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries, and the proceeds of all the foregoing. Unencumbered Property shall include the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, “**Avoidance Actions**”) and any proceeds thereof.

(b) Liens Priming Pre-Petition Secured Lenders’ Liens.

Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all pre- and post-petition property of the Debtors (including, without limitation, cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, general intangibles, documents,

instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries, and the proceeds of all the foregoing), whether now existing or hereafter acquired, that is subject to the existing liens presently securing the Pre-Petition Debt (including in respect of issued but undrawn letters of credit). Such security interests and liens shall be senior in all respects to the interests in such property of the Pre-Petition Secured Parties arising from current and future liens of the Pre-Petition Secured Parties (including, without limitation, adequate protection liens granted hereunder), but shall not be senior to any valid, perfected and unavoidable interests of other parties arising out of liens, if any, on such property existing immediately prior to the Petition Date, or to any valid, perfected and unavoidable interests in such property arising out of liens to which the liens of the Pre-Petition Secured Parties become subject subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest in and lien upon all pre- and post-petition property of the Debtors (other than the property described in clauses (a) or (b) of this paragraph 7, as to which the liens and security interests in favor of the Agent will be as described in such clauses), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which security

interests and liens in favor of the Agent are junior to such valid, perfected and unavoidable liens.

(d) Liens Senior to Certain Other Liens. The DIP Liens and the Adequate Protection Liens (as defined below) shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors.

8. *Protection of DIP Lenders' Rights.*

(a) So long as there are any borrowings or letters of credit or other amounts (other than contingent indemnity obligations as to which no claim has been asserted when all other amounts have been paid and no letters of credit are outstanding) outstanding, or the DIP Lenders have any Revolving Commitment (as defined in the DIP Credit Agreement) under the DIP Credit Agreement, the Pre-Petition Agent and Pre-Petition Secured Parties shall (i) take no action to foreclose upon or recover in connection with the liens granted thereto pursuant to the Existing Agreements or this Order, or otherwise exercise remedies against any Collateral (including, without limitation, seeking relief from the automatic stay to take such action), except to the extent authorized by an order of this Court; (ii) be deemed to have consented to any release of Collateral authorized under the DIP Documents; and (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or

otherwise take any action to perfect their security interests in the Collateral unless (solely as to this clause (iii)) the DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to this Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Filing Date.

(b) The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the Agent and the DIP Lenders to exercise, (i) immediately upon the occurrence of an Event of Default, all rights and remedies under the DIP Documents other than those rights and remedies against the Collateral as provided in clause (ii) below and (ii) upon the occurrence and during the continuance of an Event of Default and the giving of five business days prior written notice, all rights and remedies against the Collateral provided for in the DIP Documents (including, without limitation, the right to setoff monies of the Debtors in accounts maintained with the Agent or any DIP Lender). In any hearing regarding any exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing, and the Debtors and the Pre-Petition Secured Parties hereby waive their right to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the Agent or the DIP Lenders set forth in this Order or the DIP Documents. In no event shall the Agent, the DIP Lenders, the Pre-Petition Agent or the Pre-Petition Secured Lenders

be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral.

9. *Limitation on Charging Expenses Against Collateral.* Except to the extent of the Carve Out, no expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the Agent or the Pre-Petition Agent, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the Agent, the DIP Lenders, the Pre-Petition Agent or the Pre-Petition Secured Lenders.

10. *The Cash Collateral.* To the extent any funds were on deposit with any Pre-Petition Secured Party as of the Petition Date, including, without limitation, all funds deposited in, or credited to, an account of any Debtor with any Pre-Petition Secured Party immediately prior to the filing of the Debtors’ bankruptcy petitions (the “**Petition Time**”) (regardless of whether, as of the Petition Time, such funds had been collected or made available for withdrawal by any such Debtor), such funds (the “**Deposited Funds**”) are subject to rights of setoff. By virtue of such setoff rights, the Deposited Funds are subject to a lien in favor of such Pre-Petition Secured Parties pursuant to sections 506(a) and 553 of the Bankruptcy Code. The Pre-Petition Secured Lenders are obligated, to the extent provided in the Existing Agreements, to share the benefit of such liens and setoff rights with the other Pre-Petition Secured Lenders party to such Existing Agreements. Any proceeds of the Pre-Petition Collateral (including the Deposited Funds or any other funds

on deposit at the Pre-Petition Secured Parties or at any other institution as of the Petition Date) are cash collateral of the Pre-Petition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code. The Deposited Funds and all proceeds of both Pre-Petition Collateral and Collateral are referred to herein as “**Cash Collateral.**”

11. *Use of Cash Collateral.* The Debtors are hereby authorized to use all Cash Collateral of the Pre-Petition Secured Lenders, and Pre-Petition Secured Lenders are directed promptly to turn over to the Debtors all Cash Collateral received or held by them, *provided* that the Pre-Petition Secured Lenders are granted adequate protection as hereinafter set forth. The Debtors’ right to use Cash Collateral shall terminate automatically on the Termination Date (as defined in the DIP Credit Agreement). In addition, if the Borrower voluntarily terminates the Revolving Commitment prior to the Revolving Maturity Date (as each such term is defined in the DIP Credit Agreement), the Debtors shall, for the benefit of the Pre-Petition Secured Parties, continue to comply with the requirements of Articles 5 and 6 of the DIP Credit Agreement and, upon any failure by the Debtors to observe any such requirement or upon the occurrence of any event that would have constituted an Event of Default under the DIP Credit Agreement prior to the termination of the Commitment, the Pre-Petition Agent on behalf of the Pre-Petition Secured Parties shall have the immediate right unilaterally to terminate the Debtors’ right to use Cash Collateral.

12. *Adequate Protection.* The Pre-Petition Secured Parties are entitled, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their interest in the Pre-Petition Collateral, including the Cash Collateral, for

and equal in amount to the aggregate diminution in value of the Pre-Petition Secured Parties' Pre-Petition Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of Cash Collateral and any other Pre-Petition Collateral, the priming of the Pre-Petition Agent's security interests and liens in the Pre-Petition Collateral by the Agent and the DIP Lenders pursuant to the DIP Documents and this Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As adequate protection, the Pre-Petition Agent and the Pre-Petition Secured Parties are hereby granted the following (collectively, the "**Adequate Protection Obligations**"):

(a) Adequate Protection Liens. The Pre-Petition Agent (for itself and for the benefit of the Pre-Petition Secured Parties) is hereby granted (effective and perfected upon the date of this Order and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements) a replacement security interest in and lien upon all the Collateral, subject and subordinate only to (i) the security interests and liens granted to the Agent for the benefit of the DIP Lenders in this Order and pursuant to the DIP Documents and any liens on the Collateral to which such liens so granted to the Agent are junior and (ii) the Carve Out (the "**Adequate Protection Liens**");

(b) Section 507(b) Claim. The Pre-Petition Agent and the Pre-Petition Secured Parties are hereby granted, subject to the payment of the Carve Out, a superpriority claim as provided for in section 507(b) of the Bankruptcy Code, immediately junior to the claims under section 364(c)(1) of the Bankruptcy Code held by

the Agent and the DIP Lenders; *provided, however*, that the Pre-Petition Agent and the Pre-Petition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the superpriority claims under section 507(b) of the Bankruptcy Code granted hereunder or under the Existing Agreements unless and until the DIP Obligations have indefeasibly been paid in cash in full;

(c) Interest, Fees and Expenses. (i) The Pre-Petition Agent shall receive from the Debtors (x) immediate cash payment in an amount equal to all accrued and unpaid interest on the Pre-Petition Debt (other than Supplemental Interest) and letter of credit fees at the non-default rates provided for in the Existing Agreements, and all other accrued and unpaid fees and disbursements (including, but not limited to, fees owed to the Pre-Petition Agent) owing to the Pre-Petition Agent under the Existing Agreements and incurred prior to the Petition Date, (y) current cash payments of all fees and expenses payable to the Pre-Petition Agent under the Existing Agreements, including, but not limited to, the reasonable fees and disbursements of counsel, financial and other consultants for the Pre-Petition Agent and (z) on the first business day of each month, an amount equal to all accrued but unpaid interest on the Pre-Petition Debt (other than Supplemental Interest), and letter of credit and other fees at the non-default contract rate applicable on the Petition Date (including LIBOR pricing options) under the Existing Agreements, *provided* that (A) the Pre-Petition Secured Lenders reserve their rights to assert claims for the payment of post-petition interest calculated at any applicable rate of interest (including, without limitation, default rates), or on any other basis, provided for in the Existing Agreements and (B) other parties reserve their right to assert that the

adequate protection payments made pursuant to this Order should be applied to the principal of, and not to post-petition interest on, the Pre-Petition Debt;

(ii) If any Debtor is obligated to pay to any Pre-Petition Secured Party any amount upon the termination of any Hedging Agreement (a “**Termination Amount**”), such Pre-Petition Secured Party shall receive from the relevant Debtor, on the first business day of each month, an amount equal to all accrued but unpaid interest on such Termination Amount at the rate such Pre-Petition Secured Party is entitled to pursuant to the terms of such Hedging Agreement.

(d) Monitoring of Collateral. Subject to the provisions of Section 9.12 of the Pre-Petition Credit Agreement, the Pre-Petition Secured Parties shall be permitted to retain expert consultants and financial advisors at the expense of the Debtors, which consultants and advisors shall be given reasonable access for purposes of monitoring the business of the Debtors and the value of the Collateral;

(e) Information. The Debtors shall provide the Pre-Petition Agent with any written financial information or periodic reporting that is provided to, or required to be provided to, the Agent or the DIP Lenders; and

(f) Payment from Proceeds of Collateral. The Debtors are authorized and directed to pay to the Pre-Petition Agent, for the benefit of the Pre-Petition Secured Parties, 100% of the Net Proceeds (as defined in the DIP Credit Agreement), in each case limited to the Net Proceeds that are not required to be paid in respect of the DIP Obligations.

(g) Termination of Hedging Agreements. JPMC shall be permitted to exercise its rights of termination with respect to any Hedging Agreement entered into between JPMC and any Debtor and its right of setoff (subject to the sharing provisions of the Pre-Petition Credit Agreement) pursuant to the Existing Agreements, to setoff any obligations owed by JPMC to such Debtor upon such termination in accordance with the provisions thereof against an equal amount of Pre-Petition Obligations owed by such Debtor to JPMC pursuant to the Existing Agreements and as a result of such setoff the Pre-Petition Obligations then outstanding would be reduced by such amount on a dollar for dollar basis, and the automatic stay is hereby modified and vacated to the extent necessary to permit such setoff.

13. *Reservation of Rights of Pre-Petition Secured Lenders.* Under the circumstances and given that the above described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Pre-Petition Secured Parties. However, the Pre-Petition Agent and the Pre-Petition Secured Parties may request further or different adequate protection, and the Debtors or any other party may contest any such request. Except as expressly provided herein, nothing contained in this Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to the Pre-Petition Agent, any Pre-Petition Secured Party, the Agent or any DIP Lender including, without limitation, rights of a party to a swap agreement, securities contract, commodity contract, forward contract or repurchase agreement with a Debtor to

assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtor to contest such assertion).

14. *Pre-Petition Secured Parties Obligations.* In consideration of the benefits afforded to them pursuant to this Order, with respect to any Pre-Petition Letters of Credit, notwithstanding any provision to the contrary in the Pre-Petition Credit Agreement:

(i) the Issuing Bank under the Pre-Petition Credit Agreement (the “**Pre-Petition Issuing Bank**”) is hereby authorized (but not required) and permitted to extend, renew, amend or replace any Pre-Petition Letter of Credit with a new letter of credit issued to the same beneficiary, with an expiration date no later than March 31, 2006 and in an amount no greater than the applicable Pre-Petition Letter of Credit (such extended, renewed, amended or replacement Pre-Petition Letter of Credit, a “**New Pre-Petition Letter of Credit**”) and such New Pre-Petition Letter of Credit shall be deemed to constitute a Letter of Credit issued under the Pre-Petition Credit Agreement, with each existing Revolving Lender under the Pre-Petition Credit Agreement (a “**Pre-Petition Revolving Lender**”) holding the same participation in such New Pre-Petition Letter of Credit as it had held in the applicable Pre-Petition Letter of Credit;

(ii) such Pre-Petition Revolving Lender shall be obligated to reimburse the Pre-Petition Issuing Bank for any payment made on any New Pre-Petition Letter of Credit and any other amounts due in respect thereof under the Pre-Petition Credit Agreement on the same terms as

contained in the Pre-Petition Credit Agreement for the Pre-Petition Letters of Credit;

(iii) any claims (as defined in the Bankruptcy Code) that the Pre-Petition Issuing Bank or any Pre-Petition Revolving Lender may have against any Debtor in respect of any New Pre-Petition Letter of Credit (including for the reimbursement of any payment made on such New Pre-Petition Letter of Credit) shall constitute Pre-Petition Obligations, entitled to treatment as pre-petition claims, *pari passu* with the Loans outstanding under the Pre-Petition Credit Agreement, and as such shall be entitled to the adequate protection as provided herein;

(iv) The Borrower shall retire or replace all New Pre-Petition Letters of Credit on or prior to the effective date of any plan of reorganization.

15. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) Subject to the provisions of paragraph 8(a) above, the Agent, the DIP Lenders, the Pre-Petition Agent and the Pre-Petition Secured Parties are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the Agent on behalf of the DIP Lenders or the Pre-Petition Agent on behalf of the Pre-Petition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark

filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge dispute or subordination, at the time and on the date of entry of this Order. Upon the request of the Agent, each of the Pre-Petition Agent and Pre-Petition Secured Parties, without any further consent of any party, is authorized to take, execute, deliver and file such instruments (in each case without representation or warranty of any kind) to enable the Agent to further validate, perfect, preserve and enforce DIP Liens.

(b) A certified copy of this Order may, in the discretion of the Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Order for filing and recording.

(c) Any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other post-petition collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the transactions granting post-petition liens, in such leasehold interest or the proceeds of any assignment and/or

sale thereof by any Debtor, in favor of the DIP Lenders in accordance with the terms of the DIP Credit Agreement or this Order.

16. *Preservation of Rights Granted Under the Order.*

(a) No claim or lien having a priority superior to or *pari passu* with those granted by this Order to the Agent and the DIP Lenders or to the Pre-Petition Agent and the Pre-Petition Secured Parties, respectively, shall be granted or allowed while any portion of the Financing (or any refinancing thereof) or the Revolving Commitments or any letters of credit thereunder or the DIP Obligations or the Adequate Protection Obligations remain outstanding, and the DIP Liens and the Adequate Protection Liens shall not be (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise.

(b) Unless all DIP Obligations shall have been paid in full (and, with respect to outstanding letters of credit issued pursuant to the DIP Credit Agreement, cash collateralized in accordance with the provisions of the DIP Credit Agreement) and the Adequate Protection Obligations shall have been paid in full, the Debtors shall not seek, and it shall constitute an Event of Default and a termination of the right to use Cash Collateral if any of the Debtors seek, or if there is entered, (i) any modifications or extensions of this Order without the prior written consent of the Agent, and no such consent shall be implied by any other action, inaction or acquiescence by the Agent, or (ii) an order converting or dismissing any of the Cases. If an order dismissing any of the

Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (i) the Superpriority Claims, priming liens, security interests and replacement security interests granted to the Agent and, as applicable, the Pre-Petition Agent pursuant to this Order shall continue in full force and effect and shall maintain their priorities as provided in this Order until all DIP Obligations and Adequate Protection Obligations shall have been paid and satisfied in full (and that such Superpriority Claims, priming liens and replacement security interests, shall, notwithstanding such dismissal, remain binding on all parties in interest) and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in (i) above.

(c) If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect (i) the validity of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the Agent or Pre-Petition Agent, as applicable, of the effective date of such reversal, stay, modification or vacation or (ii) the validity or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Credit Agreement with respect to any DIP Obligations or Adequate Protection Obligations. Notwithstanding any such reversal, stay, modification or vacation, any use of Cash Collateral, or DIP Obligations or Adequate Protection Obligations incurred by the Debtors to the Agent, the DIP Lenders, the Pre-Petition Agent or the Pre-Petition Secured Parties prior to the actual receipt of written notice by the Agent and Pre-Petition

Agent of the effective date of such reversal, stay, modification or vacation shall be governed in all respects by the original provisions of this Order, and the Agent, DIP Lenders, Pre-Petition Agent and Pre-Petition Secured Lenders shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Order and pursuant to the DIP Documents with respect to all uses of Cash Collateral, DIP Obligations and Adequate Protection Obligations.

(d) Except as expressly provided in this Order or in the DIP Documents, the DIP Liens, the Superpriority Claims and all other rights and remedies of the Agent and the DIP Lenders granted by the provisions of this Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any of the Cases, terminating the joint administration of these Cases or by any other act or omission, or (ii) the entry of an order confirming a plan of reorganization in any of the Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations. The terms and provisions of this Order and the DIP Documents shall continue in these Cases, in any successor cases if these Cases cease to be jointly administered, or in any superceding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Superpriority Claims and all other rights and remedies of the Agent and the DIP Lenders granted by the provisions of this Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full.

17. *Effect of Stipulations on Third Parties.* The stipulations and admissions contained in this Order, including, without limitation, in paragraph 3 of this Order, shall be binding upon the Debtors in all circumstances. The stipulations and admissions contained in this Order, including, without limitation, in paragraph 3 of this Order, shall be binding upon all other parties in interest, including, without limitation, any Committee, unless (a) a party in interest has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in paragraph 18) by no later than the date that is 60 days after the initial selection of counsel by the Official Committee of Unsecured Creditors (the “**Creditors’ Committee**”) in the Cases (or such later date (x) as has been agreed to, in writing, by the Pre-Petition Agent in its sole discretion or (y) as has been ordered by the Court) (i) challenging the validity, enforceability, priority or extent of the Pre-Petition Debt or the Pre-Petition Agent’s or the Pre-Petition Secured Parties’ liens on the Pre-Petition Collateral or (ii) otherwise asserting or prosecuting any action for preferences, fraudulent conveyances, other avoidance power claims or any other any claims, counterclaims or causes of action , objections, contests or defenses (collectively, “**Claims and Defenses**”) against the Pre-Petition Agent or any of the Pre-Petition Secured Parties or their affiliates, representatives, attorneys or advisors in connection with matters related to the Existing Agreements, the Pre-Petition Debt, the Pre-Petition Collateral, and (b) there is a final order in favor of the plaintiff sustaining any such challenge or claim in any such timely filed adversary proceeding or contested matter, *provided* that, as to the Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished as of the Petition

Date. If no such adversary proceeding or contested matter is timely filed, (x) the Pre-Petition Debt and all related obligations of the Debtors (the “**Pre-Petition Obligations**”) shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in the Cases and any subsequent chapter 7 cases, (y) the Pre-Petition Agent’s and the Pre-Petition Secured Parties’ liens on the Pre-Petition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding and perfected, not subject to recharacterization, subordination or avoidance and (z) the Pre-Petition Obligations, the Pre-Petition Agent’s and the Pre-Petition Secured Parties’ liens on the Pre-Petition Collateral and the Pre-Petition Agent and the Pre-Petition Secured Parties shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors’ estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 or 11 trustee appointed or elected for any of the Debtors). If any such adversary proceeding or contested matter is timely filed, the stipulations and admissions contained in paragraph 3 of this Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any official committee (including the Creditors’ Committee) and on any other person or entity, except to the extent that such findings and admissions were expressly challenged in such adversary proceeding or contested matter. Nothing in this Order vests or confers on any Person (as defined in the Bankruptcy Code), including any Committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, Claims and Defenses with respect to the Existing Agreements or the Pre-Petition Obligations.

18. *Limitation on Use of Financing Proceeds and Collateral.*

Notwithstanding anything herein or in any other order by this Court to the contrary, no borrowings, letters of credit, Cash Collateral, Collateral or the Carve Out may be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents or the Existing Agreements, or the liens or claims granted under this Order, the DIP Documents or the Existing Agreements, (b) assert any Claims or Defenses or causes of action against the Agent, the DIP Lenders, the Pre-Petition Agent or the Pre-Petition Secured Parties or their respective agents, affiliates, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the Agent's or the Pre-Petition Agent's assertion, enforcement or realization on the Cash Collateral or the Collateral in accordance with the DIP Documents, the Existing Agreements or this Order, (d) seek to modify any of the rights granted to the Agent, the DIP Lenders, the Pre-Petition Agent or the Pre-Petition Secured Parties hereunder or under the DIP Documents or the Existing Agreements, in each of the foregoing cases without such parties' prior written consent or (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are (i) approved by an Order of this Court, (ii) in accordance with the Approved 13-Week Cash Forecast (as defined in the DIP Credit Agreement) and (iii) permitted under the DIP Credit Agreement.

19. *JPMC as Administrative Agent.* To the extent JPMC, in its role as Administrative Agent under the Existing Agreements, is the secured party under any Security Documents (as defined in the Existing Agreements), listed as loss payee under

the Debtors' insurance policies as required under the Security Agreement or is the secured party under any other Existing Agreement, JPMC, in its role as Administrative Agent under the DIP Credit Agreement, is also deemed to be the secured party under such Security Documents, loss payee under the Debtors' insurance policies and the secured party under any other Existing Agreement and shall act in that capacity and distribute any proceeds recovered or received first, for the benefit of the DIP Lenders in accordance with the DIP Credit Agreement and second, subsequent to indefeasible payment in full of all DIP Obligations, for the benefit of the Pre-Petition Secured Parties under the Existing Agreements.

20. *Maintenance of Accounts.* The Debtors shall maintain all of their deposit, checking, concentration, operating, disbursement and other accounts with the Agent (or any Affiliate thereof) or another financial institution acceptable to the DIP Lenders in their sole discretion.

21. *Order Governs.* In the event of any inconsistency between the provisions of this Order and the DIP Documents, the provisions of this Order shall govern.

22. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of this Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Secured Parties, any Committee appointed in these Cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors) and shall inure to the benefit of the Agent, the DIP Lenders, the Pre-Petition Agent, the

Pre-Petition Secured Parties and the Debtors and their respective successors and assigns; *provided, however*, that the Agent and the DIP Lenders shall have no obligation to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. In determining to make any loan under the DIP Credit Agreement or in exercising any rights or remedies as and when permitted pursuant to this Order or the DIP Documents, the Agent and the DIP Lenders shall not be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute).

23. *Additional Debtors.* In the event any subsidiary of the Borrower that is not a Debtor on the date of this Order shall become a Debtor (an “**Additional Debtor**”), (i) such Additional Debtor shall automatically and without further action of the court become a “Debtor” for purposes of this Order and (ii) all provisions of this Order, including, without limitation, those pertaining to the liens and the priority of the Financing, shall automatically and without further action of the Court become applicable to such Additional Debtor and its pre- and post-petition property as a Debtor herein, and, to the extent such Additional Debtor has guaranteed the Financing or granted any liens securing the Financing, or has borrowed since the Borrower’s Petition Date any funds from the Borrower, all such Additional Debtor’s obligations in respect of such guaranty and such borrowings shall be deemed secured and shall have priority in respect of such

Additional Debtor as Debtor and its pre- and post-petition property identical to the liens and priorities applicable to the Financing. As used herein, the "Petition Date" with respect to any Additional Debtor shall be the date of the filing of such Additional Debtor's chapter 11 petition.

24. *Final Hearing.* The Final Hearing is scheduled for _____, 2004 at _____ .m. before this Court.

The Debtors shall promptly mail copies of this Order (which shall constitute adequate notice of Final Hearing) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court and to any Committee after the same has been appointed, or Committee counsel, if the same shall have been appointed. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections; which objections shall be served upon (a) Michael L. Hall, Esq., Burr & Forman LLP, 3100 SouthTrust Tower, 420 North 20th Street, Birmingham, Alabama 35203 attorneys for the Debtors; (b) Donald S. Bernstein, Esq., Davis Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017, attorneys for JPMC as Pre-Petition Agent and DIP Agent; (c) Charles L. Denaburg, Esq., Najjar Denaburg P.C., 2125 Morris Avenue, Birmingham, Alabama 35203, attorneys for JPMC as Pre-Petition Agent and DIP Agent; and (d) J. Thomas Corbett at the Office of the Bankruptcy Administrator for the United States Bankruptcy Court for the Northern District of Alabama, Southern Division; and shall be filed electronically with the Clerk of the United States Bankruptcy Court, Northern District of Alabama, Southern Division, in

each case to allow actual receipt by the foregoing no later than 3:00 p.m., prevailing Central time, five business days prior to the date of the Final Hearing.

Dated: _____, 2004

UNITED STATES BANKRUPTCY JUDGE

JPMorgan Chase Bank (“**JPMC**”), acting as Administrative Agent and Issuing Bank (in such capacities, the “**Agent**”), for itself and a syndicate of financial institutions (together with JPMC, the “**DIP Lenders**”) to be arranged by J.P. Morgan Securities Inc.;

(2) authorization for the Debtors to execute and enter into the DIP Documents and to perform such other and further acts as may be required in connection with the DIP Documents;

(3) the granting of adequate protection to the “Secured Parties” (as defined in the Pre-Petition Credit Agreement), including, without limitation, the lenders (in their capacities as such, the “**Pre-Petition Secured Lenders**”, and together with the other “Secured Parties”, in their capacities as such, the “**Pre-Petition Secured Parties**”) under or in connection with that certain Credit Agreement, dated as of November 30, 1999, as amended and restated as of December 15, 2003, (as heretofore amended, supplemented or otherwise modified, the “**Pre-Petition Credit Agreement**”), among the Borrower, the lenders party thereto and JPMC, as administrative agent for the Pre-Petition Secured Lenders (in its capacity as such, the “**Pre-Petition Agent**”), and that certain Security Agreement, dated as of November 30, 1999, as reaffirmed and amended as of December 15, 2003, between Borrower and JPMC as Administrative Agent (as heretofore amended, supplemented or otherwise modified, the “**Security Agreement**” and, collectively with the Pre-Petition Credit

Agreement, and the mortgages and all other documentation executed in connection therewith (including any Hedging Agreement as defined in the Pre-Petition Credit Agreement), the “**Existing Agreements**”), whose liens and security interests are being primed by the Financing;

(4) authorization for the Debtors to use cash collateral (as such term is defined in the Bankruptcy Code) in which the Pre-Petition Secured Parties have an interest, and the granting of adequate protection to the Pre-Petition Secured Parties with respect to, inter alia, such use of their cash collateral and all use and diminution in the value of the Pre-Petition Collateral (as defined below);

(5) the granting of superpriority claims to the DIP Lenders payable from, and having recourse to, all pre-petition and post-petition property of the Debtors’ estates (including any Avoidance Actions (as defined below)) and all proceeds thereof, subject to the Carve Out (as defined below);

(6) pursuant to Bankruptcy Rule 4001, that an interim hearing (the “**Interim Hearing**”) on the Motion be held before this Court to consider entry of the proposed interim order annexed to the Motion (the “**Interim Order**”) (a) authorizing the Borrower, on an interim basis, to forthwith borrow revolving loans or obtain letters of credit from the DIP Lenders under the DIP Documents up to an aggregate principal or face amount not to exceed \$25,000,000 (subject to any limitations of

borrowings under the DIP Documents), (b) authorizing the Debtors' use of cash collateral, and (c) granting the adequate protection described herein; and

(7) that this Court schedule a final hearing (the "**Final Hearing**") to be held within 30 days of the entry of the Interim Order to consider entry of a final order authorizing the balance of the borrowings and letter of credit issuances under the DIP Documents on a final basis, as set forth in the Motion and the DIP Documents filed with this Court; and

An Interim Hearing on the Motion having been held by this Court on _____, 2004 at which the Court (a) issued and entered the Interim Order authorizing the Borrower to borrow or obtain letters of credit up to an aggregate principal amount of \$25,000,000 of the Financing from the DIP Lenders as provided for in the Interim Order and (b) scheduled a Final Hearing to consider entry of an order authorizing the balance of the Financing, all as set forth in the Motion, the Interim Order and the loan documentation filed with this Court.

Due and appropriate notice of the Motion, the relief requested therein and the Final Hearing having been served by the Debtors on the Debtors' twenty largest unsecured creditors (on a consolidated basis), on the Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Secured Lenders, the Official Committee of Unsecured Creditors, any party that had filed a request for notices as of the date notice of the Final Hearing was provided and on the Office of the Bankruptcy Administrator for

the United States Bankruptcy Court for the Northern District of Alabama, Southern Division.

The Final Hearing having been held by this Court on _____, 2004.

Upon the record made by the Debtors at the Interim Hearing and the Final Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Jurisdiction.* This Court has core jurisdiction over the Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. *Notice.* Under the circumstances, the notice given by the Debtors of the Motion, the Interim Hearing and the Final Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (c).

3. *Debtors' Stipulations.* Without prejudice to the rights of any other party (but subject to the limitations thereon contained in paragraph 18 below), the Debtors admit, stipulate and agree that:

(a) (i) as of the filing of the Debtors' chapter 11 petitions (the "**Petition Date**"), the Borrower was indebted and liable to the Pre-Petition Secured Lenders, without defense, counterclaim or offset of any kind, in the aggregate principal amount of approximately \$310,000,000 in respect of loans made (including capitalized interest) and in the aggregate principal amount of approximately \$14,000,000 in respect of letters of credit issued (the "**Pre-Petition Letters of Credit**"), in each case, by the Pre-

Petition Secured Lenders or Issuing Bank thereunder pursuant to, and in accordance with the terms of, the Existing Agreements, plus, in each case, interest thereon and fees (including any attorneys', accountants', appraisers' and financial advisors' fees and expenses), charges and other obligations incurred in connection therewith as provided in the Existing Agreements (collectively, the "**Pre-Petition Debt**"), (ii) the Pre-Petition Debt constitutes the legal, valid and binding obligation of the Debtors, enforceable in accordance with its terms (subject to the stay of enforcement arising from section 362 of the Bankruptcy Code), (iii) no portion of the Pre-Petition Debt is subject to avoidance, recharacterization, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law and (iv) the Debtors do not have any claims, counterclaims, causes of action, defenses or setoff rights, whether arising under the Bankruptcy Code or otherwise, against the Pre-Petition Secured Parties, the Pre-Petition Agent and their respective affiliates, agents, officers, directors, employees and attorneys; and

(b) the liens and security interests granted to the Pre-Petition Agent pursuant to and in connection with the Existing Agreements (including, without limitation, all security agreements, pledge agreements, mortgages, deeds of trust and other security documents executed by any of the Debtors in favor of the Pre-Petition Agent, for its benefit and for the benefit of the Pre-Petition Secured Parties) in connection with the Existing Agreements, are (i) valid, binding, perfected, enforceable, first-priority liens and security interests in the personal and real property described in the Existing Agreements (the "**Pre-Petition Collateral**"), (ii) not subject to avoidance,

recharacterization or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law and (iii) subject and subordinate only to (A) the DIP Liens (as defined below), (B) the Senior Permitted Liens (as defined in the DIP Credit Agreement), (C) the Carve Out (as defined below) to which the DIP Liens are subject and (D) valid, perfected and unavoidable liens permitted under the Existing Agreements to the extent such permitted liens are senior to or pari passu with the liens of the Pre-Petition Agent on the Pre-Petition Collateral.

4. *Findings Regarding the Financing.*

(a) Good cause has been shown for the entry of this Final Order.

(b) The Debtors have an immediate need to obtain the Financing and use Cash Collateral (as defined below) 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 needs. The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral, incurrence of new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors.

(c) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit

allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Debtors granting to the Agent (for its benefit and for the benefit of the Secured Parties as defined in the DIP Credit Agreement (defined below), the “**DIP Secured Parties**”), subject to the Carve Out as provided for herein, the DIP Liens and the Superpriority Claims (as defined below) under the terms and conditions set forth in this Order and in the DIP Documents.

(d) The terms of the Financing and the use of Cash Collateral are fair and reasonable, reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(e) The Financing has been negotiated in good faith and at arm’s length among the Debtors, the Agent and the DIP Lenders, and all of the Debtors’ obligations and indebtedness arising under, in respect of or in connection with the Financing and the DIP Documents, including without limitation, (i) all loans made to, and all letters of credit issued for the account of, the Debtors pursuant to the Revolving Credit Agreement substantially in the form attached as Exhibit A to the Motion (the “**DIP Credit Agreement**”), and (ii) any “Obligations” (as defined in the DIP Credit Agreement), including credit extended in respect of overdrafts and related liabilities and other depository, treasury, and cash management services and other clearing services provided by JPMC or its affiliates (all of the foregoing in clauses (i) and (ii) collectively, the “**DIP Obligations**”), shall be deemed to have been extended by the Agent, the Issuing Bank, the DIP Lenders and their respective affiliates in good faith, as that term is used in

section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(f) The Debtors have requested entry of this Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent granting the relief sought by this Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the Financing and the use of Cash Collateral in accordance with this Order and the DIP Documents is therefore in the best interest of the Debtors' estates.

5. *Authorization of the Financing and the DIP Documents.*

(a) The Debtors are hereby authorized to enter into the DIP Documents. The Borrower is hereby authorized to borrow money and obtain letters of credit pursuant to the DIP Credit Agreement, and the Guarantors are hereby authorized to guaranty such borrowings and the Borrower's obligations with respect to such letters of credit, up to an aggregate principal or face amount (inclusive of amounts authorized by the Interim Order) of \$45,000,000 (plus interest, fees and other expenses and amounts provided for in the DIP Documents), in accordance with the terms of this Order and the DIP Documents, which shall be used for all purposes permitted under the DIP Documents, including, without limitation, to provide working capital for the Borrower and the Guarantors and to pay interest, fees and expenses in accordance with this Order and the DIP Documents. In addition to such loans and obligations, the Debtors are authorized to incur overdrafts and related liabilities arising from treasury, depository and

cash management services including any automated clearing house fund transfers provided to or for the benefit of the Debtors by JPMC or any of its affiliates; *provided, however*, that nothing herein shall require JPMC or any other party to incur overdrafts or to provide any such services or functions to the Debtors.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and to pay all fees, that may be reasonably required or necessary for the Debtors' performance of its obligations under the Financing, including, without limitation:

(i) the execution, delivery and performance of the Loan Documents (as defined in the DIP Credit Agreement) and any exhibits attached thereto, including, without limitation, the DIP Credit Agreement, the Guarantee Agreements, the Security Documents (each as defined in the DIP Credit Agreement) and any mortgages contemplated thereby (collectively, and together with the letter agreements referred to in clause (iii) below, the "**DIP Documents**"),

(ii) the execution, delivery and performance of one or more amendments to the DIP Credit Agreement for, among other things, the purpose of adding additional financial institutions as DIP Lenders and reallocating the commitments for the Financing among the DIP Lenders, in each case in such form as the Debtors, the Agent and the DIP Lenders may agree (it being understood that no further approval of the Court shall be required for amendments to the DIP Credit Agreement that do not shorten the

maturity of the extensions of credit thereunder or increase the commitments, the rate of interest or the letter of credit fees payable thereunder),

(iii) the non refundable payment to the Agent or the DIP

Lenders, as the case may be, of the fees referred to in the DIP Credit Agreement (and in any separate letter agreements between them in connection with the Financing) and reasonable costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained as provided for in the DIP Documents, and

(iv) the performance of all other acts required under or in

connection with the DIP Documents.

(c) Upon execution and delivery of the DIP Documents, the DIP

Documents shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with the terms of the DIP Documents.

No obligation, payment, transfer or grant of security under the DIP Documents or this Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, setoff, recoupment or counterclaim.

6. *Superpriority Claims.*

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the

DIP Obligations shall (i) constitute allowed claims against the Debtors with priority over any and all administrative expenses, diminution claims (including all Adequate

Protection Obligations (as defined below)) and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever (“**Superpriority Claims**”), including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment and (ii) be payable from and have recourse to all pre- and post-petition property of the Debtors and all proceeds thereof, subject only to the payment of the Carve Out to the extent specifically provided for herein.

(b) For purposes hereof, the “**Carve Out**” means (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the Bankruptcy Administrator under section 1930(a) of title 28 of the United States Code and (ii) after the occurrence and during the continuance of an Event of Default (as defined in the DIP Credit Agreement) an amount not exceeding \$1,500,000 in the aggregate, which amount may be used subject to the terms of this Order, including, without limitation, paragraph 18 hereof, to pay any fees or expenses incurred by the Debtors and any statutory committees appointed in the Cases (each, a “**Committee**”) in respect of (A) allowances of compensation for services rendered or reimbursement of expenses awarded by the Bankruptcy Court to the Debtors’ or any Committee’s professionals and (B) the reimbursement of expenses allowed by the Bankruptcy Court incurred by Committee members in the performance of their duties (but excluding fees and expenses of third

party professionals employed by such members) ((A) and (B) collectively, the “**Reimbursed Expenses**”); *provided, however*, (x) that the dollar limitation in this clause 6(b)(ii) on fees and disbursements shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to 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 Issuing Bank or any Lender or their respective attorneys and agents under the DIP Credit Agreement or otherwise, (y) that nothing herein shall be construed to impair the ability of any party to object to the allowance of any of the fees, expenses, reimbursement or compensation described in clauses (A) and (B) above, and (z) that cash or other amounts on deposit in the Letter of Credit Collateral Account (as defined in the DIP Credit Agreement), shall not be subject to the Carve Out. If any of the Reimbursed Expenses are paid out of the Carve Out, the claim of each reimbursed party against the Debtors shall survive and be deemed assigned to the Agent and the Pre-Petition Agent. The distributions payable from the estate in respect of such claims, as administrative expenses, shall be deemed to be Collateral and shall be paid to the DIP Secured Parties and the Pre-Petition Secured Parties in accordance with this Order.

7. *DIP Liens.*

As security for the DIP Obligations, effective and perfected upon the date of this Order and without the necessity of the execution, delivery or recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the

Agent of, or over, any Collateral (as defined below), the following security interests and liens are hereby granted to the Agent for its own benefit and the benefit of the DIP Secured Parties (all property identified in clauses (a), (b) and (c) below being collectively referred to as the “**Collateral**”), subject to (x) the Senior Permitted Liens and (y) only in the event of the occurrence and during the continuance of an Event of Default, the payment of the Carve Out (all such liens and security interests granted to the Agent, for its benefit and for the benefit of the DIP Secured Parties, pursuant to this Order and the DIP Documents, the “**DIP Liens**”):

(a) First Lien on Cash Balances and Unencumbered Property.

Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all pre- and post-petition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens (collectively, “**Unencumbered Property**”), including without limitation, all cash and cash collateral of the Debtors (whether maintained with the Agent or otherwise) and any investment of such cash and cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries, and the proceeds of all the foregoing. Unencumbered Property shall include the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code, or any other

avoidance actions under the Bankruptcy Code (collectively, “**Avoidance Actions**”) and any proceeds thereof.

(b) Liens Priming Pre-Petition Secured Lenders’ Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all pre- and post-petition property of the Debtors (including, without limitation, cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries, and the proceeds of all the foregoing), whether now existing or hereafter acquired, that is subject to the existing liens presently securing the Pre-Petition Debt (including in respect of issued but undrawn letters of credit). Such security interests and liens shall be senior in all respects to the interests in such property of the Pre-Petition Secured Parties arising from current and future liens of the Pre-Petition Secured Parties (including, without limitation, adequate protection liens granted hereunder), but shall not be senior to any valid, perfected and unavoidable interests of other parties arising out of liens, if any, on such property existing immediately prior to the Petition Date, or to any valid, perfected and unavoidable interests in such property arising out of liens to which the liens of the Pre-Petition Secured Parties become subject subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest in and lien upon all pre- and post-petition property of the Debtors (other than the property described in clauses (a) or (b) of this paragraph 7, as to which the liens and security interests in favor of the Agent will be as described in such clauses), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which security interests and liens in favor of the Agent are junior to such valid, perfected and unavoidable liens.

(d) Liens Senior to Certain Other Liens. The DIP Liens and the Adequate Protection Liens (as defined below) shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors.

8. *Protection of DIP Lenders' Rights.*

(a) So long as there are any borrowings or letters of credit or other amounts (other than contingent indemnity obligations as to which no claim has been asserted when all other amounts have been paid and no letters of credit are outstanding)

outstanding, or the DIP Lenders have any Revolving Commitment (as defined in the DIP Credit Agreement) under the DIP Credit Agreement, the Pre-Petition Agent and Pre-Petition Secured Parties shall (i) take no action to foreclose upon or recover in connection with the liens granted thereto pursuant to the Existing Agreements or this Order, or otherwise exercise remedies against any Collateral (including, without limitation, seeking relief from the automatic stay to take such action), except to the extent authorized by an order of this Court; (ii) be deemed to have consented to any release of Collateral authorized under the DIP Documents; and (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the Collateral unless (solely as to this clause (iii)) the DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to this Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Filing Date.

(b) The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the Agent and the DIP Lenders to exercise, (i) immediately upon the occurrence of an Event of Default, all rights and remedies under the DIP Documents other than those rights and remedies against the Collateral as provided in clause (ii) below and (ii) upon the occurrence and during the continuance of an Event of Default and the giving of five business days prior written notice, all rights and remedies against the Collateral provided for in the DIP Documents (including, without limitation, the right to setoff monies of the Debtors in

accounts maintained with the Agent or any DIP Lender). In any hearing regarding any exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing, and the Debtors and the Pre-Petition Secured Parties hereby waive their right to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the Agent or the DIP Lenders set forth in this Order or the DIP Documents. In no event shall the Agent, the DIP Lenders, the Pre-Petition Agent or the Pre-Petition Secured Lenders be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral.

9. *Limitation on Charging Expenses Against Collateral.* Except to the extent of the Carve Out, no expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the Agent or the Pre-Petition Agent, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the Agent, the DIP Lenders, the Pre-Petition Agent or the Pre-Petition Secured Lenders.

10. *The Cash Collateral.* To the extent any funds were on deposit with any Pre-Petition Secured Party as of the Petition Date, including, without limitation, all funds deposited in, or credited to, an account of any Debtor with any Pre-Petition Secured Party immediately prior to the filing of the Debtors’ bankruptcy petitions (the “**Petition Time**”)

(regardless of whether, as of the Petition Time, such funds had been collected or made available for withdrawal by any such Debtor), such funds (the “**Deposited Funds**”) are subject to rights of setoff. By virtue of such setoff rights, the Deposited Funds are subject to a lien in favor of such Pre-Petition Secured Parties pursuant to sections 506(a) and 553 of the Bankruptcy Code. The Pre-Petition Secured Lenders are obligated, to the extent provided in the Existing Agreements, to share the benefit of such liens and setoff rights with the other Pre-Petition Secured Lenders party to such Existing Agreements. Any proceeds of the Pre-Petition Collateral (including the Deposited Funds or any other funds on deposit at the Pre-Petition Secured Parties or at any other institution as of the Petition Date) are cash collateral of the Pre-Petition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code. The Deposited Funds and all proceeds of both Pre-Petition Collateral and Collateral are referred to herein as “**Cash Collateral.**”

11. *Use of Cash Collateral.* The Debtors are hereby authorized to use all Cash Collateral of the Pre-Petition Secured Lenders, and Pre-Petition Secured Lenders are directed promptly to turn over to the Debtors all Cash Collateral received or held by them, *provided* that the Pre-Petition Secured Lenders are granted adequate protection as hereinafter set forth. The Debtors’ right to use Cash Collateral shall terminate automatically on the Termination Date (as defined in the DIP Credit Agreement). In addition, if the Borrower voluntarily terminates the Revolving Commitment prior to the Revolving Maturity Date (as each such term is defined in the DIP Credit Agreement), the Debtors shall, for the benefit of the Pre-Petition Secured Parties, continue to comply with the requirements of Articles 5 and 6 of the DIP Credit Agreement and, upon any failure

by the Debtors to observe any such requirement or upon the occurrence of any event that would have constituted an Event of Default under the DIP Credit Agreement prior to the termination of the Commitment, the Pre-Petition Agent on behalf of the Pre-Petition Secured Parties shall have the immediate right unilaterally to terminate the Debtors' right to use Cash Collateral.

12. *Adequate Protection.* The Pre-Petition Secured Parties are entitled, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their interest in the Pre-Petition Collateral, including the Cash Collateral, for and equal in amount to the aggregate diminution in value of the Pre-Petition Secured Parties' Pre-Petition Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of Cash Collateral and any other Pre-Petition Collateral, the priming of the Pre-Petition Agent's security interests and liens in the Pre-Petition Collateral by the Agent and the DIP Lenders pursuant to the DIP Documents and this Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As adequate protection, the Pre-Petition Agent and the Pre-Petition Secured Parties are hereby granted the following (collectively, the "**Adequate Protection Obligations**"):

(a) Adequate Protection Liens. The Pre-Petition Agent (for itself and for the benefit of the Pre-Petition Secured Parties) is hereby granted (effective and perfected upon the date of this Order and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements) a replacement security interest in and lien upon all the Collateral,

subject and subordinate only to (i) the security interests and liens granted to the Agent for the benefit of the DIP Lenders in this Order and pursuant to the DIP Documents and any liens on the Collateral to which such liens so granted to the Agent are junior and (ii) the Carve Out (the “**Adequate Protection Liens**”);

(b) Section 507(b) Claim. The Pre-Petition Agent and the Pre-Petition Secured Parties are hereby granted, subject to the payment of the Carve Out, a superpriority claim as provided for in section 507(b) of the Bankruptcy Code, immediately junior to the claims under section 364(c)(1) of the Bankruptcy Code held by the Agent and the DIP Lenders; *provided, however*, that the Pre-Petition Agent and the Pre-Petition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the superpriority claims under section 507(b) of the Bankruptcy Code granted hereunder or under the Existing Agreements unless and until the DIP Obligations have indefeasibly been paid in cash in full;

(c) Interest, Fees and Expenses. (i) The Pre-Petition Agent shall receive from the Debtors (x) immediate cash payment in an amount equal to all accrued and unpaid interest on the Pre-Petition Debt (other than Supplemental Interest) and letter of credit fees at the non-default rates provided for in the Existing Agreements, and all other accrued and unpaid fees and disbursements (including, but not limited to, fees owed to the Pre-Petition Agent) owing to the Pre-Petition Agent under the Existing Agreements and incurred prior to the Petition Date, (y) current cash payments of all fees and expenses payable to the Pre-Petition Agent under the Existing Agreements, including, but not limited to, the reasonable fees and disbursements of counsel, financial and other

consultants for the Pre-Petition Agent and (z) on the first business day of each month, an amount equal to all accrued but unpaid interest on the Pre-Petition Debt (other than Supplemental Interest), and letter of credit and other fees at the non-default contract rate applicable on the Petition Date (including LIBOR pricing options) under the Existing Agreements, *provided* that (A) the Pre-Petition Secured Lenders reserve their rights to assert claims for the payment of post-petition interest calculated at any applicable rate of interest (including, without limitation, default rates), or on any other basis, provided for in the Existing Agreements and (B) other parties reserve their right to assert that the adequate protection payments made pursuant to this Order should be applied to the principal of, and not to post-petition interest on, the Pre-Petition Debt;

(ii) If any Debtor is obligated to pay to any Pre-Petition Secured Party any amount upon the termination of any Hedging Agreement (a “**Termination Amount**”), such Pre-Petition Secured Party shall receive from the relevant Debtor, on the first business day of each month, an amount equal to all accrued but unpaid interest on such Termination Amount at the rate such Pre-Petition Secured Party is entitled to pursuant to the terms of such Hedging Agreement.

(d) Monitoring of Collateral. Subject to the provisions of Section 9.12 of the Pre-Petition Credit Agreement, the Pre-Petition Secured Parties shall be permitted to retain expert consultants and financial advisors at the expense of the Debtors, which consultants and advisors shall be given reasonable access for purposes of monitoring the business of the Debtors and the value of the Collateral;

(e) Information. The Debtors shall provide the Pre-Petition Agent with any written financial information or periodic reporting that is provided to, or required to be provided to, the Agent or the DIP Lenders; and

(f) Payment from Proceeds of Collateral. The Debtors are authorized and directed to pay to the Pre-Petition Agent, for the benefit of the Pre-Petition Secured Parties, 100% of the Net Proceeds (as defined in the DIP Credit Agreement), in each case limited to the Net Proceeds that are not required to be paid in respect of the DIP Obligations.

(g) Termination of Hedging Agreements. JPMC shall be permitted to exercise its rights of termination with respect to any Hedging Agreement entered into between JPMC and any Debtor and its right of setoff (subject to the sharing provisions of the Pre-Petition Credit Agreement) pursuant to the Existing Agreements, to setoff any obligations owed by JPMC to such Debtor upon such termination in accordance with the provisions thereof against an equal amount of Pre-Petition Obligations owed by such Debtor to JPMC pursuant to the Existing Agreements and as a result of such setoff the Pre-Petition Obligations then outstanding would be reduced by such amount on a dollar for dollar basis, and the automatic stay is hereby modified and vacated to the extent necessary to permit such setoff.

13. *Reservation of Rights of Pre-Petition Secured Lenders*. Under the circumstances and given that the above described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Pre-

Petition Secured Parties. However, the Pre-Petition Agent and the Pre-Petition Secured Parties may request further or different adequate protection, and the Debtors or any other party may contest any such request. Except as expressly provided herein, nothing contained in this Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to the Pre-Petition Agent, any Pre-Petition Secured Party, the Agent or any DIP Lender including, without limitation, rights of a party to a swap agreement, securities contract, commodity contract, forward contract or repurchase agreement with a Debtor to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtor to contest such assertion).

14. *Pre-Petition Secured Parties Obligations.* In consideration of the benefits afforded to them pursuant to this Order, with respect to any Pre-Petition Letters of Credit, notwithstanding any provision to the contrary in the Pre-Petition Credit Agreement:

(i) the Issuing Bank under the Pre-Petition Credit Agreement (the “**Pre-Petition Issuing Bank**”) is hereby authorized (but not required) and permitted to extend, renew, amend or replace any Pre-Petition Letter of Credit with a new letter of credit issued to the same beneficiary, with an expiration date no later than March 31, 2006 and in an amount no greater than the applicable Pre-Petition Letter of Credit (such extended, renewed, amended or replacement Pre-Petition Letter of Credit, a “**New Pre-Petition Letter of Credit**”) and such New Pre-Petition Letter of Credit shall be deemed to constitute a Letter of Credit issued under the Pre-

Petition Credit Agreement, with each existing Revolving Lender under the Pre-Petition Credit Agreement (a “**Pre-Petition Revolving Lender**”) holding the same participation in such New Pre-Petition Letter of Credit as it had held in the applicable Pre-Petition Letter of Credit;

(ii) such Pre-Petition Revolving Lender shall be obligated to reimburse the Pre-Petition Issuing Bank for any payment made on any New Pre-Petition Letter of Credit and any other amounts due in respect thereof under the Pre-Petition Credit Agreement on the same terms as contained in the Pre-Petition Credit Agreement for the Pre-Petition Letters of Credit;

(iii) any claims (as defined in the Bankruptcy Code) that the Pre-Petition Issuing Bank or any Pre-Petition Revolving Lender may have against any Debtor in respect of any New Pre-Petition Letter of Credit (including for the reimbursement of any payment made on such New Pre-Petition Letter of Credit) shall constitute Pre-Petition Obligations, entitled to treatment as pre-petition claims, pari passu with the Loans outstanding under the Pre-Petition Credit Agreement, and as such shall be entitled to the adequate protection as provided herein.

(iv) The Borrower shall retire or replace all New Pre-Petition Letters of Credit on or prior to the effective date of any plan of reorganization.

15. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) Subject to the provisions of paragraph 8(a) above, the Agent, the DIP Lenders, the Pre-Petition Agent and the Pre-Petition Secured Parties are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the Agent on behalf of the DIP Lenders or the Pre-Petition Agent on behalf of the Pre-Petition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge dispute or subordination, at the time and on the date of entry of the Interim Order. Upon the request of the Agent, each of the Pre-Petition Agent and Pre-Petition Secured Parties, without any further consent of any party, is authorized to take, execute, deliver and file such instruments (in each case without representation or warranty of any kind) to enable the Agent to further validate, perfect, preserve and enforce DIP Liens.

(b) A certified copy of this Order may, in the discretion of the Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing

offices are hereby authorized to accept such certified copy of this Order for filing and recording.

(c) Any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other post-petition collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the transactions granting post-petition liens, in such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Lenders in accordance with the terms of the DIP Credit Agreement or this Order.

16. *Preservation of Rights Granted Under the Order.*

(a) No claim or lien having a priority superior to or *pari passu* with those granted by this Order to the Agent and the DIP Lenders or to the Pre-Petition Agent and the Pre-Petition Secured Parties, respectively, shall be granted or allowed while any portion of the Financing (or any refinancing thereof) or the Revolving Commitments or any letters of credit thereunder or the DIP Obligations or the Adequate Protection Obligations remain outstanding, and the DIP Liens and the Adequate Protection Liens shall not be (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy

Code or (ii) subordinated to or made pari passu with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise.

(b) Unless all DIP Obligations shall have been paid in full (and, with respect to outstanding letters of credit issued pursuant to the DIP Credit Agreement, cash collateralized in accordance with the provisions of the DIP Credit Agreement) and the Adequate Protection Obligations shall have been paid in full, the Debtors shall not seek, and it shall constitute an Event of Default and a termination of the right to use Cash Collateral if any of the Debtors seek, or if there is entered, (i) any modifications or extensions of this Order without the prior written consent of the Agent, and no such consent shall be implied by any other action, inaction or acquiescence by the Agent, or (ii) an order converting or dismissing any of the Cases. If an order dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (i) the Superpriority Claims, priming liens, security interests and replacement security interests granted to the Agent and, as applicable, the Pre-Petition Agent pursuant to this Order shall continue in full force and effect and shall maintain their priorities as provided in this Order until all DIP Obligations and Adequate Protection Obligations shall have been paid and satisfied in full (and that such Superpriority Claims, priming liens and replacement security interests, shall, notwithstanding such dismissal, remain binding on all parties in interest) and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in (i) above.

(c) If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect (i) the validity of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the Agent or Pre-Petition Agent, as applicable, of the effective date of such reversal, stay, modification or vacation or (ii) the validity or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Credit Agreement with respect to any DIP Obligations or Adequate Protection Obligations. Notwithstanding any such reversal, stay, modification or vacation, any use of Cash Collateral, or DIP Obligations or Adequate Protection Obligations incurred by the Debtors to the Agent, the DIP Lenders, the Pre-Petition Agent or the Pre-Petition Secured Parties prior to the actual receipt of written notice by the Agent and Pre-Petition Agent of the effective date of such reversal, stay, modification or vacation shall be governed in all respects by the original provisions of this Order, and the Agent, DIP Lenders, Pre-Petition Agent and Pre-Petition Secured Lenders shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Order and pursuant to the DIP Documents with respect to all uses of Cash Collateral, DIP Obligations and Adequate Protection Obligations.

(d) Except as expressly provided in this Order or in the DIP Documents, the DIP Liens, the Superpriority Claims and all other rights and remedies of the Agent and the DIP Lenders granted by the provisions of this Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any of

the Cases, terminating the joint administration of these Cases or by any other act or omission, or (ii) the entry of an order confirming a plan of reorganization in any of the Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations. The terms and provisions of this Order and the DIP Documents shall continue in these Cases, in any successor cases if these Cases cease to be jointly administered, or in any superceding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Superpriority Claims and all other rights and remedies of the Agent and the DIP Lenders granted by the provisions of this Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full.

17. *Effect of Stipulations on Third Parties.* The stipulations and admissions contained in this Order, including, without limitation, in paragraph 3 of this Order, shall be binding upon the Debtors in all circumstances. The stipulations and admissions contained in this Order, including, without limitation, in paragraph 3 of this Order, shall be binding upon all other parties in interest, including, without limitation, any Committee, unless (a) a party in interest has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in paragraph 18) by no later than the date that is 60 days after the initial selection of counsel by the Official Committee of Unsecured Creditors (the “**Creditors’ Committee**”) in the Cases (or such later date (x) as has been agreed to, in writing, by the Pre-Petition Agent in its sole discretion or (y) as has been ordered by the Court) (i) challenging the validity, enforceability, priority or extent of the Pre-Petition Debt or the Pre-Petition Agent’s or

the Pre-Petition Secured Parties' liens on the Pre-Petition Collateral or (ii) otherwise asserting or prosecuting any action for preferences, fraudulent conveyances, other avoidance power claims or any other any claims, counterclaims or causes of action , objections, contests or defenses (collectively, "**Claims and Defenses**") against the Pre-Petition Agent or any of the Pre-Petition Secured Parties or their affiliates, representatives, attorneys or advisors in connection with matters related to the Existing Agreements, the Pre-Petition Debt, the Pre-Petition Collateral, and (b) there is a final order in favor of the plaintiff sustaining any such challenge or claim in any such timely filed adversary proceeding or contested matter, *provided* that, as to the Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished as of the Petition Date. If no such adversary proceeding or contested matter is timely filed, (x) the Pre-Petition Debt and all related obligations of the Debtors (the "**Pre-Petition Obligations**") shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in the Cases and any subsequent chapter 7 cases, (y) the Pre-Petition Agent's and the Pre-Petition Secured Parties' liens on the Pre-Petition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding and perfected, not subject to recharacterization, subordination or avoidance and (z) the Pre-Petition Obligations, the Pre-Petition Agent's and the Pre-Petition Secured Parties' liens on the Pre-Petition Collateral and the Pre-Petition Agent and the Pre-Petition Secured Parties shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 or 11

trustee appointed or elected for any of the Debtors). If any such adversary proceeding or contested matter is timely filed, the stipulations and admissions contained in paragraph 3 of this Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any official committee (including the Creditors' Committee) and on any other person or entity, except to the extent that such findings and admissions were expressly challenged in such adversary proceeding or contested matter. Nothing in this Order vests or confers on any Person (as defined in the Bankruptcy Code), including any Committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, Claims and Defenses with respect to the Existing Agreements or the Pre-Petition Obligations.

18. *Limitation on Use of Financing Proceeds and Collateral.*

Notwithstanding anything herein or in any other order by this Court to the contrary, no borrowings, letters of credit, Cash Collateral, Collateral or the Carve Out may be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents or the Existing Agreements, or the liens or claims granted under this Order, the DIP Documents or the Existing Agreements, (b) assert any Claims or Defenses or causes of action against the Agent, the DIP Lenders, the Pre-Petition Agent or the Pre-Petition Secured Parties or their respective agents, affiliates, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the Agent's or the Pre-Petition Agent's assertion, enforcement or realization on the Cash Collateral or the Collateral in accordance with the DIP Documents, the Existing Agreements or this Order, (d) seek to modify any of the rights

granted to the Agent, the DIP Lenders, the Pre-Petition Agent or the Pre-Petition Secured Parties hereunder or under the DIP Documents or the Existing Agreements, in each of the foregoing cases without such parties' prior written consent or (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are (i) approved by an Order of this Court, (ii) in accordance with the Approved 13-Week Cash Forecast (as defined in the DIP Credit Agreement) and (iii) permitted under the DIP Credit Agreement.

19. *JPMC as Administrative Agent.* To the extent JPMC, in its role as Administrative Agent under the Existing Agreements, is the secured party under any Security Documents (as defined in the Existing Agreements), listed as loss payee under the Debtors' insurance policies as required under the Security Agreement or is the secured party under any other Existing Agreement, JPMC, in its role as Administrative Agent under the DIP Credit Agreement, is also deemed to be the secured party under such Security Documents, loss payee under the Debtors' insurance policies and the secured party under any other Existing Agreement and shall act in that capacity and distribute any proceeds recovered or received first, for the benefit of the DIP Lenders in accordance with the DIP Credit Agreement and second, subsequent to indefeasible payment in full of all DIP Obligations, for the benefit of the Pre-Petition Secured Parties under the Existing Agreements.

20. *Maintenance of Accounts.* The Debtors shall maintain all of their deposit, checking, concentration, operating, disbursement and other accounts with the Agent (or

any Affiliate thereof) or another financial institution acceptable to the DIP Lenders in their sole discretion.

21. *Order Governs.* In the event of any inconsistency between the provisions of this Order and the DIP Documents, the provisions of this Order shall govern.

22. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of this Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Secured Parties, any Committee appointed in these Cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors) and shall inure to the benefit of the Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Secured Parties and the Debtors and their respective successors and assigns; *provided, however,* that the Agent and the DIP Lenders shall have no obligation to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. In determining to make any loan under the DIP Credit Agreement or in exercising any rights or remedies as and when permitted pursuant to this Order or the DIP Documents, the Agent and the DIP Lenders shall not be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute).

23. *Additional Debtors.* In the event any subsidiary of the Borrower that is not a Debtor on the date of this Order shall become a Debtor (an “**Additional Debtor**”), (i) such Additional Debtor shall automatically and without further action of the court become a “Debtor” for purposes of this Order and (ii) all provisions of this Order, including, without limitation, those pertaining to the liens and the priority of the Financing, shall automatically and without further action of the Court become applicable to such Additional Debtor and its pre- and post-petition property as a Debtor herein, and, to the extent such Additional Debtor has guaranteed the Financing or granted any liens securing the Financing, or has borrowed since the Borrower’s Petition Date any funds from the Borrower, all such Additional Debtor’s obligations in respect of such guaranty and such borrowings shall be deemed secured and shall have priority in respect of such Additional Debtor as Debtor and its pre- and post-petition property identical to the liens and priorities applicable to the Financing. As used herein, the “Petition Date” with respect to any Additional Debtor shall be the date of the filing of such Additional Debtor’s chapter 11 petition.

Dated: _____, 2004

UNITED STATES BANKRUPTCY JUDGE

REVOLVING CREDIT AGREEMENT

dated as of

September __, 2004

among

CITATION CORPORATION,

The Financial Institutions Party Hereto

and

JPMORGAN CHASE BANK,
as Issuing Bank and Administrative Agent

WACHOVIA BANK, NA,
Documentation Agent

J.P. MORGAN SECURITIES INC.,
Lead Arranger and Bookrunner

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REVOLVING CREDIT AGREEMENT dated as of September __, 2004, among CITATION CORPORATION, a Delaware corporation (the "Borrower"), a debtor and debtor-in-possession in a case pending under chapter 11 of the Bankruptcy Code, the financial institutions from time to time party hereto (collectively, the "Lenders") and JPMORGAN CHASE BANK, as the Issuing Bank and Administrative Agent (each as defined below).

INTRODUCTORY STATEMENT

On September __, 2004 (the "Petition Date"), the Loan Parties filed voluntary petitions with the Bankruptcy Court initiating cases under chapter 11 of the Bankruptcy Code (each, a "Case" and, collectively, the "Cases"), and the Loan Parties have continued in the possession of their assets and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

The Borrower has requested that the Lenders, the Issuing Bank and the Administrative Agent enter into this Revolving Credit Agreement (as amended, modified, supplemented or restated from time to time in accordance with the terms hereof, this "Agreement") to provide a revolving credit and letter of credit facility in an aggregate principal amount not to exceed \$45,000,000, all of the Borrower's obligations under which are to be guaranteed by Holdings and all of the other Loan Parties and secured as provided in the Interim Order (or the Final Order, when applicable), herein and in the Security Documents.

The proceeds of the Loans and Letters of Credit will be used only as described in Section 5.11 and in compliance with the other provisions hereof.

Accordingly, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

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

"ABR", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"Account" means any right to payment for goods sold or leased or for services rendered, whether or not earned by performance.

“Account Debtor” means, with respect to any Account, the account debtor with respect thereto.

“Adjusted LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“Administrative Agent” means JPMorgan Chase Bank, in its capacity as administrative agent for the Lenders hereunder and under the other Loan Documents.

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

“Advisor” has the meaning assigned to such term in Section 5.15(a).

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

“Agents” means the Administrative Agent, the Documentation Agent and the Lead Arranger and, for purposes of Article 8, the Issuing Bank.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Base CD Rate in effect on such day plus 1% and (c) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Base CD Rate or the Federal Funds Effective Rate shall be effective from and including the effective date of such change in the Prime Rate, the Base CD Rate or the Federal Funds Effective Rate, respectively.

“Applicable Percentage” means, with respect to any Revolving Lender, the percentage of the total Revolving Commitments represented by such Lender’s Revolving Commitment. If the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Revolving Commitments most recently in effect, giving effect to any assignments.

“Applicable Rate” means, for any day (a) with respect to any Revolving Loan, 2% per annum, in the case of an ABR Loan, or 3% per annum, in the case of a Eurodollar Loan and (b) with respect to the commitment fees payable hereunder, 0.25% per annum.

“Approved 13-Week Cash Forecast” has the meaning assigned to such term in Section 5.01(l).

“Assessment Rate” means, for any day, the annual assessment rate in effect on such day that is payable by a member of the Bank Insurance Fund classified as “well-capitalized” and within supervisory subgroup “B” (or a comparable successor risk classification) within the meaning of 12 C.F.R. Part 327 (or any successor provision) to the Federal Deposit Insurance Corporation for insurance by such Corporation of time deposits made in Dollars at the offices of such member in the United States; *provided* that if, as a result of any change in any law, rule or regulation, it is no longer possible to determine the Assessment Rate as aforesaid, then the Assessment Rate shall be such annual rate as shall be reasonably determined by the Administrative Agent to be representative of the cost of such insurance to the Lenders.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

“Available Amount” means, at any time, the least of (i) the difference between the Borrowing Base in effect at such time and the Availability Block at such time, (ii) until the Final Order Closing Date, \$25,000,000, and from and after the Final Order Closing Date, \$45,000,000, and (iii) the aggregate amount of the Revolving Commitments at such time.

“Availability Block” means an amount equal to \$10,000,000 as such amount may be modified by the Administrative Agent from time to time in its reasonable discretion in accordance with its customary credit policies; *provided* that no such modification shall have the effect of increasing the availability under the Borrowing Base unless consented to by the Required Lenders.

“Bankruptcy Code” means The Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and codified as 11 U.S.C. ' 101, *et seq.*

“Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of Alabama or any other court having jurisdiction over the Cases from time to time.

“Base CD Rate” means the sum of (a) the Three-Month Secondary CD Rate multiplied by the Statutory Reserve Rate plus (b) the Assessment Rate.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” has the meaning assigned to such term in the Introductory Statement.

“Borrowing” means (a) Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect, or (b) a Swingline Loan.

“Borrowing Base” means, at any date, an amount equal to 80% of Eligible Receivables, as set forth in the Borrowing Base Certificate most recently delivered on or prior to such date pursuant to Sections 4.01(j) or 5.01(f), minus the amount set forth in clause (ii) of the definition of the term “Carve Out”. The Borrowing Base and any component thereof is subject to modification and adjustment as specified in Section 5.09(b).

“Borrowing Base Certificate” means a certificate substantially in the form of Exhibit H (with such changes therein as may be reasonably required by the Administrative Agent to reflect the components of and reserves against the Borrowing Base as provided for hereunder from time to time), executed and certified as accurate and complete by a Financial Officer which shall include appropriate exhibits, schedules, supporting documentation and additional reports as (i) outlined in Schedule 1 to Exhibit H, (ii) reasonably requested by the Administrative Agent and (iii) provided for in Section 5.09(b).

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; *provided* that, when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“Camden Sale” means the sale by Citation Camden Casting Center, Inc., a Tennessee corporation, of real property located in the City of Camden, County of Benton, Tennessee, pursuant to a Purchase and Sale Agreement, substantially in the form provided to the Administrative Agent on September 9, 2004 and in no event with any change that could materially adversely affect any Loan Party or any Subsidiary.

“Capital Expenditures” means, for any period, (a) the additions to property, plant and equipment and other capital expenditures of the Borrower and its consolidated Subsidiaries that are (or would be) set forth in a consolidated statement of cash flows of the Borrower for such period prepared in accordance with GAAP and (b) Capital Lease Obligations incurred by the Borrower and its consolidated Subsidiaries during such period.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement

conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Carve Out” means (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the Bankruptcy Administrator under Section 1930(a) of title 28 of the United States Code and (ii) after the occurrence and during the continuance of an Event of Default, an amount not exceeding \$1,500,000 in the aggregate, which amount may be used, subject to the terms of the Order then in effect, to pay fees or expenses incurred by any Loan Parties and any Committee in respect of (A) allowances of compensation for services rendered or reimbursement of expenses awarded by the Bankruptcy Court to the Loan Parties’ or any Committee’s professionals and (B) the reimbursement of expenses allowed by the Bankruptcy Court, incurred by Committee members in the performance of their duties (but excluding fees and expenses of third-party professionals employed by such members); *provided, however*, that such dollar limitation on fees and disbursements shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to the occurrence of an Event of Default in respect of which the Carve Out is invoked or any fees, expenses, indemnities or other amounts paid to any Agent, the Issuing Bank or any Lender or their respective attorneys and agents under this Agreement or otherwise; and *provided further* that nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clauses (A) and (B) above.

“Cases” has the meaning assigned to such term in the Introductory Statement.

“Cash Management Liabilities” means all Post-Petition overdrafts and all other payment or performance obligations and related liabilities of the Loan Parties, now or hereafter existing, arising in connection with any deposit, checking, concentration, operating, disbursement or other accounts or from any treasury, depository or cash management services or in connection with any automated clearing house fund transfers provided to or for the benefit of any Loan Party by JPMorgan Chase Bank or any of its Affiliates.

“Change in Control” means (a) the Permitted Holders in the aggregate cease to be the “beneficial owners” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) as presently in effect), directly or indirectly, of a majority of the total ordinary voting power of the capital stock of Holdings, whether as a result of the issuance of securities of Holdings, any merger, consolidation, liquidation or dissolution of

Holdings, any direct or indirect transfer of securities or otherwise, (b) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), other than one or more Permitted Holders, is or becomes the beneficial owner (as defined in clause (a) above), directly or indirectly, of more than 30% of the total ordinary voting power of the capital stock of Holdings, unless the Permitted Holders “beneficially own” (as defined in clause (a) above), directly or indirectly, in the aggregate a greater percentage of the total ordinary voting power of the capital stock of Holdings than such other person, (c) occupation of a majority of the seats on the board of directors of Holdings by persons whose nomination for election by the stockholders of Holdings was not approved by either (i) a majority of the Permitted Holders or (ii) a vote of a majority of the directors of Holdings whose election or nomination for election was previously so approved, (d) the occurrence of a “Change of Control” as defined in the Holdings Notes Documents, (e) the Borrower ceases to be a direct, wholly owned subsidiary of Holdings, (f) Holdings shall engage in any business or activity other than the ownership of the capital stock of the Borrower and the Related Activities or (g) the occurrence of an event of default or similar event with respect to any Holdings Notes or other Indebtedness of Holdings if, as a result thereof, the holders of the Holdings Notes or such other Indebtedness or any trustee or agent on their behalf has the right to exercise voting rights or other control over the equity interests of the Borrower. For purposes of clauses (a) and (b) of the immediately preceding sentence, the Permitted Holders shall be deemed to beneficially own any voting stock of a corporation (the “specified corporation”) held by any other corporation (the “parent corporation”) so long as the Permitted Holders beneficially own, directly or indirectly, in the aggregate a majority of the voting power of the voting stock of the parent corporation.

“Change in Law” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.14(b), by any lending office of such Lender or by such Lender’s or the Issuing Bank’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Swingline Loans.

“Collateral” means any and all “Collateral”, as defined in any Security Document.

“Committee” means any statutory committee appointed in the Cases.

“Commitment Fee” has the meaning assigned to such term in Section 2.11(a).

“Consolidated EBITDA” means, for any period, Consolidated Net Income for such period, plus (a) without duplication and to the extent deducted from revenues in determining Consolidated Net Income for such period, the sum of (i) the aggregate amount of consolidated interest expense of the Borrower and its Subsidiaries for such period, (ii) the aggregate amount of letter of credit fees paid during such period, (iii) the aggregate amount of consolidated income tax expense for such period, (iv) all amounts attributable to depreciation and amortization for such period, (v) all adjustments resulting from foreign currency translations during such period, (vi) all extraordinary or non-recurring charges (including charges directly as a consequence of the Cases) during such period, and (vii) all other non-cash charges during such period, minus (b) without duplication and to the extent added to revenues in determining Consolidated Net Income for such period, the sum of (i) all extraordinary or non-recurring gains during such period, (ii) the aggregate amount of income tax benefit for such period and (iii) all other non-cash gains during such period, all as determined on a consolidated basis with respect to the Borrower and the Subsidiaries in accordance with GAAP.

“Consolidated Net Income” means, for any period, the net income or loss of the Borrower and the Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; *provided* that there shall be excluded from such net income or loss (a) the Borrower’s equity in the income of any Person (other than the Borrower) in which any other Person (other than the Borrower or any Subsidiary or any director holding qualifying shares in compliance with applicable law) owns an Equity Interest to the extent dividends or other distributions by such Person of such income are prohibited during such period, (b) the income or loss of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or any Subsidiary or the date that such Person’s assets are acquired by the Borrower or any Subsidiary and (c) the income or loss of any Person (other than the Borrower or a Subsidiary) in which the Borrower or a Subsidiary holds an Equity Interest that is accounted for by the equity method of accounting, except that the Borrower’s equity in the net income (but not loss) of any such Person for such period shall be included up to the aggregate amount actually distributed by such Person during such period to the Borrower or a Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to a Subsidiary, to any applicable limitations under clause (a) above).

“Consummation Date” means the date of the substantial consummation (as defined in Section 1101(2) of the Bankruptcy Code and which, for purposes of this Agreement, shall be no later than the effective date) of a Reorganization Plan of any Loan Party that is confirmed pursuant to an order of the Bankruptcy Court in the Cases.

“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.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Disclosed Matters” means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06.

“Documentation Agent” means Wachovia Bank, NA, in its capacity as documentation agent hereunder.

“Dollars” or “\$” refers to lawful money of the United States of America.

“Effective Date” means the date on which the conditions specified in Section 4.01 of this Agreement are satisfied (or waived in accordance with Section 9.02).

“Eligible Receivable” means, at the time of any determination thereof, each Account that satisfies the following criteria at the time of creation and continues to meet the same at the time of such determination: such Account (i) has been invoiced to, and represents the bona fide amounts due to the Borrower or a Subsidiary Loan Party from, the purchaser of goods or services, in each case originated in the ordinary course of business of the Borrower or a Subsidiary Loan Party and (ii) is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (u) below or otherwise deemed by the Administrative Agent in its reasonable discretion to be ineligible for inclusion in the calculation of the Borrowing Base as described below. Without limiting the foregoing, to qualify as an Eligible Receivable, an Account shall indicate no person other than the Borrower or a Subsidiary Loan Party as payee or remittance party. In determining the amount to be so included, the face amount of an Account shall be reduced by, without duplication, to the extent not reflected in such face amount, (A) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that the Borrower or a Subsidiary Loan Party, as applicable, may be obligated to rebate to a customer pursuant to the terms of any agreement or understanding (written or oral)), (B) without duplication, the aggregate amount of all limits and deductions provided for in this definition and elsewhere in this Agreement and (C) the aggregate amount of all cash received in respect of such Account but not yet applied by the Borrower or a Subsidiary Loan Party to reduce the amount of such Account. Subject to the last sentence of Section 5.09(b)(i), standards of eligibility

may be fixed from time to time solely by the Administrative Agent in the exercise of its reasonable judgment, with any changes in such standards to be effective three days after delivery of notice thereof to the Borrower. Unless otherwise approved from time to time in writing by the Administrative Agent, no Account shall be an Eligible Receivable if, without duplication:

(a) the Borrower or a Subsidiary Loan Party, as applicable, does not have sole lawful and absolute title to such Account; or

(b) such Account has been (i) unpaid for more than (x) if such Account was due within 60 days of the original invoice date, 120 days after such original invoice date, and otherwise, 90 days after such original invoice date, or (y) 60 days from the original due date or (ii) written off the books of the Borrower or a Subsidiary Loan Party, as applicable, or otherwise designated on such books as uncollectible; or

(c) more than 50% in face amount of all Accounts of the same Account Debtor are ineligible pursuant to clause (b) above; or

(d) the Account Debtor is insolvent or the subject of any bankruptcy case or insolvency proceeding of any kind (other than post petition Accounts of an account debtor that is a debtor-in-possession under the Bankruptcy Code and reasonably acceptable to the Administrative Agent), or

(e) (i) such Account is not payable in Dollars or (ii) the Account Debtor is not either (x) organized under the laws of the United States or Canada, any state or other political subdivision thereof, or the District of Columbia or (y) located outside of or has its principal place of business or substantially all of its assets outside of the United States or Canada, except, in the case of either clause (i) or (ii) above, to the extent such Account is supported by an irrevocable letter of credit satisfactory to the Administrative Agent (as to form, substance and issuer) and assigned to and directly drawable by the Administrative Agent; or

(f) the Account Debtor is (i) the United States or (ii) Canada, or in each case any department, agency or instrumentality thereof, unless, in the case of clause (i), the Borrower or applicable Subsidiary Loan Party duly assigns its rights to payment of such Account to the Administrative Agent pursuant to the Assignment of Claims Act of 1940, as amended, which assignment and related documents and filings shall be in form and substance satisfactory to the Administrative Agent; or

(g) such Account is subject to any adverse security deposit, progress payment, retainage or other similar advance made by or for the

benefit of the applicable Account Debtor, in each case to the extent thereof; or

(h) such Account (i) is not subject to a valid and perfected first priority Transaction Lien, subject to no other Liens other than Liens expressly permitted by Section 6.02 or (ii) does not otherwise conform in all material respects to the representations and warranties contained in the Loan Documents relating to Accounts; or

(i) such Account was invoiced (i) in advance of goods or services provided or (ii) twice or more or (iii) the associated income has not been earned; or

(j) such Account is a non-trade Account (which includes, but is not limited to, tooling or pattern receivables) or relates to payments for interest; or

(k) the sale to the Account Debtor was (i) on a bill-and-hold, guarantee sale, sale-and-return, ship-and-return, sale on approval, extended terms or consignment or other similar basis or (ii) made pursuant to any other agreement providing for repurchases or return of any merchandise which has been claimed to be defective or otherwise unsatisfactory; or

(l) the goods giving rise to such Account have not been shipped and title has not been transferred to the Account Debtor, or the Account represents a progress-billing or otherwise does not represent a complete sale; for purposes hereof, "progress-billing" means any invoice for goods sold or leased or services rendered under a contract or agreement pursuant to which the Account Debtor's obligation to pay such invoice is conditioned upon completion by the Borrower or applicable Subsidiary Loan Party of any further performance under the contract or agreement; or

(m) such Account arises out of a sale made by the Borrower or applicable Subsidiary Loan Party to an employee, officer, agent, director, stockholder, Subsidiary or Affiliate of the Borrower or such Subsidiary Loan Party; or

(n) such Account is (i) an Account for which the Borrower or applicable Subsidiary Loan Party created a new receivable for the unpaid portion of a previously unpaid Account or (ii) an Account constituting chargebacks, debit memos and other adjustments for unauthorized deductions; or

(o) the Account Debtor (i) is a creditor of any Loan Party, (ii) has or has asserted a right of set-off against the Borrower or applicable Subsidiary Loan Party (unless such Account Debtor has entered into a written agreement reasonably acceptable to the Administrative Agent to waive such set-off rights) or (iii) has disputed its liability (whether by chargeback or otherwise) or made any asserted or unasserted claim with respect to the Account or any other Account of the Borrower or applicable Subsidiary Loan Party which has not been resolved, in the case of each of clauses (i), (ii) and (iii), without duplication, to the extent of the amount owed by the Borrower or applicable Subsidiary Loan Party to the Account Debtor, the amount of such actual or asserted right of set-off or the amount of such dispute or claim, as the case may be; or

(p) such Account does not comply in all material respects with the requirements of all applicable laws and regulations, whether Federal, state or local and whether United States or Canadian or otherwise, including without limitation the Federal Consumer Credit Protection Act, the Federal Truth in Lending Act and Regulation Z of the Board; or

(q) as to all or any part of such Account, a check, promissory note, draft, trade acceptance or other Instrument for the payment of money has been received, presented for payment and returned uncollected for any reason; or

(r) such Account is for goods that have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (written or oral) that indicates that any Person other than the Borrower or the applicable Subsidiary Loan Party has or has had or has purported to have or have had an ownership interest in such goods; or

(s) such Account is an extended terms account, which is due and payable more than 120 days from the original date of invoice; or

(t) such Account is created on cash on delivery terms; or

(u) such Account is subject to any applicable Returns Reserve but solely to the extent of such Returns Reserve.

Notwithstanding the foregoing, if the aggregate amount of Accounts of any single Account Debtor and its Affiliates at any time exceeds (i) 25% in the case of Accounts where the Account Debtor is TRW Automotive Holdings Corp. (“TRW”) and TRW’s senior unsecured long-term debt securities without third party credit enhancement are rated BB or higher by S&P with a “stable” outlook, (ii) 20% in the case of Accounts where the Account Debtor’s senior unsecured long-term debt securities without third party credit enhancement are rated (A)

BBB or higher by S&P *or* (B) Baa3 or higher by Moody's *or* (C) an equivalent rating from another nationally recognized third party rating agency, in each case with a "stable" outlook, or (iii) 10% in the case of any other Accounts, in the case of each of clauses (i) through (iii), of the total amount of Eligible Receivables at such time, any such excess Accounts shall be deemed not to be Eligible Receivables. In determining the aggregate amount from the same Account Debtor that is unpaid more than 90 or 120 days from the date of invoice or more than 60 days from the due date pursuant to clause (b) above, there shall be excluded the amount of any net credit balances relating to Accounts due from an Account Debtor with invoice dates (x) if such Account was due within 60 days of the original invoice date, 120 days after such original invoice date, and otherwise, 90 days after such original invoice date, or (y) 60 days from the original due date.

"Environmental Laws" means all applicable laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which environmental liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

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

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan

(other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the IRC or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the IRC or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning assigned to such term in Article 7.

“Exchange Act” has the meaning specified in the definition of “Change in Control” contained in this Section 1.01.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America (or its political subdivision or taxing authority therein or thereof), or by the jurisdiction under the laws of which the applicable 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 of America (or its political subdivision or taxing authority therein or thereof) or any similar tax imposed by any other jurisdiction described in clause (a) above; (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.18(b)), any withholding tax that (i) is in effect and would apply to amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), except to the extent (and only to such 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 the Borrower with respect to any withholding tax pursuant to Section 2.16(a), or

(ii) is attributable to such Foreign Lender's failure to comply with Section 2.16(e) and (d) any other taxes imposed as a result of the applicable recipient's present or former connection with the jurisdiction imposing such taxes (other than a connection arising solely from the transactions contemplated hereby).

"Federal Funds Effective Rate" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Fees" shall collectively mean the Participation Fees, the Commitment Fees, the Fronting Fees, the Upfront Fees and other fees referred to in Section 2.11 and all fees and expenses referred to in Section 9.03.

"Final DIP Payment Date" means the date when all of the following conditions shall have been met: (i) all Revolving Commitments shall have expired or been terminated, (ii) the principal of and interest on each Loan and all Fees and other Obligations (other than any unmatured indemnity obligations) shall have been indefeasibly paid in full, (iii) all Letters of Credit shall have expired, been cancelled or terminated or been cash collateralized in accordance with Section 2.05(j) or other arrangements satisfactory to the Administrative Agent and the Required Lenders shall have been made, and all amounts drawn under Letters of Credit shall have been reimbursed (together with any allowed interest thereon), (iv) the Issuing Bank shall have no further commitment to issue Letters of Credit and (v) there shall be no outstanding Hedging Agreements described in clause (c) of the definition of "Obligations".

"Final Order" means an order of the Bankruptcy Court, in substantially the form of Exhibit G-2 and otherwise satisfactory to the Administrative Agent and the Required Lenders in their sole discretion, approving the Loan Documents and granting the Superpriority Claim status and the Liens described in Section 2.19, which Final Order (i) shall have been entered upon an application or motion of the Borrower reasonably satisfactory in form and substance to the Administrative Agent and the Required Lenders, on such prior notice to such parties as may in each case be reasonably satisfactory to the Administrative Agent and the Required Lenders, (ii) shall be in full force and effect, (iii) shall not have been stayed, reversed, modified or amended in any respect and (iv) if the Final Order is the subject of a pending appeal in any respect, neither the making of any Loans nor the issuance of any Letters of Credit nor the performance by any Loan Party of any of its obligations hereunder or under the Loan Documents or under any other

instrument or agreement referred to herein shall be the subject of a presently effective stay pending appeal.

“Final Order Closing Date” means the date on which the following conditions shall have been satisfied: (i) the Final Order shall have been entered by the Bankruptcy Court and (ii) the Administrative Agent, the Issuing Bank and the Lenders shall have received a favorable written opinion of Burr & Forman LLP, counsel to the Loan Parties, dated the Final Order Closing Date and in substantially the form of Exhibit B.

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

“Financing Transactions” means the execution, delivery and performance by each Loan Party of the Loan Documents to which it is to be a party, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

“First Day Orders” means all orders entered by the Bankruptcy Court (i) on the Petition Date or on or prior to the fifth day after the Petition Date or (ii) based on motions that have been filed on the Petition Date or on or prior to the third Business Day after the Petition Date.

“Foreign Lender” means any Lender that is not a “United States person” within the meaning of Section 7701(a)(30) of the IRC.

“Foreign Subsidiary” means any subsidiary that is a “controlled foreign corporation” under Section 957 of the IRC.

“Fronting Fee” has the meaning assigned to such term in Section 2.11(b).

“GAAP” means generally accepted accounting principles in the United States of America.

“Governmental Authority” means the government of the United States of America, any other nation or 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.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or

other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; *provided* that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guarantee Agreement” means the Guarantee Agreement, substantially in the form of Exhibit F, made by the Guarantors in favor of the Administrative Agent for the benefit of the Secured Parties.

“Guarantors” means, collectively, Holdings and the Subsidiary Loan Parties.

“Hazardous Materials” means all explosive or radioactive substances or wastes, all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Hedging Agreement” means any interest rate protection agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

“Holdings” means Citation Holding Company, a Delaware corporation.

“Holdings Notes” means Senior Notes issued by Holdings pursuant to the Exchange and Senior Debt Agreement dated as of December 15, 2003 among Holdings, Citation Funding Inc. and certain financial institutions, as purchasers.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed,

provided that the amount of such Indebtedness shall, for purposes of this Agreement, be deemed to be limited to the value of the property so pledged, (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnity, Subrogation and Contribution Agreement" means the Indemnity, Subrogation and Contribution Agreement, substantially in the form of Exhibit C, among the Borrower, the Guarantors and the Administrative Agent.

"Insurance Premium Finance Agreement" shall mean any agreement providing for the financing of insurance premiums by any Loan Party that has been approved by the Bankruptcy Code pursuant to a final order.

"Interest Election Request" means a request by the Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.07.

"Interest Payment Date" means (a) with respect to any ABR Loan (other than a Swingline Loan), the last day of each calendar month, (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than one month's duration, each day prior to the last day of such Interest Period that occurs at intervals of one month's duration after the first day of such Interest Period, and (c) with respect to any Swingline Loan, the day that such Loan is required to be repaid.

"Interest Period" means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two or three months thereafter, as the Borrower may elect; *provided* that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of

such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interim Order” means an order of the Bankruptcy Court, in substantially the form of Exhibit G-1 and otherwise satisfactory to the Administrative Agent and the Required Lenders in their sole discretion, approving the Loan Documents and granting the Superpriority Claim status and the Liens described in Section 2.19, which Interim Order (i) shall have been entered upon an application or motion of the Borrower reasonably satisfactory in form and substance to the Administrative Agent and the Required Lenders, on such prior notice to such parties as may in each case be reasonably satisfactory to the Administrative Agent and the Required Lenders, (ii) shall be in full force and effect and (iii) shall not have been stayed, reversed, modified or amended in any respect; and, if the Interim Order is the subject of a pending appeal in any respect, neither the making of any Loans nor the issuance of any Letters of Credit nor the performance by any Loan Party of any of its obligations hereunder or under the Loan Documents or under any other instrument or agreement referred to herein shall be the subject of a presently effective stay pending appeal.

“IRC” means the Internal Revenue Code of 1986, as amended from time to time.

“Issuing Bank” means JPMorgan Chase Bank or any of its Affiliates, in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.05(i). The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“Kelso” means Kelso & Company and its Affiliates.

“Kelso Designees” means C.I. LLC, William A. Marquard, Dieter Spethmann, John F. Mc Gillicuddy, David M. Roderick, George L. Shinn, the Louis and Patricia Kelso Trust, John Rutledge, Michel Rapoport, U. Bertram Ellis, Jr. and Cardinal Court Investors LLC.

“LC Disbursement” means a payment made by the Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Revolving Lender

at any time shall be its Applicable Percentage of the total LC Exposure at such time.

“Lead Arranger” means J.P. Morgan Securities Inc., in its capacity as lead arranger and bookrunner.

“Lenders” means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender.

“Letter of Credit” means any letter of credit issued pursuant to this Agreement.

“Letter of Credit Collateral Account” means a blocked interest bearing deposit account under the sole and exclusive control of the Administrative Agent maintained at the office of the JPMorgan Chase Bank, 270 Park Avenue, New York, New York 10017 designated as the “Citation Letter of Credit Collateral Account” and pursuant to documentation in form and substance satisfactory to the Administrative Agent and the Issuing Bank (which documents are hereby consented to by the Lenders).

“LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, the rate appearing on Page 3750 of the Dow Jones Market Service (or on any successor or substitute page of such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided on such page of such Service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the “LIBO Rate” with respect to such Eurodollar Borrowing for such Interest Period shall be the rate at which dollar deposits of \$5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease

having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Loan Documents” means this Agreement, the Fee Letter, the Guarantee Agreement, the Indemnity, Subrogation and Contribution Agreement and the Security Documents, and any other instrument or agreement executed and delivered in connection herewith, in each case as the same may be amended, restated, supplemented or replaced from time to time.

“Loan Parties” means, collectively, the Borrower and the Guarantors.

“Loans” means the loans made by the Lenders to the Borrower pursuant to this Agreement.

“Management Agreement” means the Financial Advisory Agreement between the Borrower and Kelso dated as of December 1, 1999, as amended by the Amendment dated as of December 15, 2003.

“Management Investors” means the officers and employees (including current and former officers and employees) of the Borrower at any time when Kelso beneficially owns (as defined in clause (a) of the definition of the term “Change in Control”) (a) more than 30% of the total ordinary voting power of the capital stock of Holdings and (b) a greater percentage of the total ordinary voting power of the capital stock of Holdings than is then beneficially owned in the aggregate by the officers and employees of Holdings.

“Material Adverse Effect” means a material adverse effect on (a) the business, results of operations, properties, condition (financial or otherwise), or prospects of the Borrower and the Subsidiaries taken as a whole, (b) the ability of any Loan Party to perform any of its material obligations under any Loan Document or (c) the rights of or benefits available to the Lenders under any Loan Document.

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Hedging Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount exceeding \$2,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Hedging Agreement were terminated at such time.

“Moody’s” means Moody’s Investors Service, Inc.

“Mortgage” means a mortgage, deed of trust, assignment of leases and rents, leasehold mortgage or other security document granting a Lien on any Mortgaged Property to secure the Obligations. Each Mortgage shall be satisfactory in form and substance to the Administrative Agent.

“Mortgaged Property” means, initially, each parcel of real property and the improvements thereto owned by a Loan Party.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Proceeds” means, with respect to any event (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds, but only as and when received, (ii) in the case of a casualty event, insurance proceeds, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, net of (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid by the Borrower and the Subsidiaries to third parties (other than Affiliates) in connection with such event, (ii) in the case of a sale, transfer or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or other insured damage or condemnation or similar proceeding), the amount of all payments required to be made by the Borrower and the Subsidiaries as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event, and (iii) the amount of all taxes paid by the Borrower or any of the Subsidiaries during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer).

“Net Working Capital” means, at any date, (a) the consolidated current assets of the Borrower and its consolidated Subsidiaries as of such date (excluding cash and Permitted Investments) minus (b) the consolidated current liabilities of the Borrower and its consolidated Subsidiaries as of such date (excluding current liabilities in respect of Indebtedness), in each case excluding purchase accounting adjustments. Net Working Capital at any date may be a positive or negative number. Net Working Capital increases when it becomes more positive or less negative and decreases when it becomes less positive or more negative.

“Obligations” means (a) all payment obligations of the Borrower under this Agreement and each other Loan Document, including without limitation, (i) the due and punctual payment by the Borrower of (x) the principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (y) each payment required to be made by the Borrower

under this Agreement in respect of any Letter of Credit, when and as due, including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral and (z) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Borrower to the Secured Parties under this Agreement and the other Loan Documents, (ii) the due and punctual performance of all covenants, agreements, obligations and liabilities of the Borrower under or pursuant to this Agreement and the other Loan Documents, (b) the due and punctual performance of all the covenants, agreements, obligations and liabilities of each Loan Party under or pursuant to this Agreement and the other Loan Documents, (c) the due and punctual payment and performance of all obligations of the Borrower under each Hedging Agreement entered into Post-Petition with any counterparty that was a Lender or an affiliate of a Lender at the time such Hedging Agreement was entered into and (d) the due and punctual payment and performance of all Cash Management Obligations.

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

“Other Taxes” means any and all present or future recording, stamp, documentary, excise, transfer, sales or similar taxes, charges or levies arising solely from any payment made under any Loan Document or from the execution, delivery or enforcement of any Loan Document.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Participation Fee” has the meaning assigned to such term in Section 2.11(b).

“Perfection Certificate” means a certificate signed by a Financial Officer of the Borrower in the form of Exhibit J or any other form approved by the Administrative Agent.

“Permitted Encumbrances” means:

(a) Liens imposed by law for taxes or other governmental charges that are not yet due or are being contested in compliance with Section 5.05;

(b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary

course of business and securing obligations that are not overdue by more than 60 days or are being contested in compliance with Section 5.05;

(c) pledges, deposits and other Liens, in each case made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(d) Liens to secure the performance of bids, trade contracts, obligations for utilities, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under clauses (k) or (l) of Article 7;

(f) easements, covenants, restrictions, leases, subleases, licenses, zoning restrictions, rights-of-way and similar encumbrances on real property (i) shown on the title insurance policies delivered to the administrative agent under the Pre-Petition Credit Agreement or (ii) imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary;

(g) any interest of a landlord in or to property of the tenant imposed by law, arising in the ordinary course of business and securing lease obligations that are not overdue by more than 60 days or are being contested in compliance with Section 5.05, or any possessory rights of a lessees to the leased property under the provisions of any lease permitted by the terms of this Agreement; and

(h) Liens of a collection bank arising in the ordinary course of business under Section 4-208 of the UCC in effect in the relevant jurisdiction; and

(i) Liens arising under the applicable Environmental Laws that are being contested in compliance with Section 5.05;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

"Permitted Holders" means Kelso, Kelso Designees, the Management Investors and any employee stock ownership plan established by the Borrower for the benefit of the employees of the Borrower or any Subsidiary and their Permitted Transferees.

“Permitted Holdings Expenses” means up to \$200,000 of costs and expenses incurred by Holdings in connection with its existence, operations or Related Activities; *provided* that the foregoing shall not be construed to include (a) any dividend or other distribution with respect to any Equity Interests in Holdings, or any payment, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of (i) any Equity Interests in Holdings, (ii) any option, warrant or other right to acquire any such Equity Interests in Holdings or (iii) any Holdings Notes or interest therein, (b) any payment in respect of the principal of or interest on any Holdings Notes, or any other Indebtedness of Holdings, or any fees or other consideration paid to the holders thereof in each case in respect of the Holdings Notes or such other Indebtedness, as applicable, or (c) any payment that the Borrower would be prohibited by Section 6.08 from making directly.

“Permitted Investments” means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody’s;

(c) investments in certificates of deposit, banker’s acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and

(e) shares of funds registered under the Investment Company Act of 1940, as amended, that have assets of at least \$500,000,000 and invest only in obligations described in clauses (a) through (c) above to the extent that such shares are rated by Moody’s or S&P in one of the two highest rating categories assigned by such agency for shares of such nature.

“Permitted Receivables Transaction” means (a) any sale of Accounts at a discount prior to the date on which the underlying invoice amounts would have been due pursuant to a program or on other terms with the customer in effect immediately prior to the Petition Date or (b) the provision of a discount from the invoiced amount of an Account in exchange for payment of such invoiced amounts before the due date thereof based on terms with the customer in effect immediately prior to the Petition Date; *provided* in each case that:

(i) the sum of (a) the Accounts paid at a discount that would have been outstanding based on the date due based on the customer terms in effect at the Petition Date and (b) the Accounts sold at a discount that would be outstanding based on the date due based on the customer terms in effect at the Petition Date shall not at any time exceed \$40,000,000;

(ii) any such sale of Accounts is without recourse to the Borrower or any Subsidiary Loan Party; and

(iii) any transaction pursuant to clause (b) shall be on terms usual and customary for such transactions and the discount rate applicable thereto shall not to exceed 1.25% per month.

“Permitted Transferees” means (a) in the case of Kelso, (i) any Kelso Designee, (ii) any managing director, general partner, limited partner, director, officer or employee of Kelso or any Kelso Designee (collectively, “Kelso Associates”), (iii) the heirs, executors, administrators, testamentary trustees, legatees or beneficiaries of any Kelso Associate and (iv) any trust, the beneficiaries of which, or a corporation or partnership, the stockholders or partners of which, include only a Kelso Associate, his spouse, parents, siblings members of his or her immediate family (including adopted children) and/or direct lineal descendants, and (b) in the case of any Management Investors, (i) his executor, administrator, testamentary trustee, legatee or beneficiaries (ii) his spouse, parents, siblings, members of his or her immediate family (including adopted children) and/or direct lineal descendants or (iii) a trust, the beneficiaries of which, or a corporation or partnership, the stockholders or partners of which, include only the Management Investor, as the cause may be, and his spouse, parents, siblings, members of his or her immediate family (including adopted children) and/or direct lineal descendants.

“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 assigned to such term in the Introductory Statement.

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the IRC or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Pledge Agreement” means the Pledge Agreement, substantially in the form of Exhibit D, among the Loan Parties and the Administrative Agent for the benefit of the Secured Parties.

“Post-Petition” means, when used with respect to any Indebtedness, obligation, liability, claim or other matter with respect to any Loan Party, that such Indebtedness, obligation, liability, claim or other matter arose on or after the Petition Date.

“Prepayment Event” means:

(a) any sale, transfer or other disposition (including pursuant to a sale and leaseback transaction) of any property or asset of Holdings, the Borrower or any Subsidiary consummated on or after the Petition Date, other than (i) dispositions described in clauses (a), (b), (d) and (e) of Section 6.05 and (ii) other dispositions resulting in aggregate Net Proceeds not exceeding \$250,000 since the Petition Date; or

(b) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of Holdings, the Borrower or any Subsidiary, other than casualties, insured damage or takings resulting in aggregate Net Proceeds not exceeding \$1,000,000 since the Petition Date;

(c) the issuance by Holdings, the Borrower or any Subsidiary of any Equity Interests, or the receipt by Holdings, the Borrower or any Subsidiary of any capital contribution, other than any such issuance of Equity Interests to, or receipt of any such capital contribution from, the Borrower or a Subsidiary; or

(d) the incurrence by Holdings, the Borrower or any Subsidiary of any Indebtedness, excluding any Indebtedness permitted by Section 6.01(a).

“Pre-Petition” means, when used with respect to any Indebtedness, obligation, liability, claim or other matter with respect to any Loan Party, that such Indebtedness, obligation, liability, claim or other matter arose prior to the Petition Date.

“Pre-Petition Credit Agreement” means the Credit Agreement dated as of November 30, 1999, as amended and restated as of December 15, 2003, among the Borrower, the Lenders party thereto and JPMorgan Chase Bank as administrative agent and all guarantee agreements, security agreements, pledge agreements, mortgages and other instruments or documents delivered from time to time pursuant thereto, including without limitation the “Loan Documents” as defined therein.

“Pre-Petition Payment” means any payment (by way of adequate protection or otherwise), directly or indirectly, of principal or interest or otherwise on account of any Pre-Petition Indebtedness or trade payables or other Pre-Petition claims against any Loan Party, including without limitation, the provision of a Letter of Credit to provide assurance on any such payment.

“Pre-Petition Secured Parties” means the “Secured Parties” under the Pre-Petition Credit Agreement.

“Prime Rate” means the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“Receivable” means, as at any date of determination, the unpaid and enforceable portion of the obligation, as stated in the relevant invoice, of a customer of any Loan Party in respect of inventory sold or services rendered, which amount has been recognized as revenue on the books of such Loan Party, net of any commissions payable to Persons other than employees of such Loan Party.

“Register” has the meaning assigned to such term in Section 9.04.

“Related Activities” means (i) the entry by Holdings into and the exercise of its rights and performance of its obligations in respect of (A) this Agreement and the other Loan Documents to which it is a party, in each case as amended, supplemented, waived or otherwise modified from time to time, (B) (x) Pre-Petition contracts and agreements with officers, directors and employees of Holdings, the Borrower or any Subsidiary entered into in the ordinary course relating to their employment or directorships or (y) Post-Petition contracts and agreements with officers, directors and employees of Holdings, the Borrower or any Subsidiary approved by the Bankruptcy Court, and (C) insurance policies and related contracts and agreements in the ordinary course of business, (ii) the compliance with and performance of obligations under the governing documents of Holdings, the Borrower or any Subsidiary, or any applicable law, ordinance, regulation, rule, order, judgment, decree or permit, including, without limitation,

as a result of or in connection with the activities of Holdings, the Borrower or any Subsidiary, (iii) the ownership of capital stock or other interests of the Borrower and the exercise of rights and performance of obligations in connection therewith, (iv) making loans to or other investments in, or incurrence of Indebtedness to, the Borrower or any Subsidiary (to the extent not otherwise prohibited by this Agreement), (v) the provision of administrative, legal, accounting, tax, audit and management services to or on behalf of the Borrower or any Subsidiary, (vi) the incurrence and payment of its operating and business expenses and any Taxes for which it may be liable and (vii) other activities incidental or related to the foregoing.

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

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

“Reorganization Plan” means a Chapter 11 plan of reorganization in any of the Cases.

“Required Lenders” means, at any time, Lenders having Revolving Exposures and unused Revolving Commitments representing more than 50% of the sum of the total Revolving Exposures and unused Revolving Commitments at such time.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in Holdings, the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of (i) any Equity Interests in Holdings, the Borrower or any Subsidiary, (ii) any option, warrant or other right to acquire any such Equity Interests in Holdings, the Borrower or any Subsidiary, or (iii) any Holdings Notes or interest therein.

“Returns Reserve” means the liability recorded on the Borrower’s or the applicable Subsidiary Loan Party’s books and records for the return of Inventory by its customers for any applicable period.

“Revolving Availability Period” means the period from and including the Effective Date to but excluding the earlier of the Termination Date and the date of termination of the Revolving Commitments.

“Revolving Commitment” means, with respect to each Lender, the commitment, if any, of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The aggregate amount of the Revolving Commitments is \$45,000,000. The initial amount of each Lender’s Revolving Commitment, based on an aggregate amount of Revolving Commitments of \$45,000,000 is set forth on Schedule 2.01 (as of the date hereof) or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Revolving Commitment, as applicable.

“Revolving Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Revolving Loans and its LC Exposure and Swingline Exposure at such time.

“Revolving Lender” means a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

“Revolving Loan” means a Loan made pursuant to Section 2.01 of this Agreement.

“Revolving Maturity Date” means March 31, 2005.

“S&P” means Standard & Poor’s.

“Secured Parties” has the meaning assigned to such term in the Security Agreement.

“Security Agreement” means the Security Agreement, substantially in the form of Exhibit E, among the Loan Parties and the Administrative Agent for the benefit of the Secured Parties.

“Security Documents” means the Security Agreement, the Pledge Agreement, the Mortgages and each other security agreement or other instrument or document executed and delivered pursuant to Section 5.12 or 5.13 to secure any of the Obligations.

“Senior Permitted Liens” means Liens securing obligations under Insurance Premium Finance Agreements.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including

any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject (a) with respect to the Base CD Rate, for new negotiable nonpersonal time deposits in Dollars of over \$100,000 with maturities approximately equal to three months and (b) with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board).

Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any subsidiary of the Borrower.

“Subsidiary Loan Party” means any Subsidiary that is a party to the Guarantee Agreement.

“Superpriority Claim” means a claim against any Loan Party in any of the Cases that is a superpriority administrative expense claim having priority over any and all administrative expenses, diminution claims and all other claims, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code), whether or not such claims or expenses may become secured by a judgment lien or other non-consensual lien, levy or attachment.

“Swingline Exposure” means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any

Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time.

“Swingline Lender” means JPMorgan Chase Bank, in its capacity as lender of Swingline Loans hereunder.

“Swingline Loan” means a Loan made pursuant to Section 2.04.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

“Termination Date” means the earliest to occur of (i) the Revolving Maturity Date, (ii) the Consummation Date, (iii) the acceleration of the Loans and the termination of the Revolving Commitments in accordance with the terms hereof and (iv) the date that is 30 days after the entry of the Interim Order by the Bankruptcy Court if the Final Order has not been entered by the Bankruptcy Court prior to the expiration of such 30-day period.

“Three-Month Secondary CD Rate” means, for any day, the secondary market rate for three-month certificates of deposit reported as being in effect on such day (or, if such day is not a Business Day, the next preceding Business Day) by the Board through the public information telephone line of the Federal Reserve Bank of New York (which rate will, under the current practices of the Board, be published in Federal Reserve Statistical Release H.15(519) during the week following such day) or, if such rate is not so reported on such day or such next preceding Business Day, the average of the secondary market quotations for three-month certificates of deposit of major money center banks in New York City received at approximately 10:00 a.m., New York City time, on such day (or, if such day is not a Business Day, on the next preceding Business Day) by the Administrative Agent from three negotiable certificate of deposit dealers of recognized standing selected by it.

“Transaction Lien” means any Lien created or intended to be created under any Security Document in favor of the Secured Parties (or any thereof) to secure the Secured Obligations.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

“UCC” has the meaning assigned to such term in the Security Agreement.

“Upfront Fee” has the meaning assigned to such term in Section 2.11(c).

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

Section 1.02. *Classifications Of Loans And Borrowings.* For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Eurodollar Loan”) or by Class and Type (e.g., a “Eurodollar Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Eurodollar Borrowing”) or by Class and Type (e.g., a “Eurodollar Revolving Borrowing”).

Section 1.03. *Terms Generally.* The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.04. *Accounting Terms; GAAP.* Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided that*, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before

such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

ARTICLE 2 THE CREDITS

Section 2.01. *Revolving Commitments.* Subject to the terms and conditions set forth herein, each Lender agrees to make Revolving Loans to the Borrower from time to time during the Revolving Availability Period in an aggregate principal amount that will not result in (i) such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment at such time or (ii) the total Revolving Exposures exceeding the Available Amount at such time. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

Section 2.02. *Loans And Borrowings.* (a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Revolving Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; *provided* that the Revolving Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.13, each Revolving Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Swingline Loan shall be an ABR Loan. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$1,000,000. At the time that each ABR Revolving Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$1,000,000; *provided* that an ABR Revolving Borrowing may be in an aggregate amount that is equal to the Available Amount at such time or, if less, the amount that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e). Each Swingline Loan shall be in an amount that is an integral multiple of \$100,000 and not less than \$250,000. Borrowings of more than one Type and Class may be outstanding at the same time; *provided* that there shall not at any time be more than a total of ten Eurodollar Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Revolving Maturity Date.

Section 2.03. *Requests For Borrowings.* To request a Revolving Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of the proposed Borrowing; *provided* that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e) may be given not later than 11:00 a.m., New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the aggregate amount of such Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;
- (iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (v) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.06.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Revolving Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.04. *Swingline Loans.* (a) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Borrower from time to time during the Revolving Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding \$5,000,000 or (ii) the total Revolving Exposures exceeding the Available Amount at such time; *provided* that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans.

(b) To request a Swingline Loan, the Borrower shall notify the Administrative Agent of such request by telephone (confirmed by telecopy), not later than 2:00 p.m., New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Borrower. The Swingline Lender shall make each Swingline Loan available to the Borrower by means of a credit to the general deposit account of the Borrower with the Swingline Lender (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.05(e), by remittance to the Issuing Bank) by 3:00 p.m., New York City time, on the requested date of such Swingline Loan.

(c) The Swingline Lender may by written notice given to the Administrative Agent not later than 12:00 noon, New York City time, on any Business Day require the Revolving Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Revolving Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 shall apply to the payment

obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

Section 2.05. *Letters Of Credit.* (a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit for its own account, in a form reasonably acceptable to the Issuing Bank, at any time and from time to time during the Revolving Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, the Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or

extension (i) the LC Exposure shall not exceed \$5,000,000 and (ii) the total Revolving Exposures shall not exceed the Available Amount at such time.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Revolving Maturity Date.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Revolving Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 12:00 noon, New York City time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., New York City time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 12:00 noon, New York City time, on (i) the Business Day that the Borrower receives such notice, if such notice is received prior to 10:00 a.m., New York City time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; *provided that*, if such LC Disbursement is not less than \$250,000, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.04 that such payment be financed with an ABR Revolving Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, the

Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing or Swingline Loan. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 shall apply to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond

the control of the Issuing Bank; *provided* that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or wilful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary (other than notice by the Borrower of actual fraud contained in such documents), or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans; *provided* that, if the Borrower fails to reimburse such LC Disbursement after the due date thereof pursuant to paragraph (e) of this Section, then Section 2.12(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Replacement of the Issuing Bank. The Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.11(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in the Letter of Credit Collateral Account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash equal to 105% of the LC Exposure as of such date plus any accrued and unpaid interest thereon. The Borrower also shall deposit cash collateral pursuant to this paragraph as and to the extent required by Section 2.08(b) and 2.10(b). Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the Letter of Credit Collateral Account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the Letter of Credit Collateral Account. Moneys in the Letter of Credit Collateral Account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower

within three Business Days after all Events of Default have been cured or waived. If the Borrower is required to provide an amount of cash collateral hereunder pursuant to Section 2.08(b) or 2.10(b), such amount (to the extent not applied as aforesaid) shall be returned to the Borrower as and to the extent that, after giving effect to such return, the Borrower would remain in compliance with such Section and no Default shall have occurred and be continuing.

Section 2.06. *Funding Of Borrowings.* (a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders; *provided* that Swingline Loans shall be made as provided in Section 2.04. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower maintained with the Administrative Agent in New York City and designated by the Borrower in the applicable Borrowing Request; *provided* that ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.05(e) shall be remitted by the Administrative Agent to the Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing 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 paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower 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 the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

Section 2.07. *Interest Elections.* (a) Each Revolving Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this

Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings, which may not be converted or continued.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

Section 2.08. *Termination And Reduction Of Revolving Commitments.* (a) Unless previously terminated, the Revolving Commitments shall terminate on the Termination Date.

(b) In the event and on each occasion that any Net Proceeds are received by or on behalf of Holdings, the Borrower or any Subsidiary in respect of any Prepayment Event, the Revolving Commitments shall, on the date on which Revolving Borrowings are prepaid or LC Exposure cash collateralized in accordance with Section 2.10(c), be reduced by an aggregate amount equal to 100% of such Net Proceeds (or, if less, the aggregate principal amount of the Revolving Commitments on such date).

(c) The Borrower may at any time terminate, or from time to time reduce, the Revolving Commitments; *provided* that (i) each reduction of the Revolving Commitments shall be in an amount that is an integral multiple of \$500,000 and not less than \$1,000,000 and (ii) the Borrower shall not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans and/or cash collateralization of LC Exposure in accordance with Section 2.10, the Revolving Exposures would exceed the lesser of the Available Amount and the total Revolving Commitments.

(d) The Borrower shall notify the Administrative Agent of any termination or reduction of the Revolving Commitments under paragraph (b) or (c) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying the principal amount of such termination or reduction and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; *provided* that a notice of termination of the Revolving Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Revolving Commitments shall be permanent. Each reduction of the Revolving

Commitments shall be made ratably among the Lenders in accordance with their respective Revolving Commitments.

Section 2.09. *Repayment Of Loans; Evidence Of Debt.* (a) The Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan of such Lender on the Termination Date and (ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of the Termination Date and the first date after such Swingline Loan is made that is the 15th or last day of a calendar month and is at least two Business Days after such Swingline Loan is made; *provided* that on each date that a Revolving Borrowing is made, the Borrower shall repay all Swingline Loans that were outstanding on the date such Borrowing was requested.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans of any Class made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

Section 2.10. *Prepayment of Loans.* (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to the requirements of this Section.

(b) In the event and on each occasion that the sum of the Revolving Exposures exceeds the Available Amount at such time, the Borrower shall prepay Revolving Borrowings or Swingline Borrowings (and, to the extent such Borrowings are less than the amount of such excess, deposit cash collateral in an account with the Administrative Agent pursuant to Section 2.05(j)) in an aggregate amount equal to such excess.

(c) Upon the receipt by or on behalf of Holdings, the Borrower or any Subsidiary of any Net Proceeds in respect of any Prepayment Event, the Borrower shall prepay Revolving Borrowings and cash collateralize LC Exposure in accordance with paragraph (d) below in an aggregate amount equal to 100% of such Net Proceeds (or, if less, the aggregate principal amount of Revolving Borrowings and the aggregate LC Exposure then outstanding).

(d) Prior to any optional or mandatory prepayment of Borrowings hereunder, the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (e) below. The mandatory prepayments pursuant to this Section 2.10 and cash collateralizations pursuant to Section 2.08(c) shall be made in the following order: first, outstanding Borrowings shall be prepaid, until there are no Borrowings outstanding, and, thereafter, outstanding LC Exposure shall be cash collateralized. Any cash collateralization of LC Exposure shall be effected as set forth in Section 2.05(j).

(e) The Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 12:00 noon, New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment; *provided* that, if a notice of optional prepayment is given in connection with a conditional notice of termination of the Revolving Commitments as contemplated by Section 2.08, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.08. Promptly following receipt of any such notice (other than a notice relating solely to Swingline Loans), the Administrative

Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.12.

Section 2.11. *Fees.* (a) The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a commitment fee (a “Commitment Fee”), which shall accrue at the Applicable Rate on the average daily unused amount of the Revolving Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which such Commitment terminates. Accrued Commitment Fees shall be payable in arrears on the last day of each calendar month of each year and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the date hereof. All Commitment Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing Commitment Fees, a Revolving Commitment of a Lender shall be deemed to be used to the extent of the outstanding Revolving Loans and LC Exposure of such Lender (and the Swingline Exposure of such Lender shall be disregarded for such purpose).

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee (a “Participation Fee”) with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate as interest on Eurodollar Revolving Loans on the average daily amount of such Lender’s LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender’s Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the Issuing Bank a fronting fee (a “Fronting Fee”), which shall accrue at the rate or rates per annum separately agreed upon with the Issuing Bank on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank’s standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation Fees and Fronting Fees accrued through and including the last day of each calendar month of each year shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the Effective Date; *provided* that all such fees shall be payable on the date on which the Revolving Commitments terminate and any

such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All Participation Fees and Fronting Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender on the Effective Date an upfront fee (an "Upfront Fee") in an amount equal to 0.50% of the Revolving Commitment of such Revolving Lender as in effect on the Effective Date.

(d) The Borrower agrees to pay to the Administrative Agent and the Lead Arranger, for their own accounts, fees payable in the amounts and at the times separately agreed upon in writing among the Borrower, the Administrative Agent and the Lead Arranger.

(e) Subject to the proviso contained in Section 2.11(b), all fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of Commitment Fees, Participation Fees, to the Lenders entitled thereto. Fees paid shall not be refundable under any circumstances.

Section 2.12. *Interest.* (a) The Loans comprising each ABR Borrowing (including each Swingline Loan) shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Revolving Loans as provided in paragraph (a) of this Section.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Revolving Commitments; *provided* that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of

an ABR Revolving Loan prior to the end of the Revolving Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error; *provided* the Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing in reasonable detail the calculations used by the Administrative Agent in determining any interest rate pursuant to Section 2.12(e) and 2.13.

Section 2.13. *Alternate Rate Of Interest.* If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

Section 2.14. *Increased Costs.* (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the

account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Bank; or

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein (excluding imposition of Taxes, which shall be governed by Section 2.16);

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

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

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; *provided*

that the Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; *provided further* that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.15. *Break Funding Payments.* In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Revolving Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.10(e) and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.18, then, in any such event, the Borrower shall compensate the affected Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section and a brief explanation of the basis therefor shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

Section 2.16. *Taxes.* (a) Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; *provided* that, if the Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions of Indemnified Taxes and Other Taxes (including deductions applicable to additional sums

payable under this Section) the Administrative Agent, Lender or Issuing Bank (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Borrower shall indemnify the Administrative Agent, each Lender and the Issuing Bank, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender or the Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) 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, unless such penalties, interest or expenses are incurred solely as a result of any negligence or misconduct of the Administrative Agent, such Lender or the Issuing Bank, as applicable, or any of its Related Parties. A certificate setting forth in reasonable detail the amount of such payment or liability and the reasonable basis of such payment or liability delivered to the Borrower by a Lender or the Issuing Bank, or by the Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Bank, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower 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) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate.

Section 2.17. *Payments Generally; Pro Rata Treatment; Sharing Of Setoffs.* (a) The Borrower shall make each payment required to be made by it

hereunder or under any other Loan Document (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.14, 2.15 or 2.16, or otherwise) prior to the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 12:00 noon, New York City time), on the date when due, in immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 270 Park Avenue, New York, New York, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Section 2.14, 2.15, 2.16 and 9.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in Dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) 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 its Revolving Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements and Swingline Loans; *provided* that (i) if any such participations

are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to Holdings, the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

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

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(c), 2.05(d) or (e), 2.06(b), 2.17(d) or 9.03(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 2.18. *Mitigation Obligations; Replacement Of Lenders.* (a) If any Lender requests compensation under Section 2.14, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, 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 reasonable judgment of such Lender, such designation or assignment (i) would eliminate or

reduce amounts payable pursuant to Section 2.14 or 2.16, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.14, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, or if any Lender defaults in its obligation to fund Loans hereunder, then the Borrower 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 Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided that* (i) the Borrower shall have received the prior written consent of the Administrative Agent (and, if a Revolving Commitment is being assigned, the Issuing Bank and Swingline Lender), which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.14 or payments required to be made pursuant to Section 2.16, such assignment will result in a material reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 2.19. *Priority and Liens.* (a) The Borrower hereby covenants, represents and warrants that, upon entry of the Interim Order, the Obligations of the Loan Parties hereunder and under the Loan Documents at all times shall:

(i) pursuant to Section 364(c)(1) of the Bankruptcy Code, constitute an allowed Superpriority Claim;

(ii) pursuant to Section 364(c)(2) of the Bankruptcy Code, be secured by a perfected first priority Lien on all Pre-Petition and Post-Petition property of the Loan Parties, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected and unavoidable Liens, including without limitation all such property constituting cash and cash equivalents of the Loan Parties (whether maintained with the Administrative Agent or otherwise) and any

investments thereof (and the property of any Loan Party described in this clause (ii) shall include any Loan Party's claims and causes of action under Sections 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code and any proceeds thereof);

(iii) pursuant to Section 364(d)(1) of the Bankruptcy Code, be secured by a perfected first priority senior priming Lien on all Pre-Petition and Post-Petition property of the Loan Parties, whether existing on the Petition Date or thereafter acquired, that is subject to Liens of the Pre-Petition Secured Parties in existence immediately prior to the Petition Date securing the Pre-Petition Credit Agreement (including (x) adequate protection liens granted to such Pre-Petition Secured Parties and (y) Liens in respect of issued but undrawn letters of credit thereunder); *provided* that such priming Lien shall not be senior to any valid, perfected and unavoidable interests of other parties arising out of Liens, if any, on such property existing immediately prior to the Petition Date, or to any valid, perfected and unavoidable interests in such property arising out of Liens to which the Liens of the Pre-Petition Secured Parties become subject subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code; and

(iv) pursuant to Section 364(c)(3) of the Bankruptcy Code, be secured by a perfected Lien on all Pre-Petition and Post-Petition property of the Loan Parties (other than the property described in clauses (ii) and (iii) of this subsection), whether existing on the Petition Date or thereafter acquired, that on or after the Petition Date is subject to (A) valid, perfected and unavoidable liens in existence immediately prior to the Petition Date or (B) to valid and unavoidable Liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date the priority and perfection of which relates back to a date prior to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code, junior to such valid and perfected Liens;

subject and subordinated, in the case of each of clauses (i) through (iv) above (other than with respect to the Letter of Credit Collateral Account and any cash, investments or other assets held therein) to the Carve Out and, in the case of each of clauses (ii) through (iv) above, to Senior Permitted Liens. Except for the Carve Out having priority over the Obligations (other than with respect to the Letter of Credit Collateral Account and any cash, investments or other assets held therein), the Superpriority Claims shall at all times be senior to the rights of the Loan Parties, any Chapter 11 trustee and, subject to Section 726 of the Bankruptcy Code, any Chapter 7 trustee, or any other creditor (including without limitation Post-Petition counterparties and other Post-Petition creditors) in the Cases or any subsequent proceedings under the Bankruptcy Code, including without limitation

any Chapter 7 cases if any of the Cases are converted to cases under Chapter 7 of the Bankruptcy Code.

(b) As to all real property the title to which is held by it, or the possession of which is held by it pursuant to leasehold interest, the Borrower hereby assigns and conveys as security, grants a security interest in, hypothecates, mortgages, pledges and sets over unto the Administrative Agent on behalf of the Secured Parties all of the right, title and interest of such Loan Party in all of such owned real property and in all such leasehold interests, together in each case with all of its right, title and interest in and to all buildings, improvements, and fixtures related thereto, any lease or sublease thereof, all general intangibles relating thereto and all proceeds thereof. The Borrower acknowledges that, pursuant to the Orders, the Transaction Liens on all of such real property and leasehold instruments shall be perfected without the recordation of any instruments of mortgage or assignment.

Section 2.20. *Security Interest in Letter of Credit Collateral Account.* Pursuant to Section 364(c)(2) of the Bankruptcy Code, the Borrower hereby assigns and pledges to the Administrative Agent, for its benefit and for the ratable benefit of the Secured Parties, and hereby grant to the Administrative Agent, for its benefit and for the ratable benefit of the Secured Parties, a perfected first-priority security interest, senior to all other Liens, if any, in all of the Borrower's right, title and interest in and to the Letter of Credit Collateral Account, all balances therein and all proceeds thereof, including any investment of the funds contained therein.

Section 2.21. *Payment of Obligations.* Subject to the provisions of Article 7, upon the maturity (whether by acceleration or otherwise) of any of the Obligations, the Lenders shall be entitled to immediate payment of such Obligations without further application to or order of the Bankruptcy Court.

Section 2.22. *No Discharge: Survival of Claims.* The Borrower agrees that (i) its obligations hereunder and under the other Loan Documents shall not be discharged by the entry of an order confirming any Reorganization Plan, dismissing any Case or converting any Case to a case under Chapter 7 of the Bankruptcy Code (and each Loan Party, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge with respect to such obligations) and (ii) the Superpriority Claim granted to the Administrative Agent and the Lenders pursuant to the Orders and described in Section 2.19 and the Liens granted to the Administrative Agent pursuant to the Orders and described in Sections 2.19 and 2.20 shall not be affected in any manner by the entry of an order confirming any Reorganization Plan, dismissing any Case or converting any Case to a case under Chapter 7 of the Bankruptcy Code.

Section 2.23. *Use of Cash Collateral.* Notwithstanding anything to the contrary contained herein, the Borrower shall not be permitted to request a Borrowing under Section 2.03, request the issuance of a Letter of Credit under Section 2.05 unless (i) the Bankruptcy Court shall have entered the Interim Order and (ii) the Loan Parties shall at that time have the use of all cash collateral subject to the Orders for the purposes described in Section 5.11.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders that:

Section 3.01. *Organization; Powers.* Each Loan Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

Section 3.02. *Authorization; Enforceability.* The Financing Transactions to be entered into by each Loan Party are within such Loan Party's corporate or other organization powers and have been duly authorized by all necessary corporate or other organization and, if required, stockholder action. This Agreement has been duly executed and delivered by the Borrower. Subject in each case to the entry of the Interim Order (or, where applicable, the Final Order), this Agreement constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of the Borrower or such Loan Party (as the case may be), enforceable in accordance with its terms.

Section 3.03. *Governmental Approvals; No Conflicts.* The Financing Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except the entry of the Interim Order (and, where applicable, the Final Order), (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of any Loan Party or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument entered into after the Petition Date and binding upon any Loan Party or any of their respective assets, or give rise to a right thereunder to require any payment to be made by any Loan Party, and (d) will not result in the creation or imposition of any Lien on any asset of any Loan Party, except for the Transaction Liens.

Section 3.04. *Financial Condition; No Material Adverse Change; Borrowing Base Information.* (a) The Borrower has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows (i) as of and for the fiscal year ended September 30, 2003, reported on by Deloitte & Touche LLP, independent public accountants, and (ii) as of and for the portion of the fiscal year ended August 1, 2004, certified by its chief financial officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) Except as disclosed in the financial statements referred to above or the notes thereto and except for the Disclosed Matters, after giving effect to the Financing Transactions, no Loan Party has any material contingent liabilities, unusual long-term commitments or unrealized losses.

(c) Since September 30, 2003, there has been no material adverse change in the business, results of operations, properties, condition (financial or otherwise) or prospects of the Loan Parties, taken as a whole (other than (i) the commencement of the Cases and any factors disclosed to the Lenders prior to the Effective Date that have resulted therein and (ii) any change in economic conditions generally affecting the industry in which the Borrower operates).

(d) The information contained in the most recently delivered Borrowing Base Certificate (if any) is complete and correct in all material respects and the amount shown therein as "Eligible Receivables" has been determined as provided hereunder and under the other Loan Documents.

Section 3.05. *Properties.* (a) Each Loan Party has good title to, or valid leasehold interests in, all its real and personal property material to its business (including its Mortgaged Properties), free of all Liens, except for Liens permitted by Section 6.02.

(b) Each Loan Party owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by such Loan Party does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(c) Schedule 3.05 sets forth the address of each real property that is owned or leased by any Loan Party as of the Effective Date.

(d) No Loan Party has received notice of, or has knowledge of, any pending or contemplated condemnation proceeding affecting any Mortgaged Property or any sale or disposition thereof in lieu of condemnation. Neither any Mortgaged Property nor any interest of any Loan Party therein is subject to any right of first refusal, option or other contractual right to purchase such Mortgaged Property or interest therein.

Section 3.06. *Litigation And Environmental Matters.* (a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened in writing against or affecting any Loan Party (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve any of the Loan Documents or the Financing Transactions.

(b) Except for the Disclosed Matters, no Loan Party (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (ii) has become subject to any Environmental Liability, except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (iii) has received notice of any claim with respect to any Environmental Liability except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or (iv) knows of any basis for any Environmental Liability, except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) Since the date hereof, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

Section 3.07. *Compliance With Laws And Agreements.* Each Loan Party is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

Section 3.08. *Investment And Holding Company Status.* No Loan Party is (a) an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) a “holding company” as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

Section 3.09. *Taxes.* Each Loan Party has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) any Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

Section 3.10. *ERISA.* No ERISA Event (other than the commencement of the Cases) has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under any Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of June 30, 2004, exceed by more than \$1,500,000 the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of June 30, 2004, exceed by more than \$3,500,000 the fair market value of the assets of all such underfunded Plans.

Section 3.11. *Disclosure.* The Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which any Loan Party is subject, and all other matters known to any of them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished in writing by or on behalf of any Loan Party to any Agent or any Lender in connection with the negotiation of this Agreement or the other Financing Transactions contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time. None of the reports, financial statements, certificates or other information furnished in writing by or on behalf of any Loan Party to any Agent or any Lender or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

Section 3.12. *Subsidiaries.* (a) Schedule 3.12 sets forth the name of, and the ownership interest of the Borrower in, each Subsidiary and identifies each Subsidiary that is a Subsidiary Loan Party, in each case as of the date hereof.

(b) Each Subsidiary that is a debtor and a debtor-in-possession in a Case is a Subsidiary Loan Party.

(c) Each Loan Party is a debtor and a debtor-in-possession in a Case.

Section 3.13. *Insurance.* Schedule 3.13 sets forth a description of all insurance maintained by or on behalf of any Loan Party as of the date hereof. As of the date hereof, all premiums in respect of such insurance have been paid.

Section 3.14. *Labor Matters.* There are no strikes, lockouts or slowdowns against any Loan Party pending or, to the knowledge of the Borrower, threatened in writing. The hours worked by and payments made to employees of the Loan Parties have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters. All payments due from any Loan Party, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Loan Party. The consummation of the Financing Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party is bound.

Section 3.15. *Security Documents.* Each of the Security Agreement and the Pledge Agreement is effective, upon entry of the Interim Order, to create in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral with the priority described in Section 2.19.

Section 3.16. *The Orders.* On any date on which a Loan is made or a Letter of Credit is issued, amended, renewed or extended, the Interim Order or the Final Order, as the case may be, shall have been entered and shall not have been stayed, amended, vacated, reversed or rescinded without the prior written consent of the Required Lenders. Upon the Termination Date, the Agents, the Issuing Bank and the Lenders shall, subject to the provisions of Article 7, be entitled to immediate payment of all Obligations, and to enforce the remedies provided for hereunder, without further application to or order by the Bankruptcy Court.

ARTICLE 4
CONDITIONS

Section 4.01. *Effective Date.* The occurrence of the Effective Date is subject to the following conditions precedent:

(a) *Cases.* Each of Holdings, the Borrower and the Subsidiary Loan Parties shall have filed a voluntary petition with the Bankruptcy Court initiating a Case.

(b) *Interim Order.* The Administrative Agent shall have received a copy of the signed Interim Order.

(c) *First Day Orders.* All of the First Day Orders shall be satisfactory in form and substance to the Administrative Agent and the Lenders in their sole discretion.

(d) *Loan Documents.* Each Loan Party party thereto shall have duly executed and delivered to the Administrative Agent each of this Agreement, the Fee Letter, the Guarantee Agreement, the Security Agreement, the Pledge Agreement and the Indemnity, Subrogation and Contribution Agreement and each of the documents contemplated thereunder.

(e) *Opinions of Counsel.* The Agents, the Issuing Bank and Lenders shall have received a favorable written opinion of Burr & Forman LLP, counsel to the Loan Parties, dated the Effective Date and in substantially the form of Exhibit B.

(f) *Supporting Documents.* The Administrative Agent shall have received for each Loan Party:

(i) a copy of the entity's certificate of incorporation (or other equivalent governing document), as amended up to and including the Effective Date, certified as of a recent date by the Secretary of State (or other applicable Governmental Authority) of the jurisdiction of such entity's organization;

(ii) a certificate of such Secretary of State (or other applicable Governmental Authority) of such entity's jurisdiction of organization, dated as of a recent date, as to the good standing of such entity and as to the charter documents on file in the office of such Secretary of State (or other applicable Governmental Authority);

(iii) a certificate of the Secretary or an Assistant Secretary of each such entity dated as of the Effective Date and certifying (A) that attached thereto is a true and complete copy of the by-laws (or other

equivalent governing document) of such entity as in effect on the date of such certification, (B) that (x) attached thereto is a true and complete copy of resolutions adopted by the Board of Directors of such entity authorizing the Loans and Letter of Credit extensions hereunder, the execution, delivery and performance in accordance with their respective terms of this Agreement, the other Loan Documents and any other documents required or contemplated hereunder or thereunder and the granting of the Liens contemplated hereby, and (y) such resolutions are in full force and effect without modification or amendment, (C) that the certificate of incorporation (or other equivalent governing document) of such entity has not been amended since the date of the last amendment thereto indicated on the certificate of the Secretary of State furnished pursuant to clause (i) above and (D) as to the incumbency and specimen signature of each officer of such entity executing this Agreement or any other Loan Documents or any other document delivered by it in connection herewith or therewith (such certificate to contain a certification by another officer of such entity as to the incumbency and signature of the officer signing the certificate referred to in this clause (iii)); and

(iv) such other documents as the Administrative Agent may reasonably request.

(g) *Payment of Fees.* The Borrower shall have paid the then unpaid balance of all accrued and unpaid Fees due under and pursuant to this Agreement.

(h) *Financial Statements.* The Administrative Agent shall have received the financial statements and related reports and certifications referred to in Section 3.04(a).

(i) *Projections.* The Administrative Agent shall have received projections of the Borrower and its Subsidiaries (i) from the Closing Date through the end of fiscal year 2005 on a monthly basis and (ii) for the fiscal years 2006, 2007 and 2008 on an annual basis, in each case in form and substance (including reasonable detail) satisfactory to the Lenders in their sole discretion and along with a certification of a Financial Officer that such projections were prepared by the Borrower in good faith based upon reasonable assumptions.

(j) *Borrowing Base Certificate.* The Administrative Agent shall have received a completed Borrowing Base Certificate dated the Effective Date and signed by a Financial Officer and setting forth Eligible Receivables as of the close of business on August 29, 2004.

(k) *13-Week Cash Forecast.* The Administrative Agent shall have received a 13-Week Cash Forecast, which shall be satisfactory to the Administrative Agent and the Lenders in their sole discretion and upon the

occurrence of the Closing Date shall be the initial Approved 13-Week Cash Forecast.

(l) *Corporate, Partnership, Limited Liability Company and Judicial Proceedings.* All corporate, partnership, limited liability company, judicial and other proceedings and all instruments and agreements in connection with the transactions among the Loan Parties, the Agents, the Issuing Bank and the Lenders contemplated by this Agreement shall be satisfactory in form and substance to the Administrative Agent and the Lenders, and the Administrative Agent and the Lenders shall have received all information and copies of all documents and papers, including records of corporate, partnership, limited liability company, judicial and other proceedings, which the Administrative Agent or any Lender may have requested in connection therewith, such documents and papers where appropriate to be certified by proper corporate, partnership, limited liability company, governmental or judicial or other authorities.

(m) *Closing Documents.* The Administrative Agent shall have received all documents required by this Agreement and such documents shall be reasonably satisfactory in form and substance to the Administrative Agent and the Lenders.

(n) *Information.* The Administrative Agent and the Lenders shall have received such information (financial or otherwise) as may be reasonably requested by the Administrative Agent or any Lender and shall have discussed such information with the Borrower's management and shall be satisfied with the nature and substance of such discussions.

(o) *Compliance with Laws.* The Borrower and its Subsidiaries shall have granted the Administrative Agent and the Lenders access to and the right to inspect all of their respective reports, audits and other internal information of relating to environmental matters, and any third party verification of certain matters relating to compliance with environmental laws and regulations requested by the Administrative Agent or any Lender, and the Administrative Agent and the Lenders shall be reasonably satisfied that the Borrower and its Subsidiaries are in compliance in all material respects with all applicable environmental laws and regulations and be satisfied with the costs of maintaining such compliance.

(p) *Field Audit.* The Administrative Agent shall have received the results of a field examination with respect to the Accounts of the Borrower and the Subsidiary Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent.

(q) *Perfection Certificate.* The Administrative Agent shall have received a Perfection Certificate signed by a Financial Officer covering all Loan

Parties as of the Effective Date, as well as all UCC financing statements for each of such Loan Parties referred to therein.

The Administrative Agent shall promptly notify each Loan Party, each other Agent, the Issuing Bank and all of the Lenders of the satisfaction of all of the conditions precedent set forth in this Section 4.01 and the occurrence of the Effective Date, and such notice shall be conclusive and binding on all parties hereto.

Section 4.02. *Each Credit Event.* The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to receipt of the request therefor in accordance herewith and to the satisfaction of the following conditions:

(a) The representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable.

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

(c) All First Day Orders entered after the Effective Date shall, when entered by the Bankruptcy Court, be satisfactory to the Administrative Agent and the Lenders in their sole discretion.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

ARTICLE 5 AFFIRMATIVE COVENANTS

Until the Final DIP Payment Date, the Borrower covenants and agrees with the Lenders that:

Section 5.01. *Financial Statements And Other Information.* The Borrower will furnish to the Administrative Agent and each Lender:

(a) within 90 days after the end of each fiscal year of the Borrower, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Deloitte & Touche LLP or other independent public accountants of recognized national standing (without a (x) "going concern" or like qualification or exception, except that a "going concern" qualification due to the fact that the Loan Parties are subject to the Cases may be included, and (y) any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied (it being understood that delivery of the Borrower's annual report, as filed with the SEC on Form 10-K, shall be adequate to comply with the requirements of this Section 5.01(a) if such report contains the information otherwise required by this paragraph);

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes (it being understood that delivery of the Borrower's quarterly financial statements, as filed with the SEC on Form 10-Q, shall be adequate to comply with the requirements of this Section 5.01(b));

(c) within 22 days after the end of each fiscal month of the Borrower, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal month and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding month of (or, in the case of the balance sheet, as of the end of) the previous fiscal year and the figures in the budget for such fiscal month, all certified by a Financial Officer as presenting in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(d) concurrently with any delivery of financial statements under clause (a), (b) or (c) above, (x) a certificate of a Financial Officer (i) certifying as to

whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Sections 6.12, 6.13 and 6.14, and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the Borrower's audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate and (y) comparative figures from the budget with respect to and for the period covered by such financial statements delivered under clause (a), (b) or (c) above;

(e) concurrently with any delivery of financial statements under clause (a) above, a certificate of the accounting firm that reported on such financial statements stating whether they obtained knowledge during the course of their examination of such financial statements of any Default (which certificate may be limited to the extent required by accounting rules or guidelines);

(f) no later than (i) four Business Days after the end of each fiscal week, a completed Borrowing Base Certificate showing the Borrowing Base as of the close of business on the last day of such fiscal week, (ii) ten Business Days after the end of each fiscal month, a completed Borrowing Base Certificate showing the Borrowing Base as of the close of business on the last day of such fiscal month and (iii) if reasonably requested by the Administrative Agent, as soon as reasonably available but in no event later than five Business Days after such request, a completed Borrowing Base Certificate showing the Borrowing Base as of the date so requested, in each case with supporting documentation and additional reports with respect to the Borrowing Base or the components thereof as provided for in the definition of the term "Borrowing Base Certificate";

(g) prior to the commencement of each fiscal year of the Borrower, a detailed consolidated preliminary budget for such fiscal year (including a projected consolidated balance sheet and related statements of projected operations and cash flow as of the end of and for such fiscal year and setting forth the assumptions used for purposes of preparing such budget) and, within 15 days after completion of the audit of the Borrower's financial statements for the immediately preceding fiscal year, a revision of such budget (including such projected financial statements) and, promptly when available, any subsequent significant revisions of such budget;

(h) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by any Loan Party or any Subsidiary with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed by Holdings or the Borrower to its shareholders generally, as the case may be;

(i) promptly after the same is available, copies of all pleadings, motions, applications, judicial information, financial information and other documents filed by or on behalf of any Loan Party with the Bankruptcy Court in the Cases, or distributed by or on behalf of any Loan Party to any Committee, providing copies of same to counsel for Administrative Agent;

(j) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of any Loan Party or any Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request;

(k) concurrently with any delivery of financial statements under clause (a), (b) or (c) above, a sales and Consolidated EBITDA variance analysis with an accompanying discussion comparing such variances to the annual plan and the corresponding period of the previous fiscal year along with any updated forecasts;

(l) by 5:00 p.m., New York City time, (i) on the Tuesday of each fiscal week that ends on or prior to two months after the Effective Date, (ii) on the fifth Business Day before the end of each fiscal month and (iii) within five Business Days after the Administrative Agent has made a request therefor, a detailed cash flow forecast for the 13-week period commencing on the following Monday identifying the major sources and uses, cash book balances and remaining liquidity of the Loan Parties, substantially in the form of and including the line items set forth in the initial Approved 13-Week Cash Forecast referred to in Section 4.01(k) (each, an "Approved 13-Week Cash Forecast");

(m) no later than 10:00 a.m., New York City time, on the Thursday of each week, (i) a reconciliation of the receipt or disbursement contained in the most recent Approved 13-Week Cash Forecast with the actual amount of such receipt or disbursement for the immediately preceding week, and (ii) an analysis and explanation of any significant variance in any line item, in each case in a form reasonably acceptable to the Administrative Agent;

(n) within 10 days of any material development or issue regarding Net Working Capital or customers, the Borrower will update the Administrative Agent regarding any such material development or issue. Any specific customer or vendor information provided by the Borrower to the Administrative Agent pursuant to this subsection (n) shall be held confidential by the Administrative Agent in accordance with Section 9.12 (excluding clauses (d), (f) and (g) thereof); and

(o) at least two Business Days prior to the date on which any Loan Party proposes to make any critical vendor payment authorized by the Bankruptcy Court, the Borrower will notify the Administrative Agent of such proposed

payment, the amount thereof and the vendor to whom such payment is proposed to be made.

Section 5.02. *Notices of Material Events.* The Borrower will furnish to the Administrative Agent and each Lender prompt written notice (which, in the case of clause (d) below, must in any event be given within three Business Days after the date of the event requiring such notice) of the following:

- (a) the occurrence of any Default;
- (b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any Affiliate thereof that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;
- (c) the occurrence of any ERISA Event (other than the commencement of the Cases) that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of Holdings, the Borrower and its Subsidiaries in an aggregate amount exceeding \$1,000,000; and
- (d) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 5.03. *Information Regarding Collateral.* (a) The Borrower will furnish to the Administrative Agent prompt written notice of any change (i) in any Loan Party's corporate name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties, (ii) in the location of any Loan Party's chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility), (iii) in any Loan Party's identity or corporate structure or (iv) in any Loan Party's Federal Taxpayer Identification Number. The Borrower agrees not to effect or permit, and will cause each of its Subsidiaries not to effect or permit, any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral, subject only to Liens expressly permitted under Section 6.02. The Borrower also agrees promptly to notify the Administrative Agent if any material portion of the Collateral is damaged or destroyed.

(b) Each fiscal quarter, at the time of delivery of quarterly financial statements with respect to the preceding fiscal year pursuant to clause (a) of Section 5.01, the Borrower shall deliver to the Administrative Agent a certificate executed by a Financial Officer with respect to all Loan Parties (i) setting forth the information required pursuant to Sections 1, 2, 8, 9, 10 and 11 of the Perfection Certificate or confirming that there has been no change in such information since the date of the Perfection Certificate delivered on the Effective Date or the date of the most recent certificate delivered pursuant to this Section and (ii) certifying that all UCC financing statements (other than fixture filings) or other appropriate filings, recordings or registrations, including all refilings, rerecordings and reregistrations, containing a description of the Collateral have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified pursuant to clause (i) above to the extent necessary to protect and perfect the Transaction Lien for a period of not less than 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period).

Section 5.04. *Existence; Conduct Of Business.* The Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business; *provided* that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

Section 5.05. *Payment Of Obligations.* The Borrower will, and will cause each of its Subsidiaries to, pay all Post-Petition Indebtedness and other Post-Petition obligations, including Tax liabilities, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation and the enforcement of any Lien securing such obligation and (d) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

Section 5.06. *Maintenance of Properties.* The Borrower will, and will cause each of its Subsidiaries to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

Section 5.07. *Insurance.* The Borrower will, and will cause each of its Subsidiaries to, maintain, with financially sound and reputable insurance companies (a) insurance in such amounts (with no greater risk retention) and against such risks as are customarily maintained by companies of established

repute engaged in the same or similar businesses operating in the same or similar locations and (b) all insurance required to be maintained pursuant to the Security Documents. The Borrower will furnish to the Lenders, upon request of the Administrative Agent, information in reasonable detail as to the insurance so maintained.

Section 5.08. *Casualty And Condemnation.* The Borrower (a) will furnish to the Administrative Agent and the Lenders prompt written notice of any casualty or other insured damage to any material portion of any Collateral or the commencement of any action or proceeding for the taking of any Collateral or any part thereof or interest therein under power of eminent domain or by condemnation or similar proceeding and (b) will ensure that the Net Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Security Documents.

Section 5.09. *Books And Records; Inspection Rights.* (a) The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

(b) (i) The Borrower will permit, and will cause its Subsidiaries to permit, any representatives designated by the Administrative Agent (including employees of the Administrative Agent or any consultants, accountants, lawyers and appraisers retained by the Administrative Agent) to conduct evaluations of the Borrower's computation of the Borrowing Base and the assets included in the Borrowing Base and such other assets and other financial information and properties of the Borrower or any Subsidiary as the Administrative Agent may reasonably require, all at such reasonable times and as often as reasonably requested. The Borrower shall pay the fees (including internally allocated fees and expenses of employees of the Administrative Agent) and expenses of any such representatives retained by the Administrative Agent as to which invoices have been furnished to conduct any such evaluation, including the reasonable fees and expenses associated with collateral monitoring services performed by the IB ABL Portfolio Management Group of the Administrative Agent. To the extent required by the Administrative Agent as a result of any such evaluation, appraisal or monitoring, the Borrower also agrees to modify or adjust the computation of the Borrowing Base (which may include maintaining additional reserves, modifying the advance rates or modifying the eligibility criteria for the components of the Borrowing Base); *provided* that no such modification or

adjustment shall have the effect of increasing the availability under the Borrowing Base unless consented to by the Required Lenders.

(ii) In the event that historical accounting practices, systems or reserves relating to the components of the Borrowing Base are modified in a manner that is adverse to the Lenders in any material respect, the Borrower will agree to (A) maintain such additional reserves (for purposes of computing the Borrowing Base) in respect to the components of the Borrowing Base and (B) make such other adjustments (which may include maintaining additional reserves, modifying the advance rates or modifying the eligibility criteria for the components of the Borrowing Base) to its parameters for including the components of the Borrowing Base, in each case as the Administrative Agent shall reasonably require based upon such modifications; *provided* that no agreement described in clause (A) or (B) above shall have the effect of increasing the availability under the Borrowing Base unless consented to by the Required Lenders.

(iii) The Borrower will, and will cause its Subsidiaries to, grant the Administrative Agent access to and the right to inspect all reports, audits and other internal information of the Borrower and its Subsidiaries relating to environmental matters upon reasonable notice, and obtain any third party verification of matters relating to compliance with Environmental Laws requested by the Administrative Agent at any time.

Section 5.10. *Compliance With Laws.* The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 5.11. *Use Of Proceeds And Letters Of Credit.* Letters of Credit and the proceeds of the Revolving Loans and Swingline Loans will be used only for general corporate purposes. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

Section 5.12. *Additional Subsidiaries.* On the same day on which any Subsidiary that is not a Loan Party on the date hereof shall have filed a voluntary petition with the Bankruptcy Court under chapter 11 of the Bankruptcy Code, the Borrower will (a) notify the Administrative Agent thereof and cause such Subsidiary to (i) become a party to this Agreement, the Guarantee Agreement, the Indemnity, Subrogation and Contribution Agreement, the Security Agreement and the Pledge Agreement by executing a counterpart of each such Loan Document (and execute any documents or take any other action that the Administrative Agent may request to cause or evidence that the Interim Order or the Final Order,

as the case may be, has become applicable to such Subsidiary), whereupon such Subsidiary shall have all the rights, and be subject to all the obligations, of a Loan Party under the Loan Documents, (ii) deliver a Perfection Certificate with respect to such Subsidiary and (iii) take such actions to perfect the Transaction Liens on such Subsidiary's assets as the Administrative Agent or the Required Lenders shall reasonably request and (b) if such Subsidiary owns any Equity Interests in or Indebtedness of any other Person, cause such Equity Interests and promissory notes evidencing such Indebtedness to be pledged pursuant to the Pledge Agreement (except that, if such Subsidiary owns voting Equity Interests in a Foreign Subsidiary, such subsidiary shall not be required to pledge any such voting Equity Interests representing greater 65% of the aggregate voting Equity Interests in such Foreign Subsidiary, unless the Administrative Agent reasonably determines that a pledge of a greater amount of such voting Equity Interests will not result in a material tax liability in which case such subsidiary shall be required to pledge such amount of voting Equity Interests as the Administrative Agent reasonably determines will not result in a material tax liability).

Section 5.13. *Further Assurances.* (a) The Borrower will, and will cause each Subsidiary Loan Party to, execute any and all further documents, financing statements, agreements, instruments and Mortgages, and take all such further actions (including the filing and recording of financing statements, Mortgages, fixture filings and other documents), which may be required under any applicable law, or which the Administrative Agent or the Required Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Transaction Liens or the validity or priority of any Transaction Lien, all at the expense of the Loan Parties. The Borrower also agrees to provide to the Administrative Agent, from time to time upon request, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Transaction Liens.

(b) If any material assets are acquired by any Loan Party after the Effective Date (other than (i) real property or improvements thereto or any interest therein and (ii) assets constituting Collateral under the Security Agreement that become subject to the Transaction Liens automatically upon acquisition thereof), the Borrower will notify the Administrative Agent and the Lenders thereof, and, if requested by the Administrative Agent or the Required Lenders, the Borrower will cause such assets to be subjected to a Transaction Lien and will take, and cause any applicable Subsidiary Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Transaction Liens, including actions described in paragraph (a) of this Section, all at the expense of the Loan Parties.

Section 5.14. *Maintenance of Accounts.* The Loan Parties shall maintain all of their deposit, checking, concentration, operating, disbursement and other

accounts with the Administrative Agent (or any Affiliate thereof) or another financial institution acceptable to the Lenders in their sole discretion.

Section 5.15. Retention of Advisors and Other Professionals. The Borrower shall:

- (a) continue to employ an operational advisory firm reasonably satisfactory to the Administrative Agent and the Required Lenders (the “Advisor”) on terms reasonably satisfactory to the Administrative Agent;
- (b) deliver to the Administrative Agent and any persons designated by the Administrative Agent periodic written reports from the Advisor regarding the operations of the Loan Parties and such other matters as may be reasonably requested by the Administrative Agent;
- (c) continue to permit access by the Administrative Agent, the Lenders and any persons designated by the Administrative Agent to its senior management and senior representatives of the Advisor; and
- (d) continue the retention of an executive search firm to identify a senior executive to oversee operations for the Ductile Iron business and retain such an executive no later than 180 days after the Effective Date.

Section 5.16. *S&P Rating*. Within 45 days after the Effective Date, the Borrower will obtain a debt rating of the facility from S&P.

ARTICLE 6 NEGATIVE COVENANTS

Until the Final DIP Payment Date, the Borrower covenants and agrees with the Lenders that:

Section 6.01. *Indebtedness; Certain Equity Securities*. (a) The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Indebtedness, except:

- (i) Indebtedness created under the Loan Documents;
- (ii) (i) Indebtedness existing on the Effective Date and set forth in Schedule 6.01, and (ii) Indebtedness of the Borrower consisting of obligations as account party under letters of credit in an aggregate face amount not in excess of \$13,994,000 issued under the Pre-Petition Credit Agreement which have been extended or renewed after the Petition Date (so long as the face amount of any such letter of credit has not been

increased), and Guarantees thereof by any Subsidiary pursuant to the Pre-Petition Credit Agreement;

(iii) Indebtedness owed by any Loan Party to any other Loan Party;

(iv) Guarantees by any Loan Party of Indebtedness of any other Loan Party permitted by this Section 6.01(a);

(v) Indebtedness of the Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof; *provided* that (A) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement and (B) the aggregate principal amount of Indebtedness permitted by this clause (v) shall not exceed \$10,000,000 at any time outstanding;

(vi) Indebtedness that constitutes Cash Management Liabilities; and

(vii) Indebtedness under Insurance Premium Finance Agreements in an aggregate principal amount of up to \$6,000,000.

(b) The Borrower will not, nor will it permit any Subsidiary to, issue any preferred stock or other preferred Equity Interests.

Section 6.02. *Liens.* The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) the Transaction Liens;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of the Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02; *provided* that (i) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary and (ii) such Lien shall secure only those obligations that it secures on the date hereof;

(d) any Lien securing obligations other than Indebtedness existing on any property or asset prior to the acquisition thereof by the Borrower or any

Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; *provided* that (i) such acquisition or other transaction is otherwise permitted under this Agreement, (ii) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (iii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary and (iv) such Lien shall secure only those obligations that it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be;

(e) Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Subsidiary; *provided* that (i) such Liens secure Indebtedness permitted by clause (v) of Section 6.01(a), (ii) such Liens and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such Liens shall not apply to any other property or assets of the Borrower or any Subsidiary;

(f) put and call agreements with respect to the Equity Interests of any joint venture or similar arrangement pursuant to the joint venture or similar agreement relating thereto to the extent such arrangements exist on the date hereof;

(g) Liens on property sold pursuant to sale and leaseback transactions permitted under Section 6.06 and general intangibles related thereto;

(h) Liens in favor of the Pre-Petition Secured Parties as adequate protection granted pursuant to the Orders, which Liens are junior in all respects to the Transaction Liens;

(i) sales of Accounts pursuant to Permitted Receivables Transactions and

(j) Senior Permitted Liens; *provided* that such Senior Permitted Liens shall not apply to any property or asset of any Loan Party or any Subsidiary other than the insurance premiums, policies or dividends that were financed with the funds advanced under such agreements.

Section 6.03. *Fundamental Changes.* (a) The Borrower will not, nor will it permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing (i) any Subsidiary Loan Party may merge into the Borrower in a transaction in which the Borrower is the

surviving corporation, (ii) any Subsidiary Loan Party may merge into any other Subsidiary Loan Party in a transaction in which the surviving entity is a Subsidiary Loan Party and (iii) any Subsidiary that is not a Loan Party may merge into any other Subsidiary that is not a Loan Party in a transaction in which the surviving entity is a Subsidiary that is not a Loan Party.

(b) The Borrower will not, and will not permit any of its Subsidiaries to, engage in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the date hereof.

Section 6.04. *Investments, Loans, Advances, Guarantees And Acquisitions.* The Borrower will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly owned Subsidiary prior to such merger) any Equity Interests in or evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (any of the foregoing, an "Investment"), except:

(a) Permitted Investments;

(b) Investments existing on the date hereof and, to the extent such Investments have an aggregate fair market value on such date in excess of \$100,000, set forth on Schedule 6.04;

(c) Investments existing on the date hereof by the Borrower and its Subsidiaries in Equity Interests in their respective Subsidiaries;

(d) loans or advances made (i) by the Borrower to any Subsidiary Loan Party, (ii) by any Subsidiary Loan Party to the Borrower or any other Subsidiary Loan Party or (iii) by any Subsidiary that is not a Loan Party to the Borrower or any Subsidiary Loan Party; *provided* that any such loans and advances made by a Loan Party pursuant to clause (i) or (ii) shall be evidenced by a promissory note pledged pursuant to the Pledge Agreement;

(e) Guarantees constituting Indebtedness permitted by Section 6.01;

(f) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(g) loans to employees of the Borrower and the Subsidiaries for ordinary travel and entertainment expenses, in an aggregate principal amount not to exceed \$10,000 to any employee, and for relocation expenses, in an aggregate principal amount not to exceed \$150,000 to any employee, *provided* that all loans outstanding under this clause (g) shall not exceed \$500,000 in the aggregate to all employees; and

(h) Hedging Agreements permitted under Section 6.07.

Section 6.05. *Asset Sales.* The Borrower will not, and will not permit any of its Subsidiaries to, sell, transfer, lease or otherwise dispose of any asset, including any Equity Interest owned by it, nor will the Borrower permit any of its Subsidiaries to issue any additional Equity Interest in such Subsidiary, except:

(a) sales of inventory, used or surplus equipment and Permitted Investments in the ordinary course of business;

(b) sales, transfers and dispositions (i) by the Borrower to any Subsidiary Loan Party, (ii) by any Subsidiary Loan Party to the Borrower or any other Subsidiary Loan Party or (iii) by any Subsidiary that is not a Loan Party to any other Subsidiary that is not a Loan Party;

(c) sales, transfers and other dispositions of assets (other than less than 100% of the Equity Interests in a Subsidiary) that are not permitted by any other clause of this Section; *provided* that the aggregate fair market value of all assets sold, transferred or otherwise disposed of in reliance upon this clause (c) during any fiscal year of the Borrower shall not exceed \$1,000,000;

(d) sales of Accounts pursuant to Permitted Receivables Transactions;

(e) the Camden Sale, so long as the Net Proceeds therefrom do not exceed \$320,000; and

(f) sales of fixed or capital assets pursuant to sale and lease-back transactions, to the extent expressly permitted by Section 6.06;

provided that all sales, transfers, leases and other dispositions permitted hereby (other than those permitted by clause (b) above) shall be made for fair value and for at least 85% cash consideration (except that the consideration for the Camden Sale may consist of a 32-month promissory note payable in equal monthly installments).

Section 6.06. *Sale And Leaseback Transactions.* The Borrower will not, and will not permit any of its Subsidiaries to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereinafter acquired, and

thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred, except for any such sale of any fixed or capital assets that is made for cash consideration in an amount not less than the cost of such fixed or capital asset and is consummated within 90 days after the Borrower or such Subsidiary acquires or completes the construction of such fixed or capital asset.

Section 6.07. *Hedging Agreements.* The Borrower will not, and will not permit any of its Subsidiaries to, enter into any Hedging Agreement, other than Hedging Agreements entered into in the ordinary course of business by the Borrower or a Subsidiary Loan Party with any Lender (or any of their Affiliates) to hedge or mitigate risks to which the Borrower or any Subsidiary Loan Party is exposed in the conduct of its business or the management of its liabilities.

Section 6.08. *Restricted Payments; Certain Payments Of Indebtedness.*

(a) The Borrower will not, nor will it permit any Subsidiary to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except (i) Subsidiaries that are not Loan Parties may declare and pay dividends ratably with respect to their capital stock, (ii) Subsidiary Loan Parties may declare and pay dividends with respect to their capital stock if such payments are received by the Borrower or another Subsidiary Loan Party and (iii) the Borrower may pay cash dividends to Holdings as and to the extent necessary to permit Holdings to pay Permitted Holdings Expenses then due.

(b) The Borrower will not, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness, except:

(i) payment or prepayment of Indebtedness created under the Loan Documents;

(ii) payment of regularly scheduled interest and principal payments as and when due in respect of any Indebtedness, subject to any limitations that may be imposed by the pendency of the Cases;

(iii) payment of secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, subject to any limitations that may be imposed by the pendency of the Cases; and

(iv) payment of cash adequate protection payments in accordance with the Orders.

Section 6.09. *Transactions With Affiliates.* The Borrower will not, nor will it permit any Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions in the ordinary course of business that are at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrower and the Subsidiary Loan Parties not involving any other Affiliate, (c) transactions with Affiliates set forth in Schedule 6.09, (d) the Borrower may make payments specified in the Management Agreement (other than fees payable to Kelso or any of its Affiliates), (e) employment arrangements entered into in the ordinary course of business with officers of the Borrower and the Subsidiaries, (f) customary fees, expenses and indemnification paid to members of the Board of Directors of the Borrower and the Subsidiaries, (g) transactions with Holdings in respect of Related Activities or in the nature of shared services or payments for shared services, in each case that are reasonable in light of the relationship between Holdings and the Borrower, including accounting, audit, tax and legal services or payments and (h) key employee retention payments approved pursuant to a First Day Order.

Section 6.10. *Restrictive Agreements.* The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary; *provided* that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by any Loan Documents, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.10 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by Section 6.01(a) if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (iv) clause (a) of the foregoing shall not apply to customary provisions in leases restricting the assignment thereof.

Section 6.11. *Amendment Of Material Documents.* The Borrower will not nor will it permit any Subsidiary to, amend, modify or waive any of its rights

under (a) its certificate of incorporation, by-laws or other organizational documents and (b) the Management Agreement.

Section 6.12. *Capital Expenditures.* The Borrower will not permit the aggregate amount of Capital Expenditures (other than tooling expenditures) made by the Borrower and the Subsidiaries during any fiscal period set forth below to exceed the amount set forth below opposite such period:

<u>Date</u>	<u>Amount</u>
From and including the first day of the October 2004 fiscal month through and including the last day of the October 2004 fiscal month	\$4,000,000
From and including the first day of the October 2004 fiscal month through and including the last day of the November 2004 fiscal month	\$7,000,000
From and including the first day of the October 2004 fiscal month through and including the last day of the December 2004 fiscal month	\$10,000,000
From and including the first day of the October 2004 fiscal month through and including the last day of the January 2005 fiscal month	\$13,000,000
From and including the first day of the October 2004 fiscal month through and including the last day of the February 2005 fiscal month	\$14,000,000
From and including the first day of the October 2004 fiscal month through and including the last day of the March 2005 fiscal month	\$15,000,000

Section 6.13. *Minimum Consolidated EBITDA.* The Borrower will not permit the Consolidated EBITDA during any period (calculated as of the last day of such period) set forth below to be less than the amount set forth below opposite such period:

<u>Date</u>	<u>Amount</u>
From and including the first day of the	\$4,400,000

October 2004 fiscal month through and including the last day of the October 2004 fiscal month	
From and including the first day of the October 2004 fiscal month through and including the last day of the November 2004 fiscal month	\$6,900,000
From and including the first day of the October 2004 fiscal month through and including the last day of the December 2004 fiscal month	\$7,100,000
From and including the first day of the October 2004 fiscal month through and including the last day of the January 2005 fiscal month	\$11,100,000
From and including the first day of the October 2004 fiscal month through and including the last day of the February 2005 fiscal month	\$15,000,000
From and including the first day of the October 2004 fiscal month through and including the last day of the March 2005 fiscal month	\$19,300,000

Section 6.14. *Compliance With Budget.* The Borrower will not permit the amount of cumulative Net Cash Flow for any period from and including September __, 2004 [insert Petition Date if a Monday; otherwise first Monday after the Petition Date] to and including the last day of each week to be less than the amount of the corresponding cumulative Net Cash Flow set forth in the Approved 13-Week Cash Forecast for each such period by an amount exceeding the permitted variance set forth in such Approved 13-Week Cash Forecast (it being understood that the amount of such permitted variance may be adjusted by the Administrative Agent in any subsequent Approved 13-Week Cash Forecast). As used in this Section, “Net Cash Flow” means the amount set forth in the “Cumulative Net Cash Flow – excluding critical vendor payments” line item on any Approved 13-Week Cash Forecast.

ARTICLE 7
EVENTS OF DEFAULT

If any of the following events (“Events of Default”) shall occur:

- (a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise; or
- (b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of one Business Day; or
- (c) any representation or warranty made or deemed made by or on behalf of any Loan Party in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect when made or deemed made; or
- (d) (i) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, 5.04 (with respect to the existence of the Borrower) or 5.11 or in Article 6 (other than Section 6.14), (ii) the Borrower shall have failed to observe or perform the covenant contained in Section 6.14 for two consecutive weeks, or (iii) default shall be made by any Loan Party in the due observance or performance of any term or condition contained in any Order or any material term or condition contained in any First Day Order; or
- (e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in clause (a), (b) or (d) of this Article), and such failure shall continue unremedied for a period of 10 days after notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of any Lender); or
- (f) any Loan Party shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Post-Petition Material Indebtedness, when and as the same shall become due and payable; or
- (g) any event or condition occurs that results in any Post-Petition Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Post-Petition Material Indebtedness or any trustee or agent on its or their behalf to cause any Post-Petition Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; *provided* that this clause (g) shall not

apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness; or

(h) any of the Cases shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code or any Loan Party shall file a motion or other pleading seeking the dismissal of any of the Cases under Section 1112 of the Bankruptcy Code or otherwise (or any other Person shall file such motion or pleading that shall not be dismissed within 10 days after the filing thereof); a trustee under chapter 7 or chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases and the order appointing such trustee, responsible officer or examiner shall not be reversed or vacated within 30 days after the entry thereof; or an application shall be filed by any Loan Party for the approval of any other Superpriority Claim (other than the Carve Out) in any of the Cases which is *pari passu* with or senior to the claims of the Agents, the Issuing Banks and the Lenders against any Loan Party hereunder, or there shall arise or be granted any such *pari passu* or senior Superpriority Claim; or

(i) the Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any of the assets of any Loan Party that have a value in excess of \$1,000,000 in the aggregate; or

(j) an order of the Bankruptcy Court shall be entered reversing, amending, supplementing, staying for a period in excess of 10 days, vacating or otherwise modifying any of the Orders or terminating the use of cash collateral by the Loan Parties pursuant to the Orders; or

(k) one or more judgments for the payment as to a Post-Petition liability of money in an aggregate amount in excess of \$1,000,000 shall be rendered against any Loan Party or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party to enforce any such judgment; or

(l) any non-monetary judgment or order with respect to a Post-Petition event shall be rendered against any Loan Party which does or could reasonably be expected to have a Material Adverse Effect and there shall be any period of 10 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

(m) any Loan Party shall make any Pre-Petition Payment except (i) any Pre-Petition Payment (other than any critical vendor payment) that is permitted by the Orders or the First Day Orders and (ii) any critical vendor payment (x) that is of the type described in the First Day Orders, (y) as to which the Administrative Agent shall have received prior notice in accordance with Section 5.01(o) and (z) the making of which has not been objected to by the Required Lenders within two Business Days of the receipt of such notice; or

(n) an ERISA Event (other than the commencement of the Cases) shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$1,000,000 for all periods; or

(o) it shall be determined (whether by the Bankruptcy Court or by any other judicial or administrative forum) that any Loan Party is liable for the payment of claims arising out of any failure to comply (or to have complied) with applicable environmental laws or regulations the payment of which will have a Material Adverse Effect and the enforcement thereof shall not have been stayed; or

(p) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document, except (i) as a result of the sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents or (ii) as a result of the Administrative Agent's failure to maintain possession of any stock certificates, promissory notes or other instruments delivered to it under the Pledge Agreement; or

(q) the Guarantee Agreement shall at any time fail to constitute a valid and binding agreement of any Guarantor or any party shall so assert in writing; or

(r) a Change in Control shall occur;

then, and in every such event and at any time thereafter during the continuance of such event, and without further order of or application to the Bankruptcy Court, the Administrative Agent may, and at the request of the Required Lenders shall, take either or both of the following actions, at the same or different times: (a) terminate the Revolving Commitments, and thereupon the Revolving Commitments shall terminate immediately, and (b) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other

obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

ARTICLE 8 THE AGENTS

Each of the Lenders and the Issuing Bank hereby irrevocably appoints the Administrative Agent as its agent 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 of the Loan Documents, together with such actions and powers as are reasonably incidental thereto.

Any Person serving as an Agent that is a Lender 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 an Agent, and such Person that is a bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not an Agent hereunder.

The Agents shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) no Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that an Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and (c) except as expressly set forth in the Loan Documents, no Agent shall have any duty to disclose, and no Agent shall be liable for the failure to disclose, any information relating to any Loan Party that is communicated to or obtained by such Agent or any of its Affiliates in any capacity. No Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or wilful misconduct. No Agent shall be deemed to have knowledge of any Default unless and until written notice thereof is given to such Agent by the Borrower or a Lender, and no Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability,

effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article 4 or elsewhere in any Loan Document, other than with respect to the Administrative Agent to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Any 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 believed by it to be genuine and to have been signed or sent by the proper Person. Any Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. Any Agent may consult with legal counsel (who may be counsel for the Borrower or any other Loan Party), 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.

The Administrative Agent is authorized to execute any releases, termination statements or other similar documents that may be requested by any Loan Party to evidence any release or termination of any Guarantee under the Guarantee Agreement or any Lien under any of the Security Documents if such release or termination has been effected by the terms of the applicable Loan Documents or otherwise been consented to in accordance with Section 9.02.

Any Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by such Agent. Any Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of each 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 Agent.

Subject to the appointment and acceptance of a successor to the Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders, the Issuing Bank and the Borrower. Upon any such resignation, the Required Lenders shall have the right to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and

duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 9.03 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.

Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender 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 related agreement or any document furnished hereunder or thereunder.

ARTICLE 9 MISCELLANEOUS

Section 9.01. *Notices.* Except in the case of notices and other communications expressly permitted to be given by telephone, 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 telecopy, as follows:

(a) if to the Borrower, to it at Citation Corporation, 2700 Corporate Drive, Suite 100, Birmingham, AL 35242, Attention of Charles E. Bloome (Telecopy No. _____), with a copy to Burr & Forman LLP, 3100 SouthTrust Tower, 420 North 20th Street, Birmingham, Alabama 35203, Attention of Michael L. Hall, Esq. (Telecopy No. 205- 458-5100);

(b) if to the Administrative Agent, to JPMorgan Chase Bank, Loan and Agency Services Group, 270 Park Avenue, 20th Floor, New York, New York 10017, Attention of John McDonagh (Telecopy No. 212-270-0453), with a copy to counsel to the Administrative Agent, Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, Attention of Tiziana M. Bason (Telecopy No. 212-450-3800);

(c) if to the Issuing Bank, to JPMorgan Chase Bank, Loan and Agency Services Group, 270 Park Avenue, 20th Floor, New York, New York 10017,

Attention of John McDonagh (Telecopy No. 212-270-0453), with a copy to counsel to the Administrative Agent, Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, Attention of Tiziana M. Bason (Telecopy No. 212-450-3800);

(d) if to the Swingline Lender, to JPMorgan Chase Bank, Loan and Agency Services Group, 270 Park Avenue, 20th Floor, New York, New York 10017, Attention of John McDonagh (Telecopy No. 212-270-0453), with a copy to counsel to the Administrative Agent, Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, Attention of Tiziana M. Bason (Telecopy No. 212-450-3800); and

(e) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Section 9.02. *Waivers; Amendments.* (a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent (with the consent of the Required Lenders to the extent required thereunder) and the Loan Party or Loan Parties that are parties

thereto; *provided* that no such agreement shall (i) increase the Revolving Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the final maturity of any Loan, or the required date of reimbursement of any LC Disbursement, or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Revolving Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.17(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change any of the provisions of this Section or the percentage set forth in the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender, (vi) release any Guarantor from its Guarantee under the Guarantee Agreement (except as expressly provided in the Guarantee Agreement), or limit its liability in respect of such Guarantee, without the written consent of each Lender, or (vii) release all or substantially all of the Collateral from the Transaction Liens, without the written consent of each Lender; *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank or the Swingline Lender without the prior written consent of the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be. Notwithstanding the foregoing, any provision of this Agreement may be amended by an agreement in writing entered into by the Borrower, the Required Lenders and the Administrative Agent (and, if their rights or obligations are affected thereby, the Issuing Bank and the Swingline Lender) if (i) by the terms of such agreement the Revolving Commitment of each Lender not consenting to the amendment provided for therein shall terminate upon the effectiveness of such amendment and (ii) at the time such amendment becomes effective, each Lender not consenting thereto receives payment in full of the principal of and interest accrued on each Loan made by it and all other amounts owing to it or accrued for its account under this Agreement.

Section 9.03. *Expenses; Indemnity; Damage Waiver.* (a) The Borrower shall promptly 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 and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) the reasonable fees, charges and disbursements of counsel of each Lender party hereto on the Effective Date (but

not any assignees) (A) in connection with the preparation of the Loan Documents (but, except as permitted under clause (iv) below, not any amendments, modifications or waivers of the provisions thereof) (whether or not the transactions contemplated hereby or thereby shall be consummated) and (B) in connection with the enforcement or protection of its rights under the Pre-Petition Credit Agreement, *provided* that the aggregate amount of such fees, charges and disbursements reimbursed to any Lender and its Related Parties under this clause (ii) shall not exceed \$50,000 (without waiving any other rights in respect thereof that may exist under the Pre-Petition Credit Agreement), (iii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal, extension, cancellation or termination of any Letter of Credit or any demand for payment thereunder and (iv) all reasonable out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, the Issuing Bank or any Lender, in connection with the enforcement or protection of its rights in connection with the Interim Order, the Final Order, the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) The Borrower shall indemnify the Agents, the Issuing Bank and each Lender, 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, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of any Loan Document or any other agreement or instrument contemplated hereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the Financing Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank 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 Mortgaged Property or any other property currently or formerly owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower 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 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 are determined by a court

of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnitee or any of its Related Parties.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent, the Issuing Bank or the Swingline Lender under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be, such Lender's pro rata 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, the Issuing Bank or the Swingline Lender in its capacity as such. For purposes hereof, a Lender's "pro rata share" shall be determined based upon its share of the sum of the total Revolving Exposures and unused Revolving Commitments at the time.

(d) To the extent permitted by applicable law, the Borrower 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 or any agreement or instrument contemplated hereby, any Loan or Letter of Credit or the use of the proceeds thereof. Each Lender and the Administrative Agent irrevocably waives and releases each current and former officer, director and stockholder (and Affiliates of any such stockholder and their Related Parties but not including the Borrower and the Subsidiaries) of each of the Borrower and its Affiliates and each current and former officer and director of each Subsidiary from all actions, claims and liabilities of any nature, in law or equity, known or unknown, and whether or not heretofore asserted, which such Lender or the Administrative Agent, as applicable, had, or has or hereafter may have against any of the foregoing, in each case relating to, arising from or in connection with any action, cause, event or other matter that arises out of the Loan Documents or the extensions of credit thereunder or the other transactions contemplated thereby; *provided* that the foregoing shall not be construed as a waiver or release of (i) any obligation or liability of any Loan Party under any Loan Document or (ii) any action, claim or liability based on fraud or intentional misconduct. The Borrower, on behalf of itself and its Affiliates, irrevocably waives and releases the Administrative Agent, each Lender and their Related Parties from all actions, claims and liabilities of any nature, in law or equity, known or unknown, and whether or not heretofore asserted, which the Borrower or such Affiliate, as applicable, had, or has or hereafter may have against any of the foregoing, in each case relating to, arising from or in connection with any action, cause, event or other matter that arises out of the Loan Documents or the extensions of credit thereunder or the other transactions contemplated thereby; *provided* that the foregoing shall not be construed as a waiver or release of (i) any

obligation or liability of the Administrative Agent or any Lender or Related Party under any Loan Document or (ii) any action, claim or liability based on fraud or intentional misconduct.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

(f) Notwithstanding anything to the contrary, the Borrower shall not be required to indemnify any Indemnitee against, and hold such Indemnitee harmless from, any Excluded Taxes.

Section 9.04. *Successors And Assigns.* (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph 9.04(b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitment and the Loans at the time owing to it) with the prior written consent of the Administrative Agent, *provided* that no consent of the Administrative Agent shall be required for an assignment of any Revolving Commitment to an assignee that is a Lender immediately prior to giving effect to such assignment or any Affiliate of the assigning Lender.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Revolving Commitment or Loans, the amount of the Revolving Commitment or Loans of the assigning Lender subject to each such assignment

(determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 unless each of the Borrower and the Administrative Agent otherwise consents, *provided* that no such consent of the Borrower shall be required if an Event of Default under clause (a) or (b) of Article 7 has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, *provided* that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Revolving Commitments or Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

For the purpose of this Section 9.04(b), the term "Approved Fund" has the following meaning:

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

(iii) Subject to acceptance and recording thereof pursuant to paragraph 9.04(b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections

2.14, 2.15, 2.16 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the Issuing Bank 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 the Borrower, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (ii)(C) of this Section and any written consent to such assignment required by this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent, the Issuing Bank or the Swingline Lender, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Revolving Commitment and the Loans owing to it); *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of

any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.14, 2.15, and 2.16 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, *provided* that such Participant agrees to be subject to Section 2.17(c) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.14 or 2.16 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 the Borrower'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 2.16 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.16(e) as though it were a Lender.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 9.05. *Survival.* All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Revolving Commitments have not expired or terminated. The provisions of Section 2.14, 2.15, 2.16 and 9.03 and Article 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated

hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Revolving Commitments or the termination of this Agreement or any provision hereof.

Section 9.06. *Counterparts; Integration; Effectiveness.* This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent 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.

Section 9.07. *Severability.* Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 9.08. *Right Of Setoff.* If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement or the other Loan Documents held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

Section 9.09. *Governing Law.* This Agreement shall be construed in accordance with and governed by the laws of the State of New York applicable to contracts made and to be performed wholly within such state and the Bankruptcy Code.

Section 9.10. *Waiver Of Jury Trial.* EACH PARTY HERETO HEREBY 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, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

Section 9.11. *Headings.* Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 9.12. *Confidentiality.* Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (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, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, 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 any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (g) to any direct or indirect contractual counterparty in swap agreements or any of such contractual counterparty's professional advisors which agrees to be bound by the provisions of this Section, (h) with the consent of the Borrower or (i) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section or (B) becomes available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis from a source other than a Loan Party. For the purposes of this Section, "Information" means all information received from the Borrower or a Loan Party relating to the Borrower or a Loan Party or any of their respective businesses, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by the Borrower or such Loan Party; *provided* that, in the case of information received from the Borrower or any Loan Party after the date hereof, such information is clearly identified at the time of delivery as confidential. 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.

Section 9.13. *Interest Rate Limitation.* Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in

accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

CITATION CORPORATION

By: _____
Name:
Title:
Address:

JPMORGAN CHASE BANK, as
Administrative Agent

By: _____
Name:
Title: