

share of any payments received from Borrowers. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. No Defaulting Lender shall be entitled to receive any Unused Fee payable pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender). Each Defaulting Lender which is a Revolving Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.16.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders which are Revolving Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Revolving Credit Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless Borrower Agent shall have otherwise notified Administrative Agent at such time, the relevant Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Credit Outstandings of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Credit Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(b) Defaulting Lender Cure. If Borrower Agent, Administrative Agent and, in the case that a Defaulting Lender is a Revolving Lender, the Swing Line Lender and the L/C Issuer, agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Revolving Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.17(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

## **2.18. Increase in Term Loan Facility.**

(a) Request for Increase. On up to five occasions in the aggregate after the Closing Date, provided there exists no Default or Event of Default (except as the relevant Lenders or Additional Lenders providing the applicable Increase may agree if the proceeds thereof will be used to finance a Permitted Acquisition subject to "funds certain provisions", in which case no Default or Event of Default

may exist at the time of entry into the applicable purchase agreement and no Event of Default under Sections 8.01(a), (f) or (g) shall exist at the time of consummation of such Acquisition), upon notice to Administrative Agent (which shall promptly notify the applicable Term Lenders), Borrower Agent may from time to time request to add one or more incremental term facilities and/or request an increase in the U.S. Term Loan Facility or the Canadian Term Loan Facility (but, for the avoidance of doubt, not the Second Amendment Term Loan Facility) by an amount (for all such requests) not exceeding \$20,000,000 or the Canadian Dollar Equivalent thereof in the aggregate, all of which may be used to increase either Term Loan Facility or add one or more incremental term facilities (each such increase or addition of incremental facilities, an “*Increase*”); provided that any such request for an Increase shall be in a minimum amount of \$1,000,000 or the Canadian Dollar Equivalent thereof in the aggregate or, if less, the entire unutilized amount of the maximum amount of all such requests set forth above. At the time of sending such notice, Borrower Agent (in consultation with Administrative Agent) shall specify the time period within which each applicable Term Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the applicable Term Lenders).

(b) Lender Elections to Increase. Each applicable Term Lender shall notify Administrative Agent within such time period whether or not it agrees to commit to a portion of the requested increase of the Term Loan Facility or the requested incremental term facility and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage. Any Lender not responding within such time period shall be deemed to have declined to commit to any portion of the requested increase.

(c) Notification by Administrative Agent; Additional Lenders. Administrative Agent shall notify Borrower Agent of the applicable Lenders’ responses to each request made hereunder. To achieve the full amount of a requested increase or incremental term facility and subject to the approval of Administrative Agent (which approval shall not be unreasonably withheld), Borrower Agent may also invite additional Persons (subject to the same approvals required for an assignment pursuant to Section 10.06) to become Lenders pursuant to a joinder agreement in form and substance satisfactory to Administrative Agent and its counsel (each such assignee issuing a commitment, executing and delivering such joinder agreement and becoming a Lender, an “*Additional Lender*”).

(d) Effective Date and Allocations. If the Term Loan Facility is increased or an incremental term facility is provided in accordance with this Section 2.18, Administrative Agent and Borrower Agent shall determine the effective date (the “*Increase Effective Date*”) and the final allocation of such increase or incremental term facility. Administrative Agent shall promptly notify Borrower Agent and the applicable Term Lenders of the final allocation of such increase or incremental term facility and the Increase Effective Date.

(e) Conditions to Effectiveness of Increase. As a condition precedent to each Increase, (i) Borrower Agent shall have delivered to Administrative Agent a certificate dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of Borrower Agent (A) certifying and attaching the resolutions adopted by the Loan Parties approving or consenting to such Increase, and (B) certifying that, before and after giving effect to the Increase, the representations and warranties contained in Article V and in the other Loan Documents, or which are contained in any document furnished at any time under or in connection herewith or therewith, are true and correct in all respects (or in all material respects for such representations and warranties that are not by their terms already qualified as to materiality) on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.18, the representations and warranties contained in subsections (a) and (b) of Section 5.04 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (c), respectively, of Section 6.01; provided that, if the proceeds thereof will be used to finance a Permitted Acquisition subject to “funds certain provisions”, the

relevant Lenders or Additional Lenders providing the applicable Increase may agree that this condition shall be limited to the Specified Representations and those representations included in the acquisition agreement related to such Permitted Acquisition that are material to the interest of the Lenders and only to the extent that the relevant Borrower has the right to terminate its obligations under such acquisition agreement as a result of a breach of such representation; (ii) Borrowers, Administrative Agent, and any Additional Lender shall have executed and delivered a joinder to the Loan Documents in such form as Administrative Agent shall reasonably require; (iii) Borrowers shall have paid such fees and other compensation to Administrative Agent, the Lenders increasing their Term Loan Commitments or providing any incremental term loan and the Additional Lenders, as Borrowers, Administrative Agent, such Lenders and such Additional Lenders shall agree; (iv) Borrower Agent shall have delivered to Administrative Agent updated projections (after giving effect to the applicable Increase) for Holdings and its Subsidiaries evidencing that (1) on a pro forma basis after giving effect to the applicable Increase, the Consolidated Total Net Leverage Ratio of Holdings and its Subsidiaries as of the end of the fiscal month most recently ended as to which financial statements were required to be delivered pursuant to this Agreement was equal to or less than 4.75 to 1.00 and (2) on a pro forma basis after giving effect to the applicable Increase, the Consolidated Senior Net Leverage Ratio of Holdings and its Subsidiaries as of the end of the fiscal month most recently ended as to which financial statements were required to be delivered pursuant to this Agreement was equal to or less than 3.00 to 1.00; (v) the applicable Borrower shall have delivered to Administrative Agent and the Lenders increasing their Commitments and each Additional Lender an opinion or opinions, in form and substance reasonably satisfactory to Administrative Agent, from counsel to the Loan Parties reasonably satisfactory to Administrative Agent and dated such date; (vi) Borrowers, the Lenders increasing their Commitments and each Additional Lender shall have delivered such other instruments, documents and agreements as Administrative Agent may reasonably have requested; and (vii) each of the conditions precedent set forth in Section 4.02 shall have been satisfied.

(f) Interest Margins. Borrower Agent shall have reached agreement with the Lenders (or Additional Lenders) agreeing to the respective Increase with respect to the interest margins applicable to Term Loans or incremental term loans to be made pursuant such Increase (which interest margins may be higher than, equal to, or lower than the interest margins applicable to the applicable Term Loan set forth in this Agreement immediately prior to the Increase Effective Date, as applicable) and shall have communicated the amount of such interest margins to Administrative Agent. Any joinder pursuant to clause (c) above may, with the consent of Administrative Agent, Borrowers and the Lenders or Additional Lenders providing such Increase, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate to effectuate the provisions of this Section 2.18 (including any amendment necessary to effectuate the interest margins for the Term Loans or incremental term loans to be made pursuant to such Increase). Anything to the contrary contained herein notwithstanding, it is agreed and understood that the all-in yield (including interest rate margins, any interest rate floors, original issue discount and upfront fees (based on the lesser of a four-year average life to maturity or the remaining life to maturity), but excluding reasonable and customary arrangement, structuring and underwriting fees paid or payable to the lead arranger or its affiliates with respect to an Increase of the Term Loans or any incremental term loans provided pursuant to an Increase) applicable to any Increase of the Term Loan or any incremental term loans provided pursuant to an Increase shall not be more than 0.50% higher than the corresponding all-in yield (determined on the same basis) applicable to the then outstanding Term Loans, unless the interest rate margin with respect to the then outstanding Term Loans is increased by an amount equal to (I) the difference between the all-in yield with respect to the Increase of the Term Loan or the incremental term loans provided pursuant to the Increase, as applicable, and the all-in yield with respect to the then outstanding Term Loans having the lowest all-in yield, minus (II) 0.50% per annum; provided that to the extent that the interest rate margin of the outstanding Term Loans are increased pursuant to the foregoing clause, the interest rate margin applicable to the Revolving Loans shall be increased by the same amount.

(g) Each Increase shall rank pari passu in right of payment in respect of Collateral and with the applicable Obligations in respect of the applicable Term Loans available to Borrowers. In addition thereto (i) Increases to the Term Loans or any incremental term loans shall not have a final maturity date earlier than the latest maturity date applicable to any Term Loan or previously established incremental term loan, (ii) Increases to the Term Loans or any incremental term loans shall not have a weighted average life to maturity that is shorter than the then weighted average life to maturity of the remaining Term Loans and previously established incremental term loans and (iii) other than pricing or maturity date, Increases of the Term Loans and establishment of incremental term loans shall have substantially the same terms as the Term Loans and previously established incremental term loans.

(h) Conflicting Provisions. This Section 2.18 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

**2.19. Interest Act (Canada); Criminal Rate of Interest; Nominal Rate of Interest.**

Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, solely to the extent that a court of competent jurisdiction finally determines that the calculation or determination of interest payable by Canadian Borrower in respect of the Obligations pursuant to this Agreement and the other Loan Documents shall be governed by the federal laws of Canada or any Province thereof:

(a) whenever interest, fees or other amounts payable by Canadian Borrower are calculated on the basis of a period which is less than the actual number of days in a calendar year, each rate of interest determined pursuant to such calculation is, for the purposes of the Interest Act (Canada), equivalent to such rate multiplied by the actual number of days in the calendar year in which such rate is to be ascertained and divided by the number of days used as the basis of such calculation;

(b) in no event shall the aggregate "interest" (as defined in Section 347 of the Criminal Code, R.S.C. 1985, c. C-46, as the same shall be amended, replaced or reenacted from time to time) payable by Canadian Borrower to Administrative Agent or any Lender under this Agreement or any other Loan Document exceed the aggregate amount of such interest which Administrative Agent and the Lenders are entitled to charge and receive under applicable Laws and, if any payment, collection or demand pursuant to this Agreement or any other Loan Document in respect of "interest" (as defined in that section) is determined to be contrary to the provisions of that section, such payment, collection or demand shall be deemed to have been made by mutual mistake of Administrative Agent, Lenders and the Canadian Borrower and the amount of such payment or collection exceeding the payment or collection lawfully permitted shall be refunded by Administrative Agent and Lenders to Canadian Borrower. There is no intention that Administrative Agent or any Lender shall contract for, charge or receive compensation in the form of such "interest" in excess of the highest lawful rate, and, in the event it should be determined that any excess has been charged or received, then, ipso facto, such rate (or, if such excess has resulted from more than one rate; the particular rate or rates as determined by Administrative Agent in its sole discretion) shall be reduced to the highest lawful rate so that no amounts shall be charged which are in excess thereof. For the purposes of this Agreement and each other Loan Document to which Canadian Borrower is a party, the effective annual rate of interest payable by Canadian Borrower shall be determined in accordance with generally accepted actuarial practices and principles over the term of the Loans on the basis of annual compounding for the lawfully permitted rate of interest and, in the event of dispute, a certificate of a Fellow of the Institute of Actuaries appointed by Administrative Agent for the account of Canadian Borrower will be conclusive for the purpose of such determination in the absence of evidence to the contrary; and



(c) all calculations of interest payable by Canadian Borrower under this Agreement or any other Loan Document are to be made on the basis of the nominal interest rate described herein and therein and not on the basis of effective yearly rates or yields or on any other basis which gives effect to the principle of deemed reinvestment of interest. The parties acknowledge that there is a material difference between the stated nominal interests rates and the effective yearly rates of interest and that they are capable of making the calculations required to determine such effective yearly rates of interest.

### ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

#### 3.01. Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Law requires the withholding or deduction of any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by Borrower Agent or Administrative Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If applicable Law requires the withholding or deduction of any Taxes from any payment under any Loan Document, then (A) the applicable Loan Party shall withhold or make such deductions as are required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the applicable Law, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the Loan Parties shall be increased as necessary so that after any required withholding or deductions (including deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by Loan Parties. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Law or at Administrative Agent's option timely reimburse it for the payment of any Other Taxes.

(c) Tax Indemnification.

(i) Without limiting the provisions of subsection (a) or (b) above, each Loan Party shall, and does hereby, on a joint and several basis indemnify each Recipient (and its respective directors, officers, employees, affiliates and agents) and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted on payments to, or paid by, such Recipient (or its respective directors, officers, employees, affiliates and agents), as the case may be, and any penalties, interest and related expenses and losses arising therefrom or with respect thereto (including the fees, charges and disbursements of any counsel or other tax advisor for the Recipient (or its respective directors, officers, employees, affiliates, and agents)), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each

Loan Party on a joint and several basis shall also, and does hereby, indemnify Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to Administrative Agent as required by clause (ii) of this subsection. A certificate as to the amount of any such payment or liability delivered to Borrower Agent by a Lender or the L/C Issuer (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(ii) Without limiting the provisions of subsection (a) or (b) above, each Lender and the L/C Issuer shall, and does hereby, indemnify Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, against (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (iii) any Taxes (other than Indemnified Taxes) attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender or L/C Issuer by Administrative Agent shall be conclusive absent manifest error. Each Lender and the L/C Issuer hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of Administrative Agent, any assignment of rights by, or the replacement of, a Lender or the L/C Issuer and the occurrence of the Facility Termination Date.

(d) Evidence of Payments. Upon request by Borrower Agent or Administrative Agent, as the case may be, after any payment of Taxes by the Loan Parties or by Administrative Agent to a Governmental Authority as provided in this Section 3.01, Borrower Agent shall deliver to Administrative Agent or Administrative Agent shall deliver to Borrower Agent, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to Borrower Agent or Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Each Lender shall deliver to Borrower Agent and to Administrative Agent, at the time or times prescribed by applicable Laws or when reasonably requested by Borrower Agent or Administrative Agent, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit Borrower Agent or Administrative Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Loan Parties pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdiction; provided each Lender shall only be required to deliver such documentation as it may legally provide.

(ii) Without limiting the generality of the foregoing:

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to Borrower Agent and Administrative Agent executed originals of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by Borrower Agent or Administrative Agent as will enable Borrower Agent or Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to Borrower Agent and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of Borrower Agent or Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(I) executed originals of Internal Revenue Service Form W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(II) executed originals of Internal Revenue Service Form W-8ECI,

(III) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation (including executed originals of the beneficial owner's applicable IRS Forms and a withholding statement, if applicable),

(IV) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of any Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN-E,

(V) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States Federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit Borrower Agent or Administrative Agent to determine the withholding or deduction required to be made, or

(VI) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower Agent and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower Agent or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation

reasonably requested by Borrower Agent or Administrative Agent as may be necessary for the Borrowers and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (VI), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower Agent and Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. So long as no Event of Default is occurring, if Administrative Agent, any Lender or the L/C Issuer determines, in its sole discretion acting in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by any Loan Party under this Section with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by Administrative Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Loan Party, upon the request of Administrative Agent, such Lender or the L/C Issuer, agrees to repay the amount paid over to any Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to Administrative Agent, such Lender or the L/C Issuer in the event Administrative Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This subsection shall not be construed to require Administrative Agent, any Lender or the L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

**3.02. Illegality.** If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to Borrower Agent through Administrative Agent, (i) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies Administrative Agent and Borrower Agent that the

circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Loan Parties shall, upon demand from such Lender (with a copy to Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Loan Parties shall also pay accrued interest on the amount so prepaid or converted.

**3.03. Inability to Determine Rates.** If Administrative Agent determines that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan, or (c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, Administrative Agent will promptly so notify Borrower Agent and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until Administrative Agent revokes such notice. Upon receipt of such notice, Borrower Agent may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

**3.04. Increased Costs; Reserves on Eurodollar Rate Loans.**

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e)) or the L/C Issuer;

(ii) subject any Recipient to any Taxes on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto (except for Indemnified Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Tax described in clause (a) of the definition of Excluded Tax, payable by such Lender or the L/C Issuer); or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Loan Parties will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

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

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

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

(e) Reserves on Eurodollar Rate Loans. Without duplication of the effect of the Eurodollar Reserve Percentage, the relevant Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided Borrower Agent shall have received at least 10 days' prior notice (with a copy to Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

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

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by Borrower Agent; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by Borrower Agent pursuant to Section 10.13;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

**3.06. Mitigation Obligations.** If any Lender requests compensation under Section 3.04, or Borrowers are required to pay any additional amount to any Lender, the L/C Issuer or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender or the L/C Issuer, as applicable, shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

**3.07. Survival.** All of the obligations under this Article III shall survive the resignation of Administrative Agent, the L/C Issuer and the Swing Line Lender, the replacement of any Lender and the occurrence of the Facility Termination Date.

#### **ARTICLE IV CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

**4.01. Conditions of Initial Credit Extension.** The obligation of each Lender and the L/C Issuer to make any initial Credit Extension hereunder is subject to satisfaction or waiver by the applicable party of the following conditions precedent:

(a) Administrative Agent's receipt of the following items, each properly executed by a Responsible Officer of applicable Loan Party, each dated as of the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to Administrative Agent and its legal counsel:

(i) Uniform Commercial Code (and Personal Property Security Act financing statements prepared by counsel for the Administrative Agent for execution and filing on behalf of the Administrative Agent), suitable in form and substance for filing in all places required by applicable law to perfect the Liens of Administrative Agent under the Security Instruments as a first priority Lien as to items of Collateral in which a security interest may be perfected by the filing of financing statements, and such other documents and/or evidence of other actions as may be reasonably necessary under applicable law to perfect the Liens of Administrative Agent under such Security Instruments as a first priority Lien in and to such other Collateral as Administrative Agent may require;

(ii) Uniform Commercial Code, Personal Property Security Act, tax, judgment and other related search results showing only those Liens as are acceptable to Administrative Agent and Lenders;

(iii) evidence of the payment in full and cancellation of the Existing Agreement, including terminations of Uniform Commercial Code and Personal Property Security Act financing statements filed in connection with the Existing Agreement and other evidence of Lien releases and other related matters on terms acceptable to Administrative Agent.

(iv) evidence satisfactory to Administrative Agent of the consummation (in compliance with all applicable laws and regulations, with the receipt of all necessary material governmental, shareholder and third party consents and approvals relating thereto) of (A) the incurrence of the Subordinated Indebtedness in accordance with the terms of the Subordinated Indebtedness Documents with proceeds to U.S. Borrower not less than \$20,700,000, (B) the incurrence of Indebtedness in accordance with the terms of the Holdco Notes with proceeds to Holdings of not less than \$3,000,000, (C) the consummation (in compliance with all applicable laws and regulations, with the receipt of all necessary material governmental, shareholder and third party consents and approvals relating thereto) of issuance of the Sponsor Convertible Notes with proceeds thereof, together with additional proceeds from the Holdco Notes, representing at least 30% of the total capital structure of Holdings (inclusive of customary rollover equity), (D) the consummation of the Closing Date Acquisition in accordance with the terms of the Closing Date Acquisition Documents, each of which shall be on terms and conditions satisfactory to Administrative Agent and (E) Excess Availability equal to or in excess of \$5,000,000;

(v) (A) audited financial statements for the fiscal years ending December 31, 2011, December 31, 2012 and December 31, 2013 and unaudited monthly financial statements (including an income statement, balance sheet and cash flow statement) for the three years prior to the Closing Date of Tapp Label Technologies Inc. and its Subsidiaries, (B) audited financial statements for the fiscal years ending June 30, 2012, June 30, 2013 and June 30, 2014 and unaudited monthly financial statements (including an income statement, balance sheet and cash flow statement) for the three years prior to the Closing Date of Metro Label Company Ltd., (C) reviewed financial statements for the fiscal years ending years ending June 30, 2012, June 30, 2013 and June 30, 2014 and unaudited monthly financial statements (including an income statement, balance sheet and cash flow statement) for the three years prior to the Closing Date of each of Metro Label Pacific Ltd. and Metro Label California Ltd., (D) five-year projected



financial statements and (E) a closing balance sheet adjusted to give effect to the Transactions, in each case, in form and substance acceptable to Administrative Agent;

(vi) such documentation and information at least 5 Business Days prior to the Closing Date about the Loan Parties required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation, the Act

(vii) each agreement, instrument, document, certificate, opinion and other items set forth on the closing checklist attached hereto as Exhibit G, except those items that are expressly permitted to be delivered after the Closing Date pursuant to Section 6.13 hereof;

(viii) such other assurances, certificates, documents, consents or opinions as Administrative Agent or any Lender may reasonably require.

(b) Any fees, charges and disbursements required to be paid on or before the Closing Date shall have been paid.

(c) All consents, licenses and approvals required in connection with the execution, delivery and performance by each Loan Party and the validity against each such Loan Party of the Loan Documents to which it is a party shall have been obtained and be in full force and effect.

(d) Unless waived by Administrative Agent, Borrowers shall have paid all reasonable fees, charges and disbursements of counsel to Administrative Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such reasonable fees, charges and disbursements as shall constitute its reasonable estimate of such reasonable fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between Borrowers and Administrative Agent).

(e) Administrative Agent shall be satisfied that after giving effect to (i) the initial Credit Extension hereunder, (ii) consummation of the Transactions and payment of all fees and expenses in connection therewith, (1) the Consolidated Total Net Leverage Ratio shall not be greater than 4.75:1.0, (2) the Consolidated Senior Net Leverage Ratio shall not be greater than 3.00:1.0 and (3) Consolidated EBITDA for the latest twelve (12) fiscal months ended May 31, 2015 shall be equal to or greater than \$11,800,000, after giving pro forma effect to the consummation of the Transactions.

(f) Administrative Agent shall be satisfied with title and other matters related to owned real estate, if any, including receipt of title insurance, real estate surveys, flood determinations and environmental studies including Phase I assessments.

(g) The Purchase Agreement and all material documents and instruments delivered in connection therewith together with evidence satisfactory to the Administrative Agent that all consents and/or waivers from, or notices to, Governmental Authorities in accordance with applicable Laws have been obtained or made as Administrative Agent shall reasonably request shall be in form and substance satisfactory to Administrative Agent.

(h) The Purchase Agreement Representations shall be true and correct as of the closing date of the Closing Date Acquisition.

(i) The Closing Date Acquisition shall have been approved by the Target's directors and (if necessary) shareholders, and all necessary regulatory approvals with respect to the Closing Date Acquisition shall have been obtained. There shall be no injunction, temporary restraining order or other

legal action in effect which would prohibit the closing of the Closing Date Acquisition or the closing and funding of the Facilities.

(j) Administrative Agent shall be satisfied that key members of the Borrower's management team have been retained and have entered into satisfactory employment contracts.

(k) The Sponsor, Borrowers, Administrative Agent and North Haven Credit Partners II L.P. shall have entered into the Sponsor Equity Contribution Agreement, in form and substance satisfactory to Administrative Agent.

(l) Since December 31, 2014, no event, circumstance or change shall have occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

(m) Administrative Agent shall have received all other documents and legal matters in connection with the transactions contemplated by this Agreement and shall have been delivered, executed or recorded and shall be in form and substance reasonably satisfactory to Administrative Agent.

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**4.02. Conditions to all Credit Extensions.** The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar Rate Loans) or make the initial Credit Extension hereunder is subject to the following conditions precedent:

(a) The representations and warranties of the Loan Parties contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all respects (or in all material respects for such representations and warranties that are not by their terms already qualified as to materiality) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all respects (or in all material respects for such representations and warranties that are not by their terms already qualified as to materiality) as of such earlier date, and except that for purposes of this Section 4.02(a), the representations and warranties contained in subsections (a) and (b) of Section 5.04 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) No Default or Event of Default shall have occurred and be continuing, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) Administrative Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) After giving effect to each Credit Extension, Total Revolving Credit Outstandings do not exceed the Total Revolving Credit Commitments.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar Rate Loans) submitted by

Borrower Agent shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a), 4.02(b) and 4.02(d) have been satisfied on and as of the date of the applicable Credit Extension.

## ARTICLE V REPRESENTATIONS AND WARRANTIES

To induce the Lender Parties to enter into this Agreement and to make Loans and to issue Letters of Credit hereunder, each Loan Party represents and warrants to Administrative Agent and the Lenders, and in the case of representations and warranties made as of the Closing Date both before and after the consummation of the Transactions, that:

**5.01. Existence, Qualification and Power.** Each Loan Party and each Subsidiary (a) is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business as is now being conducted and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and to consummate the Transactions to which it is a party, and (c) is duly qualified and in good standing under the Laws of each jurisdiction where its operation or properties requires such qualification, except, in the case of this clause (c), to the extent that failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**5.02. Authorization; No Contravention; Consents.** The execution, delivery and performance by each Loan Party of each Loan Document to which it is a party, and the consummation of the Transactions, have been duly authorized by all necessary organizational action, and do not and will not (a) contravene the terms of its Organization Documents, (b) conflict with or result in any breach or contravention of, in any material respect, or the creation of any Lien under (i) any material Contractual Obligation to which such Person is a party or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject, (c) violate any Law material to any Loan Party or Subsidiary in any material respect, or (d) require any material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person, if the failure to obtain the same, take such action or give such notice could reasonably be expected to result in a Material Adverse Effect.

**5.03. Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as the enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to or affecting the rights and remedies of creditors or by general equitable principles.

**5.04. Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements and the Reviewed Financial Statements (i) were each prepared in accordance with GAAP consistently applied throughout the applicable period covered thereby, except as otherwise expressly noted therein; and (ii) each fairly present, in all material respects, the financial condition of Holdings and its Subsidiaries, Metro Label Company Ltd., Metro Label California Ltd. and Metro Label Pacific Ltd., as applicable, as of the respective date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The unaudited consolidated and consolidating balance sheet of Holdings and its Subsidiaries dated as of May 31, 2015, and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for the month then ended (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of Holdings and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since December 31, 2013, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) As of the Closing Date, the Loan Parties and their Subsidiaries, on a Consolidated basis, are Solvent.

**5.05. Litigation.** As of the Closing Date, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Loan Party, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any Subsidiary or against any of their properties that (a) purport to affect or pertain to this Agreement or any other Loan Document or any of the Transactions or (b) except as specifically disclosed in Schedule 5.05, either individually or in the aggregate, assert liabilities in excess of, or could reasonably be expected to result in liabilities in excess of, \$250,000 or the Canadian Dollar Equivalent thereof, or otherwise have a Material Adverse Effect.

**5.06. No Default.** No Loan Party nor any Subsidiary is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document or the incurrence of Indebtedness hereunder.

**5.07. Ownership of Property; Liens.**

(a) Each Loan Party and each of its Subsidiaries has good, and in the case of Real Estate, marketable title to all property (tangible and intangible), including Intellectual Property, necessary to, or used in the ordinary conduct of, its business, subject to Permitted Liens and except (i) for any such properties which are immaterial to the operations of such Loan Party's or such Subsidiary's respective business and/or (ii) as may have been disposed of in compliance with the terms of this Agreement.

(b) No Real Estate is owned by any Loan Party as of the Closing Date. Schedule 5.07(b) sets forth the address (including street address, county and state) of all leases of the Loan Parties, with respect to each such lease as of the Closing Date.

(c) Schedule 7.02 sets forth, as of the Closing Date, a complete and accurate list of all Liens on the property or assets of each Loan Party and each of its Subsidiaries (other than Liens created under the Loan Documents), showing the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto. The property and assets of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Liens set forth on Schedule 7.02, and other Permitted Liens.

## 5.08. Environmental Compliance.

(a) Each Loan Party, Subsidiary, Real Estate and real property currently leased or operated by any Loan Party or Subsidiary complies and has at all times complied with Environmental Law. Any real property formerly owned, leased or operated by any Loan Party, Subsidiary or their respective predecessors-in-interest complied with Environmental Law at all times during any such Loan Party's, Subsidiary's or predecessors-in-interest's ownership, lease or operation thereof.

(b) Each Loan Party and Subsidiary has obtained and maintains and complies with any permit, license or other approval required under any Environmental Law with respect to such Loan Party's or Subsidiary's operations.

(c) No Loan Party or any Subsidiary is or has any time been subject to any Environmental Liability except as has not resulted, and could not, individually or in the aggregate, reasonably be expected to result, in Environmental Liabilities on the part of the Loan Parties and their Subsidiaries in excess of \$250,000 or the Canadian Dollar Equivalent thereof.

(d) As of the Closing Date, (i) none of the properties currently or formerly owned, leased or operated by any Loan Party or any Subsidiary is listed or, to the knowledge of the Loan Parties, proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) on any property currently owned, leased or operated by any Loan Party or any Subsidiary there are no and, to the knowledge of the Loan Parties, never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed; (iii) to the knowledge of the Loan Parties, there is no asbestos or asbestos-containing material on any property currently owned, leased or operated by any Loan Party or Subsidiary; and (iv) Hazardous Materials have not been released, discharged or disposed of by any Loan Party or Subsidiary in violation of Environmental Laws or, to the knowledge of the Loan Parties, by any other Person in violation of Environmental Laws on any property currently or formerly owned, leased or operated by any Loan Party or any Subsidiary or their respective predecessors-in-interest, except in the case of this clause (iv) as has not resulted and could not, individually or in the aggregate, reasonably be expected to result in, Environmental Liabilities on the part of the Loan Parties and Subsidiaries in excess of \$250,000 or the Canadian Dollar Equivalent thereof.

(e) Except as could not individually or in the aggregate reasonably be expected to result in Environmental Liabilities on the part of the Loan Parties and their Subsidiaries in excess of \$250,000 or the Canadian Dollar Equivalent thereof, as of the Closing Date, no Loan Party or any Subsidiary is undertaking, and no Loan Party or any Subsidiary has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored by any Loan Party or any Subsidiary at, or transported to or from by or on behalf of any Loan Party or any Subsidiary, any property owned or operated by any Loan Party or any Subsidiary have, to the knowledge of the Loan Parties, been disposed of in a manner not reasonably expected to result in Environmental Liability to any Loan Party or any Subsidiary in excess of \$250,000 or the Canadian Dollar Equivalent thereof.

(f) The Loan Parties and their Subsidiaries have provided the Administrative Agent all reports, audits, assessments and correspondence with regulatory authorities regarding environmental matters in connection with the Loan Parties, Subsidiaries or real property currently or formerly owned, leased or operated by any Loan Party or Subsidiary.

**5.09. Insurance and Casualty.** The Loan Parties and their Subsidiaries maintain insurance with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties or the applicable Subsidiary operates. Schedule 5.09 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and their Subsidiaries as of the Closing Date. Each insurance policy listed on Schedule 5.09 is in full force and effect.

**5.10. Taxes.** Each Loan Party and each Subsidiary has filed all Federal and state and foreign (including Canadian federal and provincial) income Tax returns and other material Tax returns and reports required to be filed, and has paid all Federal and state and foreign (including Canadian federal and provincial) income Taxes and other material Taxes, assessments, fees and other governmental charges levied or imposed upon it or its properties, income or assets otherwise due and payable, except those which are being Properly Contested. Neither Holdings nor any Subsidiary thereof is party to any tax sharing agreement. All interest paid by U.S. Borrower will be treated as U.S.-source income for U.S. federal income tax purposes. All interest paid by Canadian Borrower will be treated as Canadian-source income for U.S. federal income tax purposes.

**5.11. ERISA Compliance; Canadian Plans.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter or opinion letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code and such letter may be relied upon, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of each Loan Party, nothing has occurred that would prevent or cause the loss of any such Plan's tax-qualified status.

(b) As of the Closing Date, there are no pending or, to the best knowledge of any Loan Party, threatened claims, actions or lawsuits, or action by any Person, with respect to any Plan that could reasonably be expected to result in liabilities individually or in the aggregate in excess of \$250,000 or the Canadian Dollar Equivalent thereof. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in liabilities individually or in the aggregate in excess of \$250,000 or the Canadian Dollar Equivalent thereof.

(c) (i) No ERISA Event has occurred, and no Loan Party is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event, in each case that could reasonably be expected to result in liabilities individually or in the aggregate in excess of \$250,000; (ii) each Loan Party, each Subsidiary thereof and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained, in each case except as could not reasonably be expected to result in liabilities individually or in the aggregate to the Loan Parties in excess of \$250,000; (iii) as of the valuation date for any Pension Plan immediately prior to the date this representation is made, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and no Loan Party knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to

drop below 60% as of the most recent valuation date; and (iv) no Loan Party, no Subsidiary thereof nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA, except as could not reasonably be expected to result in liabilities individually or in the aggregate to the Loan Parties in excess of \$250,000.

(d) As of the Closing Date, no Loan Party maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than those listed on Schedule 5.11(d) hereto.

(e) Except as would not reasonably be expected to result in a Material Adverse Effect, (i) all Canadian Plans that are registered pension plans, as that term is defined in the *Pension Benefits Standards Act* (British Columbia) and Pension Benefits Act (Ontario) (or other applicable Laws governing registered pension plans in Canada ("**Canadian Pension Plans**")), have been administered in accordance with all applicable Laws, (ii) no Canadian Pension Plan is a multiemployer plan, as that term is defined in the *Pension Benefits Standards Act* (British Columbia) and Pension Benefits Act (Ontario) (or other law governing registered pension plans in Canada), (iii) no Canadian Pension Plan is or was a defined benefit pension plan, (iv) no Canadian Plan, other than a pension plan, provides post-employment benefits other than as required by applicable Laws and (v) no Canadian Plan is unfunded, self-insured or contains a deficit reserve. Each Canadian Pension Plan, if any, has been duly registered under the *Income Tax Act* (Canada) and all other applicable Laws which require registration and no event has occurred which is reasonably likely to cause the loss of such registered status in each case where the failure to do so could reasonably be expected to have a Material Adverse Effect. All material obligations (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Canadian Pension Plans under any applicable Laws and any funding agreements therefor have been performed in a timely fashion, in each case where the failure to do so could reasonably be expected to have a Material Adverse Effect. To the knowledge of the Canadian Borrower, as of the Closing Date, there are no material outstanding disputes concerning the assets of the Canadian Pension Plans.

(f) With respect to each scheme or arrangement mandated by a government other than the United States or Canada (a "**Foreign Government Scheme or Arrangement**") and with respect to each employee benefit plan maintained or contributed to by any Loan Party or any Subsidiary of any Loan Party that is not subject to United States or Canadian law (a "**Foreign Plan**"):

(i) any employer and employee contributions required by law or by the terms of any Foreign Government Scheme or Arrangement or any Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices;

(ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the date hereof, with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and

(iii) each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

**5.12. Subsidiaries; Equity Interests; Capitalization.** No Loan Party and no Subsidiary of any Loan Party (a) has any Subsidiaries other than those disclosed on Schedule 5.12 (which Schedule sets forth the legal name, jurisdiction of incorporation or formation and authorized

Equity Interests of each such Subsidiary) or created or acquired in compliance with Section 6.12, or (b) has any equity Investments in any other Person other than those specifically disclosed on Schedule 5.12 or made after the Closing Date in compliance with this Agreement and the other Loan Documents. All of the outstanding Equity Interests of each Loan Party and each Subsidiary have been validly issued, are fully paid and non-assessable and are owned by the Persons and in the amounts specified on Schedule 5.12 free and clear of all Liens except for non-consensual Permitted Liens.

**5.13. Margin Regulations; Investment Company Act.** No Loan Party and no Subsidiary of any Loan Party is engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. None of the Loan Parties, nor any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

**5.14. Disclosure.** No report, financial statement, certificate or other information furnished by or on behalf of any Loan Party or any Subsidiary to Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, 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, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

**5.15. Compliance with Laws; Anti-Terrorism Laws and Foreign Asset Control Regulations.**

(a) Each Loan Party and each Subsidiary is in compliance with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) Each Loan Party and each Subsidiary is in compliance in all material respects with, and the advances of the Loans and use of the proceeds thereof will not violate, (a) the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the "*Trading With the Enemy Act*") or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the "*Foreign Assets Control Regulations*") and any other enabling legislation or executive order relating thereto, thereto (which for the avoidance of doubt shall include, but shall not be limited to Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "*Executive Order*") and/or (b) the Uniting And Strengthening America by Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001). None of the Loan Parties or any of their Subsidiaries is a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations.

(c) Neither the Loan Parties, nor, to the knowledge of the Loan Parties, any agent or representative of the Loan Parties, has taken any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "government official" (including any officer or employee of a



government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage in violation of applicable anti-corruption laws, except for such violations that would not reasonably be expected to result in a loss to the Loan Parties in excess of \$500,000. The Loan Parties have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws and with the representation and warranty contained herein.

**5.16. Labor Matters.** Except as set forth on Schedule 5.16, as of the Closing Date no Loan Party or any Subsidiary is a party to or bound by any collective bargaining agreement. There are no strikes, lockouts, slowdowns or other labor disputes against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. As of the Closing Date, there are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan Party or any Subsidiary has made a pending demand for recognition. As of the Closing Date, there are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Subsidiaries which individually or in the aggregate could reasonably be expected to result in a Material Adverse Effect. The consummation of the transactions contemplated by the Loan Documents 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 or any of its Subsidiaries is bound.

**5.17. Brokers.** No broker or finder (except for those whose fees and expenses have been paid in full on the Closing Date) brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents.

**5.18. Closing Date Acquisition Documents.** Borrower Agent has delivered to Administrative Agent a complete and correct copy of the Closing Date Acquisition Documents, including all schedules and exhibits thereto. The execution, delivery and performance of each of the Closing Date Acquisition Documents have been duly authorized by all necessary action on the part of the Loan Parties. Each Closing Date Acquisition Document is the legal, valid and binding obligation of each Loan Party party thereto, enforceable against such Loan Party in accordance with its terms, in each case, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to or affecting the rights and remedies of creditors or by general equitable principles. No Loan Party is in default in any material respect in the performance or compliance with any provisions thereof. All representations and warranties made by any Loan Party, and to each Loan Party's knowledge, each other party thereto, in the Closing Date Acquisition Documents and in the certificates delivered in connection therewith are true and correct in all material respects. The Closing Date Acquisition has been consummated (or is being consummated concurrently with the execution and delivery of this Agreement), in all material respects, in accordance with the terms of the Closing Date Acquisition Documents and all applicable Laws. All requisite approvals by Governmental Authorities having jurisdiction over any Loan Party and, to each Loan Party's knowledge, each other party to any Closing Date Acquisition Document, with respect to the Closing Date Acquisition, have been obtained (including filings or approvals required under the Hart-Scott-Rodino Antitrust Improvements Act and the Investment Canada Act

and the Competition Act (Canada)), except for any approval the failure to obtain could not reasonably be expected to be material to the interests of the Lenders.

**5.19. Senior Indebtedness.** All Obligations including those to pay principal of and interest (including post-petition interest, whether or not allowed as a claim under bankruptcy or similar laws) on the Loans and other Obligations, and fees and expenses in connection therewith, constitute "Senior Indebtedness" or similar term relating to the Obligations and all such Obligations are entitled to the benefits of the subordination created by the Intercreditor Agreement or any other applicable Subordinated Indebtedness Document, as applicable. Each Loan Party acknowledges that Administrative Agent, each Lender and the L/C Issuer is entering into this Agreement and is extending its Commitments in reliance upon the subordination provisions of the Intercreditor Agreement or applicable Subordinated Indebtedness Document.

**5.20. Status of Holdings.** Holdings has not engaged in any business activity and does not own any property other than as permitted pursuant to Section 7.15.

**5.21. Surety Bonds.** No Loan Party is a party to or bound by any surety bond agreement, indemnification agreement therefor or bonding requirement with respect to products or services sold by it.

**5.22. Validity, Perfection and Priority of Security Interests.** The Liens in favor of Administrative Agent provided pursuant to the Security Instruments are valid and perfected first priority security interests in the Collateral (subject only to the Permitted Liens), and all filings and other actions necessary to perfect the Liens on such Collateral have been taken on the Closing Date or shall be taken as promptly as practicable following the Closing Date or in accordance with Section 6.13.

## ARTICLE VI AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan Obligation (other than contingent indemnification claims for which no claim has been asserted) hereunder shall remain unpaid or unsatisfied, each Loan Party shall, and shall cause each Subsidiary to:

**6.01. Financial Statements.** Deliver to Administrative Agent and each Lender:

(a) as soon as available, but in any event within 120 days after the end of each Fiscal Year of Holdings (or by October 31, 2016, in the case of the Fiscal Year ending December 31, 2015), a consolidated and consolidating balance sheet of Holdings and its Subsidiaries as of the end of such Fiscal Year, and the related consolidated and consolidating statements of income or operations, owners' equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP; (i) such consolidated statements to be audited and accompanied by a report and opinion of an accounting firm of nationally recognized standing, subject to the approval of the Required Lenders (the "**Auditor**"), which report and opinion shall not be subject to any "going concern" or other qualification or exception or any qualification or exception as to the scope of such audit and shall state that such financial statements fairly present the financial condition of Holdings and its Subsidiaries as of the dates indicated and the results of their operations and cash flow for the periods indicated in conformity with GAAP; provided that the report/opinion delivered in connection with the annual audit for the Fiscal Year ending December 31, 2015, may be subject to a going concern qualification and (ii) such consolidating statements to be certified by a Responsible Officer of Borrower Agent to the effect that such statements are prepared in

accordance with GAAP and fairly stated in all material respects when considered in relation to the consolidated financial statements of Holdings and its Subsidiaries;

(b) quarterly, as soon as available and in any event within forty five (45) days after the end of each Fiscal Quarter of Holdings, a consolidated and consolidating balance sheet of Holdings and its Subsidiaries as of the end of such Fiscal Quarter and the related consolidated statements of income or operations and cash flows for such Fiscal Quarter, setting forth in each case in comparative form figures for the preceding Fiscal Year and the financial projections for the current Fiscal Year and certified by a Responsible Officer of Borrower Agent to the effect that such statements fairly present in all material respects in accordance with GAAP the financial condition of Holdings and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end adjustments and the absence of footnotes.

(c) monthly, as soon as available, but in any event within 30 days after the end of each Fiscal Month (or 45 days after the end of each Fiscal Month ending no more than 6 months after the Closing Date), unaudited consolidated and consolidating balance sheets of Holdings and its Subsidiaries as of the end of such Fiscal Month and the related consolidated and consolidating statements of income or operations and cash flows for such Fiscal Month and for the portion of the Fiscal Year then elapsed, setting forth in each case in comparative form figures for the preceding Fiscal Year and the financial projections for the current Fiscal Year and certified by a Responsible Officer of Borrower Agent to the effect that such statements fairly present in all material respects in accordance with GAAP the financial condition of Holdings and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end adjustments and the absence of footnotes.

(d) as soon as available but in any event within 30 days after the end of each Fiscal Year, annual financial projections of Holdings and its Subsidiaries on a consolidated and consolidating basis, in form reasonably satisfactory to Administrative Agent, of monthly consolidated and consolidating balance sheets and statements of income or operations and cash flows.

**6.02. Other Information.** Deliver to Administrative Agent and each Lender, in form and detail reasonably satisfactory to Administrative Agent:

(a) concurrently with delivery of financial statements under Section 6.01(a), with the financial statements under Section 6.01(b) and with the financial statements under Section 6.01(c), a Compliance Certificate executed by a Responsible Officer of Borrower Agent and certified by the CRO, which certifies compliance with Section 7.12 and provides a reasonably detailed calculation of financial covenants required thereby and a management report (i) describing the operations and financial condition of Holdings and its Subsidiaries for the fiscal period covered by such financial statements and the portion of the current Fiscal Year then elapsed (or for the Fiscal Year then ended in the case of year-end financials) and (ii) discussing the reasons for any significant variations as between the fiscal period covered and the portion of the Fiscal Year then elapsed and the same periods during the immediately preceding Fiscal Year, and as between such periods and the same periods included in the financial projections delivered pursuant to Section 6.01(d), all such information to be presented in reasonable detail;

(b) concurrently with delivery of financial statements under Section 6.01(a), an Excess Cash Flow Certificate executed by a Responsible Officer of Borrower Agent which provides a reasonably detailed description of Excess Cash Flow for such Fiscal Year;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement sent to the equityholders of Holdings, and copies of all annual, regular, periodic and special

reports and registration statements which Holdings may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, and not otherwise required to be delivered to Administrative Agent pursuant hereto;

(d) monthly, as soon as available, but in any event within 30 days after the end of each Fiscal Month, (i) a 13-week cash flow forecast, containing line items of sufficient detail to reflect the Loan Parties' projected receipts and operating disbursements for such 13-week period, in form and substance acceptable to the Administrative Agent and (ii) a report detailing accounts receivable and accounts payable of the Loan Parties with detailed aging and reconciliation; and

(e) promptly, such additional information regarding the business, financial or organizational affairs of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as Administrative Agent or any Lender may from time to time reasonably request.

**6.03. Notices.** Promptly and in any event within three (3) Business Days, notify Administrative Agent and each Lender of:

(a) the occurrence of any Default or Event of Default;

(b) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of or default under, or receipt of a notice alleging breach or non-performance of or default under, a Material License or a Contractual Obligation (including any Subordinated Indebtedness Document or the Holdco Notes); (ii) the threat or commencement of (or any material development in) any dispute, litigation, arbitration, or governmental investigation; or (iii) the violation or asserted violation of any applicable Law;

(c) the occurrence of any ERISA Event;

(d) the creation or acquisition of any Subsidiary;

(e) any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary, the receipt by any Loan Party or any Subsidiary of any comment letter or management report submitted by its Auditor (together with a copy thereof) or any discharge, resignation or withdrawal by or of any Loan Party's present Auditor;

(f) any Change of Control; and

(g) any casualty, damage or destruction to any material portion of the Collateral (deemed to include Collateral having an aggregate value in excess of \$250,000 or the Canadian Dollar Equivalent thereof) or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral (deemed to include Collateral having an aggregate value in excess of \$250,000 or the Canadian Dollar Equivalent thereof) under power of eminent domain or by condemnation or similar proceeding.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of Borrower Agent setting forth details of the occurrence referred to therein and stating what action Borrowers have taken and propose to take with respect thereto.

**6.04. Payment of Obligations.** Pay and discharge as the same shall become due and payable, (a) all U.S. and non-U.S. federal, state, provincial and other material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are

being Properly Contested; and (b) all lawful claims which, if unpaid, would by law become a Lien upon its property, except to the extent that any such Lien would otherwise be permitted by Section 7.02.

**6.05. Preservation of Existence, Etc.** (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary in the normal conduct of its business; (c) preserve or renew all of its registered Intellectual Property and rights to use Intellectual Property necessary in the normal conduct of its business; and (d) keep in full force and effect each License the expiration or termination of which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect (each a "**Material License**").

**6.06. Maintenance of Properties.** Maintain, preserve and protect all of its properties (other than insignificant properties) and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted.

**6.07. Maintenance of Insurance; Condemnation Proceeds.**

(a) Maintain with (i) companies having an A.M. Best Rating of at least "A" or (ii) financially sound and reputable insurance companies reasonably acceptable to Administrative Agent and not Affiliates of the Loan Parties, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by applicable Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons.

(b) Deliver to Administrative Agent certificates setting forth in reasonable detail the nature and extent of all insurance maintained by the Loan Parties, and cause each issuer of an insurance policy to a Loan Party to provide Administrative Agent with a customary endorsement showing, among other things, Administrative Agent as a loss payee with respect to each policy of property or casualty insurance and naming Administrative Agent as an additional insured with respect to each policy of liability insurance. Borrower Agent shall execute and deliver, and cause each other applicable Loan Party to execute and deliver, to Administrative Agent a collateral assignment, in form and substance reasonably satisfactory to Administrative Agent, of each business interruption insurance policy maintained by the Loan Parties.

(c) Unless Borrower Agent provides Agent Administrative with evidence of the continuing insurance coverage required by this Agreement, Administrative Agent may purchase insurance at Borrowers' expense to protect Administrative Agent's and Lenders' interests in the Collateral. This insurance may, but need not, protect Borrowers' and each other Loan Party's interests. The coverage that Administrative Agent purchases may, but need not, pay any claim that is made against a Borrower or any other Loan Party in connection with the Collateral. Borrowers may later cancel any insurance purchased by Administrative Agent, but only after providing Administrative Agent with evidence that Loan Parties have obtained the insurance coverage required by this Agreement. If Agent purchases insurance for the Collateral, as set forth above, Borrowers will be responsible for the costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance and the costs of the insurance may be added to the principal amount of the Loans owing hereunder.

**6.08. Compliance with Laws Generally; Environmental Laws.** Except in each case as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse

Effect, (a) comply with the requirements of all Laws (including without limitation all applicable Environmental Laws) and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which such requirement of Law or order, writ, injunction or decree is being Properly Contested; (b) maintain its Real Estate in compliance with all Environmental Laws; (c) obtain and renew all environmental permits necessary for its operations and properties; and (d) implement any and all investigation, remediation, removal and response actions that are required to comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under or about any of its Real Estate.

**6.09. Books and Records.** (a) Maintain proper books of record and account, in which full, true and correct entries, in all material respects, for the Loan Parties taken as a whole and for the Loan Parties and their Subsidiaries taken as a whole, in conformity with GAAP consistently applied (or such other customary standard in such foreign jurisdiction where a Foreign Subsidiary does business) shall be made; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over any Loan Party or such Subsidiary, as the case may be.

**6.10. Inspection Rights; Meetings with Administrative Agent.** Permit Administrative Agent or its designees or representatives from time to time, subject to reasonable notice and during normal business hours (except, no such notice shall be required and the inspection may be conducted at any time, when a Default or Event of Default exists), to conduct inspections of the operations and properties of the Loan Parties and Subsidiaries and to examine its organizational, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers and Auditors. Administrative Agent shall not have any duty to any Loan Party to share any results of any such inspection, examination with any Loan Party. The Loan Parties acknowledge that all reports are prepared by or for Administrative Agent and Lenders for their purposes, and Loan Parties shall not be entitled to rely upon them. Without limiting the foregoing, the Loan Parties will participate and will cause their key management personnel to participate in meetings with Administrative Agent and Lenders periodically during each year, which meetings shall be held at such times and such places as may be reasonably requested by Administrative Agent.

**6.11. Compliance with ERISA.** Do, and cause each of its ERISA Affiliates to do, each of the following: (a) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other applicable Laws; (b) cause each Plan which is qualified under section 401(a) of the Code to maintain such qualification; (c) cause each Plan subject to any Foreign Benefit Law to maintain any required approvals by any Governmental Authority regulating such Plan, (d) make all required contributions to any Plan, and (e) make all required contributions and payments to any Foreign Plans.

**6.12. Further Assurances.**

(a) At Borrowers' cost and expense, upon request of Administrative Agent, duly execute and deliver or cause to be duly executed and delivered, to Administrative Agent such further instruments, documents, certificates and financing and continuation statements, and do and cause to be done such further acts that may be reasonably necessary or advisable in the reasonable opinion of Administrative Agent to carry out more effectively the provisions and purposes of this Agreement, the Security Instruments and the other Loan Documents.

(b) Upon the acquisition or creation of any Domestic Subsidiary or any Foreign Subsidiary, cause to be delivered to Administrative Agent each of the following, as applicable, in each case reasonably acceptable to Administrative Agent and, as applicable, duly executed by the parties thereto: (i) a joinder agreement with respect to this Agreement, together with other Loan Documents reasonably requested by Administrative Agent, including all Security Instruments and other documents reasonably requested to establish and preserve the Lien of Administrative Agent in all Collateral of such Domestic Subsidiary or Foreign Subsidiary, subject to any limitations on Collateral set forth in the Loan Documents; (ii) Uniform Commercial Code financing statements, Personal Property Security Act legislation financing statements, Documents and original collateral (including pledged Equity Interests, other securities and Instruments) and such other documents and agreements as may be reasonably required by Administrative Agent, all as necessary or desirable to establish and maintain a valid, perfected Lien in all Collateral in which such Domestic Subsidiary or Foreign Subsidiary has an interest consistent with the terms of the Loan Documents executed on the Closing Date (and subject to any limitations on Collateral set forth therein); (iii) an opinion of counsel to such Domestic Subsidiary or Foreign Subsidiary addressed to Administrative Agent and the Lenders, in form and substance reasonably acceptable to Administrative Agent and substantially similar to those opinions of counsel delivered on the Closing Date; and (iv) current copies of the Organization Documents of such Domestic Subsidiary or Foreign Subsidiary, resolutions of the Board of Directors, partners, or appropriate committees thereof (and, if required by such Organization Documents or applicable law, of the shareholders, members or partners) of such Person authorizing the actions and the execution and delivery of documents described in this Section 6.12, all certified by an appropriate officer as Administrative Agent may elect. For the avoidance of doubt, any Foreign Subsidiary that is a CFC shall not be required to guarantee or pledge its assets for any obligations of a Loan Party that is a United States person within the meaning of Section 7701(a)(30) of the Code; provided however, the shareholder or shareholders of such CFC that are Loan Parties shall pledge 65% of all classes of Equity Interests entitled to vote and 100% of all non-voting Equity Interests of the CFC to support the Obligations of such Loan Parties.

(c) Upon the acquisition by any Loan Party of any fee owned Real Estate with an individual fair market value in excess of \$500,000 or the Canadian Dollar Equivalent thereof (or any leasehold interest, but only if requested by Administrative Agent and only if Administrative Agent reasonably determines that such interest is material; provided that Borrowers shall only be required to use commercially reasonable efforts (without added cost to the applicable Loan Party under the respective lease) to obtain leasehold mortgages in accordance with this Section 6.12(c)), deliver or cause to be delivered to Administrative Agent, with respect thereto, in each case reasonably acceptable to Administrative Agent, a mortgage or deed of trust, as applicable, and an opinion of Borrowers' counsel with respect thereto, an ALTA lender's title insurance policy insuring Administrative Agent's first priority Lien (subject to non-consensual Permitted Liens), a current ALTA survey, certified to Administrative Agent by a licensed surveyor, a certificate from a national certification agency indicating whether such Real Estate is located in a special flood hazard area, an environmental audit, and in addition, in the case of Real Estate that consists of a leasehold estate, such estoppel letters, consents and waivers from the landlord and non-disturbance agreements from any holders of mortgages or deeds of trust on such Real Estate and as may be obtained after the exercise of commercially reasonable efforts by the applicable Loan Party. Administrative Agent will have the right to waive all requirements set forth in this subsection (c) with respect to leasehold interests.

### **6.13. Post-Closing Covenants.**

(a) [Reserved].

(b) Each Loan Party shall use commercially reasonable efforts to cause to be delivered to Administrative Agent within 45 days after the Closing Date (subject to extension or waiver by

Administrative Agent), a collateral access agreement, in form and substance reasonably satisfactory to Administrative Agent, with respect to (i) each bailee with which such Loan Party keeps Inventory or other assets as of the Closing Date with a fair market value in excess of \$250,000 or the Canadian Dollar Equivalent thereof and (ii) each landlord which leases real property to such Loan Party as of the Closing Date.

(c) Within 60 days after the Closing Date (subject to extension by Administrative Agent), each Loan Party shall move each Deposit Account of the Loan Parties as of the Closing Date (other than Excluded Accounts) to BMO and thereafter maintain each such account with BMO.

(d) Within 30 days after the Closing Date (subject to extension by Administrative Agent), Holdings shall deliver insurance endorsements required pursuant to Section 6.07(b) hereof, as are reasonably acceptable to Administrative Agent, in its sole discretion, naming Administrative Agent as additional insured on the liability insurance policies of the Loan Parties.

**6.14. Canadian Pension Plans.** Each Borrower shall, and shall cause each Subsidiary to, promptly pay and discharge all obligations and liabilities related to each Canadian Plan, including each Canadian Pension Plan, which if unpaid or unperformed could reasonably be expected to result in the imposition of a Lien against any of its property or to have a Material Adverse Effect. Each Borrower shall, and shall cause each Subsidiary to, promptly notify Administrative Agent and each Lender of the occurrence of any event with respect to any Canadian Plan, including each Canadian Pension Plan, which would result in the incurrence by any Borrower or any Subsidiary of any material liability, fine or penalty, or any material increase in the contingent liability of any Borrower or any Subsidiary with respect thereto.

**6.15. Foreign Corrupt Practices Act.** No Loan Party will fail to comply with the fails, regulations and executive orders referred to in Section 5.15.

**6.16. Equity Contribution.** On the First Amendment Effective Date, the Sponsor shall make the portions of the Equity Contribution described in clauses (ii) and (iii) of the definition thereof to Holdings.

## ARTICLE VII NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan Obligation (other than contingent indemnification claims for which no claim has been asserted) hereunder shall remain unpaid or unsatisfied, no Loan Party (or Parent, solely for purposes of Sections 7.15 and 7.19) shall, nor shall it permit any Subsidiary to, directly or indirectly:

**7.01. Indebtedness.** Create, incur, assume or suffer to exist any Indebtedness or issue any Disqualified Equity Interest, except:

(a) the Obligations;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.01 and any refinancings, refundings, renewals or extensions thereof; provided that (i) the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder, (ii) the average life to maturity of any refinancing, refunding,



renewal or extension of such Indebtedness permitted hereby is not less than the then average life to maturity of the Indebtedness so refinanced or replaced, (iii) the direct or contingent obligors with respect to such Indebtedness are not changed as a result of or in connection with such refinancing, refunding, renewal or extension, (iv) any refinancing, refunding, renewal or extension of Indebtedness subordinated to the Obligations shall be on terms no less favorable to Administrative Agent and the Lenders, and no more restrictive to the Loan Parties, than the subordinated Indebtedness being refinanced, refunded, renewed or extended and in an amount not less than the amount outstanding at the time thereof, (v) the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the interest rate for the Indebtedness being refinanced, refunded, renewed, or extended, and (vi) such refinancing, renewal, or extension does not impair or restrict, in any material respect greater than as contained in the Indebtedness being refinanced, refunded, renewed or extended, the ability of the Loan Parties to make distributions or transfer money and other property to or otherwise enter into transactions among the other Loan Parties;

(c) (i) Guarantees by any Loan Party in respect of Indebtedness otherwise permitted hereunder of any other Loan Party (other than Holdings); provided that any Guarantee of Indebtedness that is required to be subordinated to the Obligations shall be subordinated to the Obligations on substantially the same terms as such subordinated Indebtedness and (ii) Guarantees by a Subsidiary of Holdings which is not a Loan Party in respect of Indebtedness otherwise permitted hereunder of another Subsidiary of Holdings which is not a Loan Party;

(d) obligations (contingent or otherwise) of the Loan Parties existing or arising under any Swap Contract, provided that such obligations are (or were) required hereunder or entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, cash flows or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a "market view";

(e) Indebtedness in respect of Capital Leases and purchase money obligations for real property and fixed or capital assets within the limitations set forth in Section 7.02(i); provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$2,000,000 or the Canadian Dollar Equivalent thereof;

(f) the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;

(g) unsecured Indebtedness of (i) any Loan Party (other than Holdings) owing to any other Loan Party, (ii) any Subsidiary that is not a Loan Party owing to any other Subsidiary that is not a Loan Party and (iii) any Subsidiary that is not a Loan Party owing to any Loan Party; provided that (A) the aggregate principal amount of all such Indebtedness under this clause (iii) of all such Subsidiaries (together with Investment permitted under Section 7.03(c)(iv)) shall not exceed \$250,000 or the Canadian Dollar Equivalent thereof, (B) such Indebtedness is not incurred during the continuance of any Default or Event of Default, (C) such Indebtedness shall not be evidenced by promissory notes unless such notes are delivered to Administrative Agent and pledged to Administrative Agent pursuant to the Security Agreement;

(h) surety bonds incurred in the ordinary course of business and permitted under Section 7.02;

(i) Indebtedness owing to insurance carriers and incurred to finance insurance premiums of any Loan Party or any Subsidiary in the ordinary course of business in a principal amount not to exceed at any time the amount of insurance premiums to be paid by such Loan Party or any Subsidiary;

(j) deferred purchase price obligations in the form of earnouts and other similar contingent obligations and seller debt, in each case, incurred in connection with a Permitted Acquisition, solely to the extent permitted pursuant to the defined term "Permitted Acquisition"; provided that the terms of any such earnout and other similar contingent obligations and seller debt shall only require payments so long as no Default or Event of Default has occurred and is continuing and the Loan Parties are in compliance with the financial covenants contained in Section 7.12;

(k) Indebtedness in respect of netting services, overdraft protections and other like services, in each case incurred in the ordinary course of business and paid within five (5) Business Days;

(l) the Subordinated Indebtedness;

(m) the Holdco Notes; and

(n) other unsecured Indebtedness of a type not described above not exceeding \$250,000 or the Canadian Dollar Equivalent thereof in the aggregate at any time outstanding.

**7.02. Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following ("**Permitted Liens**"):

(a) Liens in favor of Administrative Agent pursuant to any Loan Document;

(b) Liens existing on the date hereof and listed on Schedule 7.02 and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is otherwise permitted under Section 7.01(b);

(c) Liens for taxes, duties, levies, imposts, deductions, assessments or other governmental charges, not yet due and payable or which are being Properly Contested;

(d) Liens of carriers, warehousemen, processors, mechanics, materialmen, repairmen, landlords or other like Liens imposed by Law or arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being Properly Contested;

(e) Liens, pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA or a foreign benefit law;

(f) Liens on deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) Liens consisting of minor imperfections of title and easements, rights-of-way, covenants, consents, reservations, encroachments, variations and zoning and other similar restrictions, charges, encumbrances or title defects affecting real property which, in the aggregate do not materially detract

from the value of the property subject thereto or materially interfere with the use by the Loan Parties in the ordinary course of business of the property subject to such encumbrance;

(h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01 or securing appeal or other surety bonds related to such judgments;

(i) Liens securing Indebtedness permitted under Section 7.01(e); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

(j) licenses, sublicenses, operating leases or subleases (and precautionary UCC filings with respect thereto) granted by or to the Loan Parties to or from any other Person in the ordinary course of business;

(k) Liens in favor of collecting banks arising under Section 4-210 of the UCC;

(l) Liens (including the right of setoff) in favor of a bank or other depository institution arising as a matter of law encumbering deposits;

(m) Liens in favor of customs and revenue authorities imposed by Law to secure payment of customs duties in connection with the importation of goods and arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being Properly Contested;

(n) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto to the extent permitted under Section 7.01(i);

(o) Liens on assets securing the Subordinated Indebtedness which Liens are subject to the Intercreditor Agreement; and

(p) other Liens which do not secure Indebtedness for borrowed money or letters of credit and as to which the aggregate amount of the obligations secured thereby does not exceed \$250,000 or the Canadian Dollar Equivalent thereof.

**7.03. Investments.** Make any Investments, except:

(a) Investments held by the Loan Parties and their Subsidiaries in the form of Cash Equivalents;

(b) loans and advances to officers, directors and employees of the Loan Parties and Subsidiaries made in the ordinary course of business in an aggregate amount at any one time outstanding not to exceed \$250,000 or the Canadian Dollar Equivalent thereof;

(c) (i) Investments by the Loan Parties and their Subsidiaries in their respective Subsidiaries solely to the extent outstanding on the date hereof, (ii) additional Investments by Loan Parties and their Subsidiaries in Loan Parties, (iii) additional Investments by Subsidiaries of Holdings that are not Loan Parties in other Subsidiaries that are not Loan Parties and (iv) so long as no Default or Event of Default has occurred and is continuing or would result from such Investment, additional Investments by the Loan Parties in wholly-owned Subsidiaries that are not Loan Parties in an aggregate amount (together with Indebtedness permitted by Section 7.01(g)(iii)) not to exceed \$250,000 or the Canadian Dollar Equivalent thereof;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business (and, to the extent owing by a Foreign Subsidiary to a Loan Party, made on customary arms-length terms), and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Investments existing as of the date hereof (other than those set forth on Schedule 5.12) to the extent set forth in Schedule 7.03 and extensions or renewals thereof, provided that no such extension or renewal shall be permitted if it would (i) increase the amount of such Investment at the time of such extension or renewal or (ii) result in a Default or an Event of Default hereunder;

(f) Investments consisting of a Permitted Acquisition;

(g) bank deposits and securities accounts maintained in accordance with the terms of this Agreement and the other Loan Documents;

(h) Investments in securities of account debtors received pursuant to a plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such account debtors and Investments acquired in connection with the settlement of delinquent accounts receivable in the ordinary course of business;

(i) Investments received as the non-cash portion of consideration in connection with a transaction permitted under Section 7.05;

(j) Investments constituting Indebtedness and Guarantees permitted under Section 7.01 and transactions permitted by Sections 7.05 and Section 7.06;

(k) Guarantees permitted by Section 7.01; and

(l) other Investments, of a type not described above, not exceeding \$250,000 or the Canadian Dollar Equivalent thereof in the aggregate at any time outstanding.

**7.04. Mergers, Dissolutions, Etc..** Merge, dissolve, liquidate, consolidate with or into another Person (including Parent), except that, so long as no Default or Event of Default exists or would result therefrom:

(a) with not less than 10 Business Days' (or such shorter period as may be agreed by Administrative Agent) prior written notice to Administrative Agent, (i) any Subsidiary may merge or consolidate with or liquidate or dissolve into a Loan Party, provided, that, the Loan Party shall be the continuing or surviving Person, and (ii) any Subsidiary that is not a Loan Party may merge into any other Subsidiary that is not a Loan Party, provided, that, when any wholly-owned Subsidiary is merging with another Subsidiary that is not wholly-owned, the wholly-owned Subsidiary shall be the continuing or surviving Person; and

(b) in connection with a Permitted Acquisition, any Subsidiary of a Loan Party may merge with or into or consolidate with any other Person (other than Parent) or permit any other Person (other than Parent) to merge with or into or consolidate with it; provided, that, (i) the Person surviving such merger shall be a wholly-owned Subsidiary of a Loan Party and (ii) in the case of any such merger to which any Loan Party is a party, such Loan Party is the surviving Person.

**7.05. Dispositions.** Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of Cash Equivalents and Inventory in the ordinary course of business;

(b) Dispositions in the ordinary course of business of equipment or fixed assets that are obsolete, worn out or no longer useful in the ordinary course of business and disposition of other assets (other than Equity Interests of a Subsidiary or accounts receivable), in each case for so long as (i) no Event of Default has occurred and is continuing at the time of such Disposition, (ii) the aggregate fair market value or a book value, whichever is more, of such equipment, fixed assets and other assets does not exceed \$15,000,000 or the Canadian Dollar Equivalent thereof in any twelve-month period, (iii) the applicable Loan Party shall receive not less than 70% of such consideration in cash and (iv) all proceeds thereof are remitted to Administrative Agent for application to the Obligations in accordance with Section 2.06(b)(ii) if required thereby;

(c) any Disposition that constitutes or funds (i) an Investment permitted under Section 7.03, (ii) a Lien permitted under Section 7.02, (iii) a merger, dissolution, consolidation or liquidation permitted under Section 7.04, or (iv) a Restricted Payment permitted under Section 7.06;

(d) such Disposition that results from a casualty or condemnation in respect of such property or assets and is not otherwise an Event of Default so long as all proceeds thereof are remitted to Administrative Agent for application to the Obligations in accordance with Section 2.06(b)(ii) if required thereby;

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

(f) licenses, sublicenses, leases or subleases granted to third parties in the ordinary course of business (but limited, in the case of licenses of intellectual property, to non-exclusive licenses) not interfering with the business of the Loan Parties;

(g) the lapse, abandonment or other dispositions of Intellectual Property that is, in the reasonable good faith judgment of a Loan Party, no longer economically practicable or commercially desirable to maintain or useful in the conduct of the business of the Loan Parties or any of their Subsidiaries; and

(h) (i) Dispositions among the Loan Parties (other than Holdings) or by any Subsidiary of a Loan Party to a Loan Party (other than Holdings) and (ii) Dispositions by any Subsidiary which is not a Loan Party to another Subsidiary that is not a Loan Party.

**7.06. Restricted Payments.** Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that, in each case (except Section 7.06(a) (b), (d) and (e)) only if no Default or Event of Default shall have occurred and be continuing (both before or as a result of the making of such Restricted Payment):

(a) each Subsidiary may make Restricted Payments to a Loan Party (other than Holdings) or a Subsidiary of a Loan Party and, in connection therewith, on a pro rata basis to any other equity holder of such Subsidiary;

(b) the Borrowers and each Subsidiary may make Restricted Payments to Holdings to permit Holdings to make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) the Borrowers and each Subsidiary may make Restricted Payments to Holdings to permit Holdings to immediately purchase, redeem or otherwise acquire shares of its stock or other Equity Interests to the extent contractually required by customary employee or management agreements, plans or arrangements in an amount not to exceed \$500,000 or the Canadian Dollar Equivalent thereof in any Fiscal Year and \$1,000,000 or the Canadian Dollar Equivalent thereof in the aggregate during the term of this Agreement;

(d) the Borrowers may make Restricted Payments to Holdings in amounts required for Holdings to immediately pay (or to make Restricted Payments to allow any direct or indirect parent entity thereof to pay), without duplication, franchise taxes and other similar licensing expenses and other fees and expenses required to maintain its corporate existence; and

(e) for so long as the U.S. Borrower is a "disregarded entity" for U.S. federal income tax purposes, the U.S. Borrower may make Restricted Payments to Holdings (and so long as Holdings is a "disregarded entity" or a partnership for U.S. federal income tax purposes, Holdings may distribute such amounts to its members) solely to pay the federal, state and local income taxes of such members attributable to the period to which such distribution relates calculated by multiplying the net taxable income of the U.S. Borrower attributable to such period by the highest applicable marginal federal, state and local income tax rate (taking into account preferential tax rates and taking into account the deductibility of state and local taxes for U.S. federal income tax purposes) applicable to an individual residing in Napa, California provided that (1) such net taxable income shall be reduced by prior period net taxable losses of the U.S. Borrower not previously taken into account to reduce tax distributions hereunder; (2) such estimate shall be subject to true-up within 120 days after the end of such taxable period based on the U.S. Borrower's actual net taxable income; (3) if such true-up (based on the actual net taxable income of the U.S. Borrower for the applicable period) demonstrates that the U.S. Borrower has distributed more than allowable under this paragraph, then future tax distributions shall be reduced until such reductions are equal to such excess distribution (provided that, if such excess distribution exceeds \$500,000, it shall be a default unless one or more equity owners of Holdings contribute to Holdings within 45 days after the filing of such federal income tax return an amount equal to such excess distribution); and (4) such cash distributions shall be reduced by any amounts withheld by the U.S. Borrower (or otherwise paid directly to any taxing authority) with respect to any taxable income or gain of the U.S. Borrower and reduced by any income tax credits attributable to the U.S. Borrower allocated to any equity owners of Holdings (such Restricted Payments, subject to and to the extent permitted by the other provisions of this clause (e), "*Tax Distributions*").

**7.07. Change in Nature of Business.** Engage in any material line of business other than the Core Business.

**7.08. Transactions with Affiliates.** Enter into, or suffer to exist, any transaction, arrangement or agreement of any kind with any Affiliate of any Loan Party, other than (a) those described on Schedule 7.08, as in existence on the date hereof, (b) those expressly permitted by this Agreement and the other Loan Documents, (c) transactions between or among Loan Parties, (d) employment agreements and compensation to employees (including stock ownership plans, awards or grants of Equity Interests, employee benefit plans including vacation plans, health and life insurance plans, deferred compensation plans, retirement or savings plans and similar plans), (e) indemnification of officers, directors and employees in the ordinary course of business, (f) transactions between Loan Parties and Subsidiaries that are not Loan Parties, subject to any

limitations set forth herein, and (g) others disclosed to Administrative Agent on fair and reasonable terms substantially as favorable to such Loan Party or such Subsidiary as would be obtainable by such Loan Party or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate; provided that no Loan Party or any of its Subsidiaries shall enter into any transaction, arrangement or agreement related to airplane expenses.

**7.09. Inconsistent Agreements.** Enter into any Contractual Obligation (other than this Agreement, any other Loan Document, the Subordinated Indebtedness Documents or the Holdco Notes) that (i) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person; or (ii) limits the ability (A) of any Subsidiary to make Restricted Payments to any Loan Party or to otherwise transfer property to any Loan Party, (B) of any Subsidiary to Guarantee the Indebtedness of any Loan Party or become a direct Borrower hereunder, or (C) of any Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided, however, that this Section 7.09 shall not prohibit limitations:

(a) in respect of any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 7.01(e) solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness;

(b) in respect of customary restrictions and conditions contained in any agreement relating to any Disposition not prohibited hereunder (in which case such restrictions or conditions shall relate only to the applicable property) or otherwise relating to a Disposition that is conditioned upon the amendment, restatement or replacement of this Agreement or the repayment in full of amounts owing hereunder;

(c) consisting of restrictions regarding licenses or sublicenses by a Loan Party or a Subsidiary of a Loan Party of Intellectual Property in the ordinary course of business (in which case such restrictions shall relate only to such Intellectual Property; and

(d) customary anti-assignment provisions found in Contractual Obligations entered into in the ordinary course of business.

**7.10. Use of Proceeds.** Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, in any manner that might cause the Credit Extension or the application of such proceeds to violate Regulations T, U or X of the FRB, in each case as in effect on the date or dates of such Credit Extension and such use of proceeds.

**7.11. Prepayment of Indebtedness; Amendment to Subordinated Indebtedness Documents, Holdco Notes, Sponsor Convertible Notes and Keepwell Agreement; Amendment to Organization Documents.**

(a) Voluntarily prepay, redeem, purchase, repurchase, defease or otherwise satisfy prior to the scheduled maturity thereof any Indebtedness that is subordinated to any of the Obligations, or make any payment in violation of any subordination terms thereof.

(b) Amend, modify or change in any manner any term or condition of (i) any Subordinated Indebtedness Document in a manner that violates the Intercreditor Agreement, (ii) the Holdco Notes, (iii) the Sponsor Convertible Notes, (iv) the Keepwell Agreement or (v) any other Indebtedness that is subordinated to any of the Obligations in a manner that violates the subordination terms thereof.

(c) Amend or otherwise modify any Organization Documents of such Person, except for such amendments or other modifications required by Law or which are not adverse to the interests of

Administrative Agent or any Lender and which, in each instance, are fully disclosed to Administrative Agent.

**7.12. Financial Covenants.**

(a) Consolidated Capital Expenditures. Permit the aggregate amount of Consolidated Capital Expenditures made by the Loan Parties and their Subsidiaries to exceed \$2,500,000 for the Fiscal Year ending December 31, 2017 and each Fiscal Year thereafter.

(b) Consolidated EBITDA. Permit Consolidated EBITDA (i) as of the last day of each Fiscal Month for each Fiscal Month ending on or prior to December 31, 2017 to be less than the corresponding amount set forth opposite such period and (ii) as of the last day of each Fiscal Quarter for each Fiscal Quarter ending after December 31, 2017 to be less than the corresponding amount set forth opposite such period:

Measurement Period Ending	Minimum Consolidated EBITDA
September 30, 2016	\$1,078,673
October 31, 2016	\$1,057,692
November 30, 2016	\$978,542
December 31, 2016	\$1,926,088
January 31, 2017	\$2,258,076
February 28, 2017	\$2,377,215
March 31, 2017	\$2,696,436
April 30, 2017	\$2,704,955
May 30, 2017	\$3,137,191
June 30, 2017	\$3,329,356
July 31, 2017	\$3,226,767
August 31, 2017	\$3,561,276
September 30, 2017	\$3,872,427
October 31, 2017	\$4,189,858
November 30, 2017	\$4,533,251
December 31, 2017	\$4,736,652
March 31, 2018	\$4,795,860
June 30, 2018	4,855,069
September 30, 2018	4,914,277
December 31, 2018	4,973,485
March 31, 2019	5,035,653



June 30, 2019	5,097,822
September 30, 2019	5,159,991
December 31, 2019	5,222,159
March 31, 2019	5,287,436
June 30, 2019	5,352,713

(c) **Minimum Liquidity.** Permit Liquidity as of the close of business of the last day of each Fiscal Month to be less than \$500,000.

(d) **Toronto Business EBITDA.** Permit Toronto Business EBITDA as of the last day of each Fiscal Month for each Fiscal Month ending on or after September 30, 2017 to be less than the corresponding amount set forth opposite such period:

<u>Measurement Period Ending</u>	<u>Minimum Toronto Business EBITDA</u>
<u>September 30, 2017</u>	<u>\$2,706,000</u>
<u>October 31, 2017</u>	<u>\$3,070,000</u>
<u>November 30, 2017</u>	<u>\$3,411,000</u>
<u>December 31, 2017</u>	<u>\$3,674,000</u>
<u>January 31, 2018</u>	<u>\$3,913,000</u>

**7.13. Anti-Terrorism Laws and Foreign Asset Control Regulations.** (a) Become a “blocked person” as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations, (b) knowingly engage in any dealings or transactions, or be otherwise associated, with any such “blocked person” or in any manner violate any such order, or (c) use any part of the proceeds of the Loans for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

**7.14. Fiscal Year.** Change its Fiscal Year end.

**7.15. Holdings and Parent Covenant.** (a) Permit Holdings to engage in any business activities, hold any assets or incur any Indebtedness other than (i) acting as a holding company and transactions incidental thereto, (ii) entering into the Loan Documents and the transactions required herein or permitted herein to be performed by Holdings, (iii) entering into the agreements related to and consummating the Transactions, (iv) receiving and distributing the dividends, distributions and payments permitted to be made to Holdings pursuant to Section 7.06, (v) owning the Equity Interests of the U.S. Borrower, (vi) issuing Equity Interests as permitted hereunder, (vii) providing guarantees for the benefit of a Borrower to the extent such Person is otherwise permitted to enter into the transaction under this Agreement (including guaranties of lease obligations) and (viii) holding nominal deposits in Deposit Accounts in connection with consummating any of the foregoing transactions or (b) Permit Parent to engage in any business activities, hold any assets or incur any

Indebtedness other than (i) incurring Indebtedness under the Sponsor Convertible Notes, (ii) acting as a holding company and transactions incidental thereto, (iii) entering into the Loan Documents and the transactions required herein or permitted herein to be performed by Parent, (iv) entering into the agreements related to and consummating the Transactions, (v) owning the Equity Interests of Holdings, and (vi) holding nominal deposits in Deposit Accounts in connection with consummating any of the foregoing transactions.

**7.16. Sale and Leaseback Transactions.** Enter into any Sale and Leaseback Transaction.

**7.17. Corporate Separateness, Related Matters and Covenants.** Parent and Holdings shall satisfy, and cause each of their respective Subsidiaries to satisfy, customary corporate or limited liability company formalities, including the maintenance of corporate and business records. No bank account of Parent shall be commingled with any bank account of any of its Subsidiaries. Any financial statements distributed to any creditor of Parent or Holdings (other than the Lenders, the holders under the Subordinated Indebtedness Documents and the holders of the Holdco Notes) shall, to the extent permitted under GAAP, clearly establish the corporate separateness of Parent from Holdings. Neither Parent nor Holdings shall take any action, or conduct its affairs in a manner, which is reasonably likely to result in its corporate existence being ignored for purposes of subjecting its assets to claims of creditors of any other person, or in its assets and liabilities being substantively consolidated with those of any other Person in a bankruptcy, reorganization or other insolvency proceeding.

## **ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES**

**8.01. Events of Default.** Any of the following shall constitute an Event of Default:

(a) **Non-Payment.** Any Borrower fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation, or (ii) within three days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee or other amount payable hereunder or under any other Loan Document; or

(b) **Specific Covenants.** Any Loan Party (or Parent, solely for purposes of Sections 7.15 and 7.17) fails to perform or observe any term, covenant or agreement contained (i) in any of Sections 6.03 (solely with respect to notices of Events of Default), 6.05(a) (solely with respect to the Loan Parties), 6.07, 6.10, 6.13, or Article VII or in the Keepwell Agreement, or (ii) in any of Sections 6.01, 6.02(a) or 6.02(b) and such failure continues for three (3) or more Business Days; or

(c) **Other Defaults.** Any Loan Party fails to perform or observe any other term, covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after the earlier of (i) receipt of notice of such failure by a Responsible Officer of Borrower Agent from Administrative Agent, or (ii) any Responsible Officer of any Loan Party becomes aware, or should have been aware, of such failure; or

(d) **Representations and Warranties.** Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party or any Subsidiary herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading when made or deemed made in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality); or

(e) Cross-Default. (i) Parent, any Loan Party or any Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, and after passage of any grace period) in respect of any Indebtedness or Guarantee having an aggregate principal amount of more than \$1,000,000 or the Canadian Dollar Equivalent thereof, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or any other event occurs, and such event continues for more than the grace period, if any, therein specified, the effect of which is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded, or (ii) there occurs any breach or non-performance of, or any default under, the Subordinated Indebtedness Documents or the Holdco Notes; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, monitor or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. Any Loan Party or any Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due; any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any Loan Party or any Subsidiary and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary (i) one or more final judgments or orders for the payment of money in an aggregate amount exceeding \$500,000 or the Canadian Dollar Equivalent thereof (except to the extent covered by insurance as to which the insurer does not dispute coverage or third party indemnification acceptable to Administrative Agent), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, such judgments or orders remain unvacated and unpaid and either (A) enforcement proceedings are commenced by any creditor upon any such judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of any such judgment or order, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs which, together with any outstanding liability incurred in connection with any other ERISA Event, has resulted or could reasonably be expected to result in liability of any Loan Party or any Subsidiary in an aggregate amount in excess of \$500,000, (ii) the existence of any Lien under Section 430(k) of the Code or Section 303(k) or Section 4068 of ERISA on any assets of a Loan Party or any Subsidiary thereof, (iii) a Loan Party, a Subsidiary thereof or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan that could reasonably be expected to result in liability for any Loan Party in an aggregate amount in excess of \$500,000; (iv) any Loan Party shall fail to pay when due any amount under any Canadian Plan,

including any Canadian Pension Plan which results in, or could reasonably result in liability for any Loan Party in an aggregate amount in excess of \$500,000; (v) any other event occurs or shall occur or exist with respect to a Plan or any Canadian Plan or Canadian Pension Plan that could reasonably be expected to have a Material Adverse Effect ; or (vi) the benefit liabilities of all Plans governed by Foreign Benefit Laws, or the funding of which are regulated by any Foreign Benefit Laws, at any time exceed all such Plans' assets, as computed in accordance with applicable law as of the most recent valuation date for such Plans, by more than \$500,000; or

(j) Invalidity of Loan Documents. Any Loan Document, or any Lien granted thereunder, at any time after its execution and delivery and for any reason, other than as expressly permitted under such Loan Document or upon Payment in Full of all Loan Obligations, ceases to be in full force and effect (except with respect to immaterial assets); or any Loan Party or any Subsidiary or Affiliate thereof repudiates, challenges or contests in any manner the validity or enforceability of any Loan Document, Loan Obligation or any Lien granted to Administrative Agent pursuant to the Security Instruments (including the perfection or priority thereof); or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(k) Subordinated Indebtedness. The subordination provisions relating to any Subordinated Indebtedness (the "***Subordination Provisions***") shall fail to be enforceable by Administrative Agent (except to the extent that Administrative Agent has effectively waived the benefits thereof) in accordance with the terms thereof, or the principal or interest on any Loan, any L/C Obligation or other Obligations shall fail to constitute "designated senior debt" (or any other similar term) under any document, instrument or agreement evidencing such Subordinated Indebtedness; or any Loan Party, any Subsidiary or any holder of Subordinated Indebtedness (or any representative thereof) shall, directly or indirectly, repudiate, challenge or contest in any manner (i) the effectiveness, validity or enforceability of any of the Subordination Provisions, or (ii) that any of such Subordination Provisions exist for the benefit of Administrative Agent, any Lender or the L/C Issuer; or

(l) Change of Control. There occurs any Change of Control.

**8.02. Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, Administrative Agent may, and at the direction of the Required Lenders shall, take any or all of the following actions: (a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated; (b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by Borrowers; (c) require that Borrowers Cash Collateralize the L/C Obligations or any other Obligations that are contingent or not yet due and payable, in each case in an amount equal to the Minimum Collateral Amount; and (d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law; provided, however, that upon the occurrence of Event of Default under clause (f) above, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of Borrowers to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of Administrative Agent or any Lender.

### 8.03. Application of Funds.

(a) After the exercise of any remedy provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.16 and 2.17, be applied by Administrative Agent in the following order:

First, to all fees, indemnities, expenses and other amounts (including all Extraordinary Expenses and all reasonable fees, charges and disbursements of counsel to Administrative Agent and amounts payable under Article III) due to Administrative Agent in its capacity as such, until paid in full;

Second, to all amounts owing to the Swing Line Lender for outstanding Swing Line Loans until paid in full;

Third, to that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest, fees and other Obligations expressly described in clauses Fourth through Sixth~~Seventh~~ below) payable to the Lenders (other than the Second Amendment Term Lender) and the L/C Issuer (including reasonable fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Third payable to them until paid in full;

Fourth, to that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans (other than the Second Amendment Term Loan), L/C Borrowings and other Obligations, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Fourth payable to them until paid in full;

Fifth, to (i) that portion of the Obligations constituting unpaid principal of the Loans (other than the Second Amendment Term Loan) and L/C Borrowings and to Cash Collateralize that portion of L/C Obligations comprising the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by Borrowers and (ii) the payment of Credit Product Obligations (provided that funds from, and proceeds of Collateral owned by, any Person directly or indirectly liable for a Swap Obligation and that was not an "eligible contract participant" as defined in the Commodity Exchange Act at the time such Swap Obligation was incurred may not be used to satisfy such Swap Obligation), ratably among the Lenders, L/C Issuer and the Credit Product Providers in proportion to the respective amounts described in this clause Fifth payable to them until paid in full;

Sixth, to all other Obligations of Borrowers owing under or in respect of the Loan Documents that are due and payable to Administrative Agent and the other Lender Parties, or any of them, on such date (provided that funds from, and proceeds of Collateral owned by, any Person directly or indirectly liable for a Swap Obligation and that was not an "eligible contract participant" as defined in the Commodity Exchange Act at the time such Swap Obligation was incurred may not be used to satisfy such Swap Obligation), ratably based on the respective aggregate amounts of all such Obligations owing to Administrative Agent and the other Lender Parties on such date until paid in full;

Seventh, to the portion of the Obligations constituting accrued and unpaid interest and principal of the Second Amendment Term Loan, ratably based on the respective aggregate amounts of such Obligations owing to the Second Amendment Term Lenders on such date until paid in full; and

Last, the balance, if any, after Payment in Full of the Obligations, to Borrowers or as otherwise required by Law.

(ii) Subject to Sections 2.03(c) and 2.17, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. Amounts distributed with respect to any Credit Product Obligations shall be the lesser of (i) the maximum Credit Product Obligations last reported to Administrative Agent or (ii) the actual Credit Product Obligations as calculated by the methodology reported to Administrative Agent for determining the amount due. Administrative Agent shall have no obligation to calculate the amount to be distributed with respect to any Credit Product Obligations, and may request a reasonably detailed calculation of such amount from the applicable Credit Product Provider. The allocations set forth in this Section are solely to determine the rights and priorities of Administrative Agent and Lender Parties as among themselves, and may be changed by agreement among them without the consent of any Borrower. This Section is not for the benefit of or enforceable by any Loan Party.

(iii) The provisions of Section 8.03(a) are intended to be and shall be enforceable as a "subordination agreement" under Section 510(a) of the Bankruptcy Code.

(b) For purposes of Section 8.03(a), "paid in full" of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any insolvency proceeding, default interest, interest on interest, and expense reimbursements, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any proceeding under Debtor Relief Laws.

## ARTICLE IX ADMINISTRATIVE AGENT

**9.01. Appointment and Authority; Limitations on Lenders.** Each of the Lenders and the L/C Issuer hereby irrevocably appoints BMO to act on its behalf as Administrative Agent hereunder and under the other Loan Documents and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of Administrative Agent, the Lenders and the L/C Issuer, except for a Borrower's consent right as expressly permitted in Section 9.06 and no Loan Party shall have rights as a third party beneficiary of any of such provisions (although each Loan Party shall be bound by such provisions). Administrative Agent shall be authorized to determine whether any conditions to funding any Loan or to issuance of a Letter of Credit have been satisfied. Actions taken by Administrative Agent hereunder, under the other Loan Documents or upon the instructions of Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary), shall be binding upon each Lender.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against Borrowers or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own

behalf during the pendency of a proceeding relative to any Borrower under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**9.02. Rights as a Lender.** The Person serving as Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not Administrative Agent hereunder and without any duty to account therefor to the Lenders.

**9.03. Exculpatory Provisions.** Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, Administrative Agent:

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

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, and shall not be required to take any action that, in its opinion may expose Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by Administrative Agent or any of its Affiliates in any capacity.

Administrative Agent shall not be liable for any action taken (including any apportionment or distribution of payments) or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until written notice describing such Default or Event of Default is given to Administrative Agent by Borrower Agent, a Lender or the L/C Issuer. Administrative Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable Law or expose Administrative Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of this Agreement.

Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any

Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Administrative Agent.

**9.04. Reliance by Administrative Agent.** Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. Administrative Agent may consult with legal counsel (who may be counsel for Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.05. Delegation of Duties.** Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by Administrative Agent. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

**9.06. Resignation of Administrative Agent.** Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and Borrower Agent. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with Borrower Agent, to appoint a successor, which shall be a Lender or a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the 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 L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if Administrative Agent shall notify Borrower Agent and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such Collateral (although shall have no duties with respect thereto) until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired)



Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by BMO as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Swing Line Lender, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

**9.07. Non-Reliance on Administrative Agent and Other Lenders.** Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**9.08. No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Bookrunners or Arrangers or Agents (other than Administrative Agent) listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as Administrative Agent, a Lender or the L/C Issuer hereunder.

**9.09. Administrative Agent May File Proofs of Claim; Credit Bidding.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise (a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and Administrative Agent) allowed in such judicial proceeding; and (b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby

authorized by each Lender and the L/C Issuer to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Sections 2.09.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer in any such proceeding.

The Loan Parties and the Lender Parties hereby irrevocably authorize Administrative Agent, based upon the instruction of the Required Lenders, to (a) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Section 363 of the Bankruptcy Code or any similar Laws in any other jurisdictions to which a Loan Party is subject, or (b) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by (or with the consent or at the direction of) Administrative Agent (whether by judicial action or otherwise) in accordance with applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Lender Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of Administrative Agent to credit bid and purchase at such sale or other disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of Administrative Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Lender Parties whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the asset or assets so purchased (or in the Equity Interests of the acquisition vehicle or vehicles that are used to consummate such purchase). Except as provided above and otherwise expressly provided for herein or in the other Security Instruments, Administrative Agent will not execute and deliver a release of any Lien on any Collateral. Upon request by Administrative Agent or Borrowers at any time, the Lender Parties will confirm in writing Administrative Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 9.09.

**9.10. Collateral Matters.** The Lender Parties irrevocably authorize Administrative Agent, at its option and in its discretion, (a) to release any Lien on any Collateral (i) upon the occurrence of the Facility Termination Date, (ii) that is Disposed or to be Disposed as part of or in connection with any Disposition permitted hereunder or under any other Loan Document, or (iii) subject to Section 10.01, if approved, authorized or ratified in writing by the Required Lenders; (b) to subordinate any Lien on any property granted to or held by Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted hereunder; and (c) to release any Subsidiary from its obligations under the Loan Documents (and all Liens granted by such Subsidiary) if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder. Upon request by Administrative Agent at any time, the Required Lenders will confirm in writing Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Loan Party from its obligations under the Loan Documents pursuant to this Section 9.10.

**9.11. Other Collateral Matters.**

(a) Care of Collateral. Administrative Agent shall have no obligation to assure that any Collateral exists or is owned by a Loan Party, or is cared for, protected or insured, nor to assure that Administrative Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.

(b) Lenders as Agent For Perfection by Possession or Control. Administrative Agent and Lender Parties appoint each Lender as agent (for the benefit of Lender Parties) for the purpose of perfecting Liens in any Collateral held or controlled by such Lender, to the extent such Liens are perfected by possession or control. If any Lender obtains possession or control of any Collateral, it shall notify Administrative Agent thereof and, promptly upon Administrative Agent's request, deliver such Collateral to Administrative Agent or otherwise deal with it in accordance with Administrative Agent's instructions.

**9.12. Right to Perform, Preserve and Protect.** If any Loan Party fails to perform any obligation hereunder or under any other Loan Document, Administrative Agent itself may, but shall not be obligated to, cause such obligation to be performed at the Loan Parties' expense. Administrative Agent is further authorized by the Loan Parties and the Lender Parties to, upon the occurrence and during the continuance of an Event of Default, make expenditures from time to time which Administrative Agent, in its reasonable business judgment, deems necessary or desirable to (i) preserve or protect the business conducted by Loan Parties, the Collateral, or any portion thereof and/or (ii) enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations. Each Loan Party hereby agrees to reimburse Administrative Agent on demand for any and all costs, liabilities and obligations incurred by Administrative Agent pursuant to this Section 9.12. Each Lender hereby agrees to indemnify Administrative Agent upon demand for any and all costs, liabilities and obligations incurred by Administrative Agent pursuant to this Section 9.12, in accordance with the provisions of Section 10.04.

**9.13. Credit Product Providers and Credit Product Arrangements.**

(a) Each Credit Product Provider, by delivery of a notice to Administrative Agent of the creation of a Credit Product Arrangement, agrees to be bound by Section 8.03 and this Article IX. Each Credit Product Provider shall indemnify Administrative Agent (and any sub-agent thereof) and each Related Party thereof (each a "***Credit Product Indemnitee***") against, and hold harmless each such Credit Product Indemnitee from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel), incurred by any such Credit Product Indemnitee or asserted against any Credit Product Indemnitee by any third party or by Borrowers or any other Loan Party arising out of, in connection with, or as a result of such provider's Credit Product Obligations.

(b) Except as otherwise expressly set forth herein, no Credit Product Provider that obtains the benefit of the provisions of Section 8.03, any Guarantee or any Collateral by virtue of the provisions hereof or any other Loan Document shall have any voting rights or right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise (including with respect to the release or impairment of any Collateral or notice of or consent to any amendment, waiver or modification of the provisions hereof or of any other Loan Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Credit Product Arrangements in respect of any Payment in Full of the Obligations or the Facility Termination Date.

**9.14. Designation of Additional Agents.** Administrative Agent, subject to the consent of the Borrowers (not to be unreasonably withheld), shall have the continuing right, for purposes hereof, at any time and from time to time to designate one or more of the Lenders (and/or its or their Affiliates) as “syndication agents,” “documentation agents,” “book runners,” “lead arrangers,” “arrangers” or other designations for purposes hereto, but such designation shall have no substantive effect, and such Lenders and their Affiliates shall have no additional powers, duties or responsibilities as a result thereof.

**9.15. Authorization to Enter into Intercreditor Agreement.** Each Lender hereby irrevocably appoints, designates and authorizes Administrative Agent to enter into the Intercreditor Agreement on its behalf and to take such action on its behalf under the provisions of any such agreement. Each Lender further agrees to be bound by the terms and conditions of the Intercreditor Agreement. Each Lender hereby authorizes and directs Administrative Agent to issue blockage notices in connection with the Subordinated Indebtedness at the direction of Administrative Agent or the Required Lenders.

## **ARTICLE X MISCELLANEOUS**

**10.01. Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by Borrowers, Borrower Agent or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and Borrowers, the applicable Borrower or the applicable Loan Party, as the case may be, and acknowledged by Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment (but excluding the delay or waiver of any mandatory prepayment) of principal, interest, fees or other amounts due to the Lenders (or any of them), including the Revolving Credit Maturity Date or the Term Loan Maturity Date, or any scheduled reduction of the Commitments hereunder or under any other Loan Document, in each case without the written consent of each Lender directly affected thereby;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of “Default Rate” (so long as such amendment does not result in the Default Rate being lower than the interest rate then applicable to Base Rate Loans or Eurodollar Rate Loans, as applicable) or to waive any obligation of Borrowers to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein);

(d) change the provisions requiring pro rata payments to the Lenders set forth herein without the written consent of each Lender directly affected thereby;

(e) change any provision of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(f) release any Borrower or all or substantially all of the Guarantors from this Agreement or release any material Security Instrument to which any such Person is a party without the written consent of each Lender, except to the extent such Person is the subject of a Disposition permitted by Section 7.05 (in which case such release may be made by Administrative Agent acting alone); or

(g) release all or substantially all of the Collateral without the written consent of each Lender except with respect to Dispositions and releases of Collateral permitted or required hereunder (including pursuant to Section 7.05) or as provided in the other Loan Documents (in which case such release may be made by Administrative Agent acting alone);

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by Administrative Agent in addition to the Lenders required above, affect the rights or duties of Administrative Agent under this Agreement or any other Loan Document; and (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the respective parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender. Notwithstanding the foregoing or anything to the contrary in this Agreement, the consent of the Second Amendment Term Lenders shall not be required for any amendment, waiver or consent to this Agreement unless such amendment, waiver or consent reduces the principal of, or the rate of interest specified herein on, the Second Amendment Term Loan or increases the Commitment of the Second Amendment Term Lenders.

If any Lender does not consent (a “*Non-Consenting Lender*”) to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender or any class of Lenders and that has been approved by the Required Lenders, Borrowers may replace such Non-Consenting Lender in accordance with Section 10.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by Borrowers to be made pursuant to this paragraph).

No Loan Party will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender or its Affiliates (in their capacities as such) as consideration for the agreement by such Lender to any amendment, waiver, consent or release with respect to any Loan Document, unless such remuneration or value is concurrently paid, on the same terms, on a ratable basis to all Lenders providing their agreement. Notwithstanding the terms of this Agreement or any amendment, waiver, consent or release with respect to any Loan Document, Non-Consenting Lenders shall not be entitled to receive any fees or other compensation paid to the Lenders in connection with any amendment, waiver, consent or release approved in accordance with the terms of this Agreement by the Required Lenders.

In addition, notwithstanding the foregoing, this Agreement, including this Section 10.01, and the other Loan Documents may be amended (or amended and restated) by Administrative Agent, the

Borrower and the Lenders providing the applicable Credit Extension to increase the Term Loan Facility or the Revolving Credit Facility or to provide any incremental term loan, in each case pursuant to Section 2.18 hereof and (a) to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement (including the rights of the Lenders to share ratably in prepayments following any such increase to the Term Loan Facility or the Revolving Credit Facility or the provision of any incremental term loan), the Security Agreement and the other Loan Documents with the Loans and the accrued interest and fees in respect thereof, (b) to include appropriately the Lenders holding such credit facility in any determination of the Required Lenders and (c) to amend other provision of the Loan Documents so that such increase to the Term Loan Facility or the Revolving Credit Facility or the provision of any incremental term loan pursuant to Section 2.18 are appropriately incorporated herein (including this Section 10.01).

In addition, notwithstanding anything to the contrary contained in Section 10.01, if Administrative Agent and the Borrowers shall have jointly identified an obvious error or any error, defect or omission of a technical or immaterial nature, in each case, in any provision of the Loan Documents, then Administrative Agent and the Borrowers shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof.

**10.02. Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone or in the case of notices otherwise expressly provided herein (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier or email (including as a .pdf file) as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

if to a Loan Party, Administrative Agent, the L/C Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person below, as changed pursuant to subsection (d) below:

- |  |   |
|--|---|
| (i) If to Administrative Agent,<br>Swing Line Lender or L/C<br>Issuer: | Bank of Montreal<br>111 West Monroe<br>Chicago, Illinois 60603<br>Attention: <del>Dan M. Weeks</del> Michelle Tesch<br>Facsimile No.: (312) <del>293-8532</del> 461-7116<br>Telephone No.: (312) 461-1533<br>Email: <del>Dan.weeks@bmo</del> Michelle.Tesch@Bmo.com |
| With a copy to:  | Bank of Montreal<br>111 West Monroe<br>Chicago, Illinois 60603<br>Attention: Agency Services<br>Facsimile No.: (312) 765-8078<br>Telephone No. (312) 461-6332<br>Email: mike.fitzmaurice@bmo.com  |

With a copy to:

Winston & Strawn LLP  
35 West Wacker Drive  
Chicago, Illinois 60601  
Attention: Charles B. Boehrer  
Facsimile No.: (312) 558-5700  
Telephone No. (312) 558-5989  
Email: CBoehrer@winston.com

(ii) If to a Loan Party:

Tapp Label Company, LLC,  
as Borrower Agent  
1380 Main Street Suite 200  
St. Helena, CA 94574  
Attention: David Bowyer  
Telephone No.: (707) 302-3515  
Email: DBowyer@tapplabel.com

With a copy to:

Adams Office, LLC  
Fox Wood  
88 Old Roxbury Road  
Roxbury, CT 06783  
Attention: Raymond Schwartz  
Facsimile No.: (860) 210-9673  
Telephone No.: (860) 350-4177  
Email: rschwartz@adamsoffice.net

With a copy to:

Kaplan, Strangis and Kaplan, P.A.  
90 South Seventh Street, Suite 5500  
Minneapolis, MN 55110  
Attention: Robert T. York  
Facsimile No.: (612) 375-1143  
Telephone No.: (612) 375-1138  
Email: rty@kskpa.com

if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire, as changed pursuant to subsection (d) below (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to Loan Parties).

Notices sent by hand or overnight courier service or by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not sent during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender

or the L/C Issuer, as applicable, has notified Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. Administrative Agent or Borrowers may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed to have been given when sent; provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed given to the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. Each Loan Party hereby acknowledges that Administrative Agent and/or the Arrangers will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of Borrowers hereunder (collectively, "**Borrower Materials**") by posting Borrower Materials on SyndTrak, IntraLinks or another similar electronic system (the "**Platform**"). THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH BORROWER MATERIALS OR THE PLATFORM. In no event shall Administrative Agent or any of its Related Parties (collectively, the "**Agent Parties**") have any liability to any Borrower, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of a Borrower's or Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Borrower, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of Borrowers, Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, telecopier number, electronic mail address or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier number, electronic mail address or telephone number for notices and other communications hereunder by notice to Borrower Agent, Administrative Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify Administrative Agent from time to time to ensure that Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of Borrowers even if (i) such notices were not made in a manner specified herein, were incomplete or were not



preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Borrowers shall indemnify Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of Borrowers. All telephonic notices to and other telephonic communications with Administrative Agent may be recorded by Administrative Agent, and each of the parties hereto hereby consents to such recording.

**10.03. No Waiver; Cumulative Remedies.** No failure by any Lender, the L/C Issuer or Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

**10.04. Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. Borrowers shall pay (i) all reasonable out-of-pocket expenses (including any Extraordinary Expenses) incurred by Administrative Agent, the Arrangers and their respective Affiliates (whether incurred prior to or during any workout, restructuring or negotiations in respect of the Obligations), (A) in connection with this Agreement and the other Loan Documents, including without limitation the reasonable fees, charges and disbursements of (1) counsel for Administrative Agent and the Arrangers, (2) outside consultants for Administrative Agent, and (3) environmental site assessments, (B) in connection with (1) the syndication and administration of the credit facilities provided for herein, (2) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), or (3) the enforcement or protection of their rights in connection with this Agreement or the Loan Documents or efforts to preserve, protect, collect, or enforce the Collateral, and (ii) with respect to the L/C Issuer, and its Affiliates, all reasonable out-of-pocket expenses incurred in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder. Borrowers shall pay all reasonable out-of-pocket expenses incurred by the Lender Parties (other than the Second Amendment Term Lender) who are not Administrative Agent, the Arrangers, the L/C Issuer or any Affiliate of any of them, after the occurrence and during the continuance of an Event of Default; provided, that, such Lender Parties shall be entitled to reimbursement for no more than one counsel selected by the Required Lenders representing all such Lender Parties (absent a conflict of interest in which case the Lender Parties may engage and be reimbursed for additional counsel; provided that, in no event may the Second Amendment Term Lender seek reimbursement for fees of its own counsel) and local or specialty counsel, as needed (the foregoing, collectively being referred to as "Lender Party Expenses").

(b) Indemnification by Loan Parties. Each Loan Party shall indemnify Administrative Agent (and any sub-agent thereof), each other Lender Party (other than the Second Amendment Term Lender) and each Related Party of any of the foregoing Persons (each such Person being called an "*Indemnatee*") against, and hold harmless each Indemnatee from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnatee), incurred by any Indemnatee or asserted against any Indemnatee by any third party or by Borrowers or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or

thereunder, the consummation of the transactions contemplated hereby or thereby or, in the case of Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration and enforcement of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Lender Party to, a Controlled Account Bank or other Person which has entered into a control agreement with any Lender Party hereunder or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party, the Sponsor or any of its Affiliates or by Borrowers or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by Borrowers or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if such Borrower or such other Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that (i) the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it, or (ii) any liabilities, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever are imposed on, incurred by, or asserted against, Administrative Agent, the L/C Issuer or a Related Party in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by Administrative Agent, the L/C Issuer or a Related Party in connection therewith, then, in each case, each Lender severally agrees to pay to Administrative Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on such Lender's portion of Loans, commitments and risk participations with respect to the Revolving Credit Facility) 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 Administrative Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity; and provided, further, that the obligation of the Lenders to so indemnify shall not 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 willful misconduct of such Administrative Agent, L/C Issuer or Related Party. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Loan Parties shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information

transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of Administrative Agent, the L/C Issuer and the Swing Line Lender, the replacement of any Lender and the occurrence of the Facility Termination Date.

**10.05. Marshalling; Payments Set Aside.** None of Administrative Agent or Lenders shall be under any obligation to marshal any assets in favor of any Loan Party or against any Obligations. To the extent that any payment by or on behalf of any Loan Party is made to a Lender Party, or a Lender Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Lender Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the occurrence of the Facility Termination Date.

**10.06. Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to any Person (other than any of the Persons described in Subsection (b)(iv) of this Section) in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Lender Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 10.06(b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and the Loans at the time owing to it under such Facility or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$1,000,000 or the Canadian Dollar Equivalent thereof, in the case of any assignment in respect of the Revolving Credit Facility, or \$1,000,000 or the Canadian Dollar Equivalent thereof, in the case of any assignment in respect of the Term Loan Facility or any Increase, unless each of Administrative Agent and, so long as no Event of Default has occurred and is continuing, Borrower Agent otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single assignee (or to an assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

Notwithstanding the foregoing or anything in this Agreement to the contrary, Second Amendment Term Lenders may not assign Second Amendment Term Loans at any time.

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

(A) the consent of Borrower Agent (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that Borrower Agent shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) any Term Loan Commitment, Revolving Credit Commitment or Revolving Loan if such assignment is to a Person that is not a Lender with a Commitment or Loan in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Facility.

(iii) Assignment and Assumption. The parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment and provided, further, that such fee shall not be payable in connection with an assignment to an Affiliate of a Lender or an Approved Fund. The assignee, if it is not a Lender, shall deliver to Administrative Agent an Administrative Questionnaire.

(iv) No Assignment to Certain Persons. No such assignment shall be made to (A) Sponsor or any Affiliate of Sponsor (including, for the avoidance of doubt, any Second Amendment Term Lender), any Borrower or any of a Borrower's Affiliates or Subsidiaries, (B) any holder of the Subordinated Indebtedness, (C) any holder of the Holdco Notes, (D) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (D) or (E) a natural person.

(v) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of Borrower Agent and Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by Administrative Agent in the Register pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, each Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d);

provided that an assignment or transfer not in compliance with Section 10.06(b)(iv) shall be void and of no force or effect.

(c) Register. Administrative Agent, acting solely for this purpose as a non-fiduciary agent of Borrowers (and such agency being solely for tax purposes) (in such capacity, subject to Section 10.17), shall maintain at Administrative Agent's Office in the U.S. 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 Commitments of, and principal amounts and stated interest of the Loans and Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, and Borrowers, Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by Borrower Agent at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or substantive change to the Loan Documents is pending, any Lender may request and receive from Administrative Agent a copy of the Register.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or Administrative Agent, sell participations to any Person (other than a natural person, a Defaulting Lender or a Borrower or any of Borrowers' Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrowers, Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender granting a participation shall as a non-fiduciary agent of the Borrowers maintain in the U.S. a register ("**Participation Register**") with respect to the ownership and transfer of each participation containing the information set forth in the Register described in Section 10.06(c). No transfer of a participation shall be effective unless recorded in such Participation Register. Each Participation Register shall be available for inspection by the Borrowers during normal business hours upon prior reasonable notice to the applicable Lender maintaining the Participant Register to the extent required to cause the Obligations to be in "registered form" within the meaning of Treasury Regulation Sections 5f.103-1 and 1.871-14(c). For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participation Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the

applicable participation. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless Borrower Agent is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrowers, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) Resignation as L/C Issuer and/or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time BMO assigns all of its Revolving Credit Commitment or Revolving Loans pursuant to subsection (b) above, such Person may, (i) upon 30 days' notice to Borrower Agent and the Lenders, resign as L/C Issuer and/or (ii) in the case of BMO, upon 30 days' notice to Borrower Agent, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer, or Swing Line Lender, Borrower Agent shall be entitled to appoint from among the Lenders willing to serve in such capacity a successor L/C Issuer or Swing Line Lender hereunder, as the case may be; provided, however, that no failure by Borrower Agent to appoint any such successor shall affect the resignation of such Person as L/C Issuer or Swing Line Lender, as the case may be. If BMO resigns as L/C Issuer, such Person shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If BMO resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of such L/C Issuer with respect to such Letters of Credit.

(i) If at any time Sponsor or any Affiliate of Sponsor becomes a Lender hereunder, neither Sponsor nor such Affiliate of Sponsor shall be entitled to the benefits of Section 3.01(a)(ii) or Section 3.01(c) in respect of Canadian Taxes (it being understood that this sentence shall in no way affect the benefits of any other Lender under such Sections).

**10.07. Treatment of Certain Information; Confidentiality.** Each of the Lender Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners,

directors, trustees, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrowers and their obligations, (g) with the consent of Borrower Agent, (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Lender Parties or any of their respective Affiliates on a nonconfidential basis from a source other than the Loan Parties, (i) to a Person that is an investor or prospective investor in a Securitization that agrees that its access to information regarding the Loan Parties and the Loans and Commitments is solely for purposes of evaluating an investment in such Securitization or (j) to a Person that is a trustee, collateral agent, collateral manager, servicer, noteholder, equityholder or secured party in a Securitization solely for the purpose of the administration, servicing and evaluation of, and reporting on, the assets serving as collateral for such Securitization.

For purposes of this Section, “*Information*” means all information received from Sponsor, any Loan Party or any Subsidiary relating to a Loan Party or any Subsidiary or any of their respective businesses, other than any such information that is available to any Lender Party on a nonconfidential basis prior to disclosure by a Loan Party or any Subsidiary, provided that, in the case of information received from Sponsor, a Loan Party or any Subsidiary after the date hereof, any information not marked “PUBLIC” at the time of delivery will be deemed to be confidential; provided, that any information marked “PUBLIC” may also be marked “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.

Each of the Lender Parties acknowledges that (a) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities Laws.

Each of the Loan Parties hereby authorize Administrative Agent to publish the name and logo of any Loan Party and the amount of the credit facility provided hereunder in any “tombstone” or comparable advertisement which Administrative Agent elects to publish. Administrative Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

**10.08. Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, only after obtaining the prior written consent of Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for



the credit or the account of any Loan Party against any and all of the obligations of Borrowers now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of Borrowers may be contingent or unmatured or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify Borrower Agent and Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

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

**10.10. Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Subject to Section 4.01, this Agreement shall become effective when it shall have been executed by Administrative Agent and when Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement and each other Loan Document by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

**10.11. Survival.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Lender Parties, regardless of any investigation made by any Lender Party or on their behalf and notwithstanding that any Lender Party may have had notice or knowledge of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

Further, the provisions of Sections 3.01, 3.04 and 3.05 and Article X shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, Administrative Agent may require such indemnities and collateral security as it shall reasonably deem necessary to protect the Lender Parties against loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked.

**10.12. Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by Administrative Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.13. Replacement of Lenders.** If any Lender requests compensation under Section 3.04, if Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, if any Lender is a Defaulting Lender, or if any Lender fails to approve any amendment, waiver or consent requested by Borrower Agent pursuant to Section 10.01 that has received the written approval of not less than the Required Lenders but also requires the approval of such Lender, then in each such case Borrower Agent may, at its sole expense and effort, upon notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) Borrower Agent shall have paid to Administrative Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower Agent (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) in the case of any such assignment resulting from the refusal of a Lender to approve a requested amendment, waiver or consent, the Person to whom such assignment is being made has agreed to approve such requested amendment, waiver or consent; and

(e) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrowers to require such assignment and delegation cease to apply.

**10.14. Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST BORROWERS OR THEIR PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**10.15. Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY

OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**10.16. USA PATRIOT Act Notice.** Each Lender that is subject to the Act (as hereinafter defined) and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Borrowers that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "*Act*"), it is required to obtain, verify and record information that identifies Borrowers, which information includes the name and address of Borrowers and other information that will allow such Lender or Administrative Agent, as applicable, to identify Borrowers in accordance with the Act.

**10.17. No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Lender Parties are arm's-length commercial transactions between each Loan Party, on the one hand, and the Lender Parties, on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Lender Party is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Loan Party or any of its Affiliates or any other Person and (B) no Lender Party has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents, (iii) the Lender Parties may be engaged in a board range of transactions that involve interests that differ from those of the Loan Parties and their Affiliates, and no Lender Party has any obligation to disclose any of such interests to any Loan Party or its Affiliates and (iv) the Lender Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against any Lender Party with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**10.18. Attachments.** Any exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein; except, that, in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

**10.19. Rights of Second Amendment Term Lenders.** Second Amendment Term Lenders shall be subject to the following conditions:

(a) each Second Amendment Term Lender, solely in its capacity as a Lender, hereby agrees that such Second Amendment Term Lender shall have no right whatsoever:

(i) to vote with respect to any amendment, modification, waiver, consent or other such action with respect to any of the terms of this Agreement or any other Loan Document other than as described in Section 10.01 of this Agreement and that it shall be deemed to have voted its interest as a Lender without discretion in the same proportion as the allocation of voting with respect to such matter by Lenders who are not Second Amendment Term Lenders; or

(ii) to attend (or receive any notice of) any meeting, conference call or to receive any report prepared by or for the benefit of the Administrative Agent or other correspondence among the Administrative Agent or any Lender or among Lenders to which the Loan Parties or their representatives are not also invited or receive any information from the Administrative Agent or any other Lender (other than notices and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II) except to the extent such information has been made available by the Administrative Agent or any Lender to any Loan Party or its representative; or

(iii) (1) to make or bring any claim, in its capacity as a Lender, against the Administrative Agent with respect to the duties and obligations of such persons under the Loan Documents (other than any such claim made in good faith and as determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted solely from the bad faith of the Administrative Agent or alleging that the Administrative Agent is treating such Second Amendment Term Lender in a disproportionate manner relative to the other Lenders (it being understood that the application of the express provisions of Section 8.03(a) hereof is not disproportionate treatment), (2) receive advice of counsel or other advisors to the Administrative Agent or any other Lenders or (3) challenge the attorney client privilege of Administrative Agent or any Lender and their respective counsel;

(b) each Second Amendment Term Lender hereby further agrees that if any Loan Party shall be subject to any voluntary or involuntary proceeding commenced under the Bankruptcy Code:

(i) the provisions set forth in this Section 10.19 constitute (1) a "subordination agreement" as such term is contemplated by, and utilized in, Section 510(a) of the Bankruptcy Code, and, as such, would be enforceable for all purposes in any case where a Loan Party has filed for protection under the Bankruptcy Code from time to time in effect and affecting the rights of creditors generally applicable to such Loan Party and (2) an irrevocable voting proxy coupled with a pledge in favor of the Administrative Agent with respect to voting obligations set forth in this Section 10.19;

(ii) each Second Amendment Term Lender, solely in its capacity as a Lender, shall support and shall not object to (1) any use of cash collateral (including any and all terms of any cash collateral order) and/or any debtor-in-possession financing (including any and all terms of any financing agreement, related documents and financing order) that is supported by or consented to by the Administrative Agent and (2) any sale of any assets of the Loan Parties, whether under Section 363 of the Bankruptcy Code or otherwise, that is supported by or consented to by the Administrative Agent (including the terms and conditions of any bidding procedures orders, sale orders and any and all purchase and sale agreements and related documents);

(iii) each Second Amendment Term Lender, solely in its capacity as a Lender, shall be deemed to have voted in such proceedings in the same proportion as the allocation of voting with respect to such matter by those Lenders who are not Second Amendment Term Lenders, except to the extent that any plan under the Bankruptcy Code proposes to treat the Obligations

held by such Second Amendment Term Lender in a manner that is less favorable to such Second Amendment Term Lender in any material respect than the proposed treatment of similar Obligations held by other Lenders (other than by reason of (i) such Second Amendment Term Lender also owning Equity Interests in the Borrower or (ii) the provisions of Section 8.03(a) hereof). For the avoidance of doubt, the Administrative Agent is hereby irrevocably authorized and empowered (in the name of such Second Amendment Term Lender) to vote on behalf of such Second Amendment Term Lender or consent on behalf of such Second Amendment Term Lender in any such proceedings with respect to any and all claims of such Second Amendment Term Lender relating to the Obligations. Each Second Amendment Term Lender agrees and acknowledges that the foregoing constitutes an irrevocable proxy in favor of the Administrative Agent to vote or consent on behalf of such Second Amendment Term Lender in any proceeding in the manner set forth above and that such Second Amendment Term Lender shall be irrevocably bound to any such votes made or consents given and further shall not challenge or otherwise object to such votes or consents and shall not itself vote or provide consents in the proceeding:

(iv) with respect to any matter requiring the vote of holders of any such Term Loans during the pendency of any such insolvency proceeding (including voting on any plan of reorganization pursuant to 11 U.S.C. §1126), such Term Loans held by such Second Amendment Term Lender (and any claim with respect thereto) shall be deemed assigned for all purposes to Administrative Agent, which shall cast such vote in accordance with, and subject to the limitations of, clause (iii) above; and

(v) each Second Amendment Term Lender, solely in its capacity as a Lender, hereby expressly and irrevocably waives, for the benefit of the Administrative Agent and the Lenders any principles or provisions of law (including as set forth in the Bankruptcy Code) which are or might be in conflict with the terms of this Agreement and any legal or equitable discharge of such Second Amendment Term Lender's obligations hereunder.

## ARTICLE XI CONTINUING GUARANTEE

### 11.01. Guarantee.

(a) Holdings, each Borrower and each Subsidiary Guarantor hereby absolutely and unconditionally guarantees, as a guarantee of payment and performance and not merely as a guarantee of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations, whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of Borrowers to the Lender Parties, arising hereunder or under any other Loan Document (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Lender Parties in connection with the collection or enforcement thereof, subject to the limitations set forth in Section 10.04(a) hereof). Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon Holdings, each Borrower and each Subsidiary Guarantor, and conclusive for the purpose of establishing the amount of the Obligations, subject to manifest error. This Guarantee shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of Holdings, any Borrower or any Subsidiary Guarantor under this Guarantee (other than defense of payment), and Holdings, each

Borrower and each Subsidiary Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing (other than defense of payment).

(b) Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guaranty in respect of Swap Obligations. The obligations of each Qualified ECP Guarantor under this Section 11.01(b) shall remain in full force and effect until Payment in Full of the Obligations. Each Qualified ECP Guarantor intends that this Section 11.01(b) constitute, and this Section 11.01(b) shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

**11.02. Rights of Lenders.** Holdings, each Borrower and each Subsidiary Guarantor consents and agrees that the Lender Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof and subject only to the terms of this Agreement: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guarantee or any Obligations; (c) apply such security and direct the order or manner of sale thereof as Administrative Agent, the L/C Issuer and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Obligations. Without limiting the generality of the foregoing, Holdings, each Borrower and each Subsidiary Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of Holdings, each Borrower or any Subsidiary Guarantor under this Guarantee or which, but for this provision, might operate as a discharge of Holdings, any Borrower or any Subsidiary Guarantor.

**11.03. Certain Waivers.**

(a) Holdings, each Borrower and each Subsidiary Guarantor waives, to the fullest extent permitted by law, (i) any defense arising by reason of any disability or other defense of any Borrower or any other Guarantor, or the cessation from any cause whatsoever (including any act or omission of any Lender Party) of the liability of Borrowers; (ii) any defense based on any claim that Holdings', any Borrower's or any Subsidiary Guarantor's obligations exceed or are more burdensome than those of any Borrower; (iii) the benefit of any statute of limitations affecting Holdings', any Borrower's or any Subsidiary Guarantor's liability hereunder; (iv) any right to require any Lender Party to proceed against any Borrower, proceed against or exhaust any security for the Obligations, or pursue any other remedy in the power of any Lender Party whatsoever; (v) any benefit of and any right to participate in any security now or hereafter held by any Lender Party; and (vi) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties. Holdings, each Borrower and each Subsidiary Guarantor expressly waives, to the fullest extent permitted by law, all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Obligations, and all notices of acceptance of this Guarantee or of the existence, creation or incurrence of new or additional Obligations, except as otherwise expressly set forth in this Agreement.

(b) Holdings, each Borrower and each Subsidiary Guarantor agrees that its obligations hereunder are absolute and unconditional, irrespective of (i) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Borrower or other Loan Party is

or may become a party or be bound; (ii) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by Administrative Agent or any Lender with respect thereto; (iii) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guarantee for the Obligations or any action, or the absence of any action, by Administrative Agent or any Lender in respect thereof (including the release of any security or guarantee); (iv) the insolvency of any Borrower or any other Loan Party; (v) any election by Administrative Agent or any Lender in proceeding under Debtor Relief Laws for the application of Section 1111(b)(2) of the Bankruptcy Code; (vi) any borrowing or grant of a Lien by any Borrower or other Loan Party, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (vii) the disallowance of any claims of Administrative Agent or any Lender against any Borrower for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (viii) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except defense of payment.

(c) Holdings, each Borrower and each Subsidiary Guarantor expressly waives, to the fullest extent permitted by law, all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Administrative Agent or Lenders to marshal assets or to proceed against any Borrower, or any other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against Holdings, such Borrower or such Subsidiary Guarantor. Holdings, each Borrower and each Subsidiary Guarantor waives, to the fullest extent permitted by law, all defenses available to a surety, guarantor or accommodation co-obligor other than defense of payment. It is agreed among Holdings, each Borrower and each Subsidiary Guarantor, Administrative Agent and Lenders that the provisions of this Article XI are essential to the transaction contemplated by the Loan Documents and that, but for such provisions, Administrative Agent and Lenders would decline to make Loans and issue Letters of Credit. Holdings, each Borrower and each Subsidiary Guarantor acknowledges that its guarantee pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(d) Administrative Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this Article XI. If, in taking any action in connection with the exercise of any rights or remedies, Administrative Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Loan Party or other Person, whether because of any applicable Laws pertaining to "election of remedies" or otherwise, Holdings, each Borrower and each Subsidiary Guarantor consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that Holdings, any Borrower or any Subsidiary Guarantor might otherwise have had. Any election of remedies that results in denial or impairment of the right of Administrative Agent or any Lender to seek a deficiency judgment against any Borrower shall not impair Holdings', each Borrower and each Subsidiary Guarantor's obligation to pay the full amount of the Obligations.

**11.04. Obligations Independent.** The obligations of Holdings, each Borrower and each Subsidiary Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other guarantor, and a separate action may be brought against Holdings, each Borrower and each Subsidiary Guarantor to enforce this Guarantee whether or not any Borrower or any other person or entity is joined as a party.

**11.05. Subrogation.** Neither Holdings, nor any Borrower nor any Subsidiary Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guarantee until the Facility Termination Date. If any amounts are paid to Holdings, any Borrower or any Subsidiary Guarantor in violation of the



foregoing limitation, then such amounts shall be held in trust for the benefit of the Lender Parties and shall forthwith be paid to Administrative Agent to reduce the amount of the Obligations, whether matured or unmatured.

**11.06. Termination; Reinstatement.** This Guarantee is a continuing and irrevocable guarantee of all Obligations now or hereafter existing and shall remain in full force and effect until the Facility Termination Date. Notwithstanding the foregoing, this Guarantee shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of a Borrower or Holdings or any Subsidiary Guarantor is made, or any of the Lender Parties exercises its right of setoff, in respect of the Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Lender Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Lender Parties are in possession of or have released this Guarantee and regardless of any prior revocation, rescission, termination or reduction. The obligations of Holdings, each Borrower and each Subsidiary Guarantor under this paragraph shall survive termination of this Guarantee.

**11.07. Subordination.** Holdings, each Borrower and each Subsidiary Guarantor hereby subordinates the payment of all obligations and indebtedness of any Borrower owing to Holdings, each Borrower and each Subsidiary Guarantor, whether now existing or hereafter arising, including but not limited to any obligation of any Borrower to Holdings, any other Borrower or any Subsidiary Guarantor as subrogee of the Lender Parties or resulting from Holdings', any other Borrower's or any Subsidiary Guarantor's performance under this Guarantee, to the indefeasible Payment in Full of all Obligations. If the Required Lenders so request after the occurrence and during the continuance of any Event of Default, any such obligation or indebtedness of any Borrower to Holdings, any other Borrower or any Subsidiary Guarantor shall be enforced and performance received by Holdings, any Borrower or any Subsidiary Guarantor as trustee for the Lender Parties and the proceeds thereof shall be paid over to Administrative Agent to be applied to the Obligations, but without reducing or affecting in any manner the liability of Holdings, any Borrower or any Subsidiary Guarantor under this Guarantee.

**11.08. Stay of Acceleration.** If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against Holdings, any Borrower or any Subsidiary Guarantor under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by Holdings, each Borrower and each Subsidiary Guarantor immediately upon demand by the Lender Parties.

**11.09. Condition of Borrowers.** Holdings, each Borrower and each Subsidiary Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from each Borrower and any other guarantor such information concerning the financial condition, business and operations of Borrowers and any such other guarantor as Holdings, each Borrower and each Subsidiary Guarantor requires, and that none of the Lender Parties has any duty, and neither Holdings, nor any Borrower, nor any Subsidiary Guarantor is relying on the Lender Parties at any time, to disclose to Holdings, any Borrower or any Subsidiary Guarantor any information relating to the business, operations or financial condition of Borrowers or any other guarantor (Holdings, each Borrower and each Subsidiary Guarantor waiving any duty on the part of the Lender Parties to disclose such information and any defense relating to the failure to provide the same).

**11.10. Limitation of Liability.** Notwithstanding any provision of this Article XI to the contrary, it is intended that the provisions of this Article XI not constitute a "Fraudulent Conveyance" (as defined below). Consequently, each Lender Party and Loan Party agrees that if the provisions of this Article XI, or any Liens securing the obligations and liabilities arising pursuant to this Article XI, would, but for the application of this sentence, constitute a Fraudulent Conveyance, this Agreement and each such Lien shall be valid and enforceable only to the maximum extent that would not cause such provisions or such Lien to constitute a Fraudulent Conveyance, and such provisions shall automatically be deemed to have been amended accordingly at all relevant times. For purposes hereof, "*Fraudulent Conveyance*" means a fraudulent conveyance or fraudulent transfer under Section 548 of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the provisions of any applicable fraudulent conveyance or fraudulent transfer law or similar law of any Governmental Authority as in effect from time to time.

ANNEX II TO SECOND AMENDMENT

AMENDED EXHIBIT D

[see attached]

FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: \_\_\_\_\_, 20\_\_

To: Bank of Montreal, as Administrative Agent

Ladies and Gentlemen:

This certificate is given by Tapp Label Company, LLC, a Delaware limited liability company (the "Borrower Agent"), pursuant to Section 6.02(a) of that certain Credit Agreement dated as of July 6, 2015 among Borrower Agent, and the other borrowers party thereto (collectively with Borrower Agent, "Borrowers"), the Guarantors party thereto, the Lenders from time to time party thereto and Bank of Montreal, as Administrative Agent for Lenders (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby certifies to Administrative Agent and Lenders, solely as an officer of Borrower Agent and not individually, that:

(a) the financial statements delivered with this certificate in accordance with Section 6.01(a), Section 6.01(b) and/or 6.01(c) of the Credit Agreement were prepared in accordance with GAAP and are fairly stated in all material respects [**subject to normal year-end adjustments and the absence of footnotes**] [**note: delete bracketed text where the Compliance Certificate is delivered in conjunction with the annual audited financial statements.**]

(b) I have reviewed the terms of the Credit Agreement and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and conditions of Holdings and its Subsidiaries during the accounting period covered by such financial statements;

(c) such review has not disclosed the existence during or at the end of such accounting period, and I have no knowledge of the existence as of the date hereof, of any condition or event that constitutes a Default or an Event of Default, except as set forth in Schedule 1 hereto, which includes a description of the nature and period of existence of such Default or an Event of Default and what action Borrowers have taken, are undertaking and propose to take with respect thereto;

(d) Borrowers are in compliance with the covenants contained in Section 7.12 of the Credit Agreement, as demonstrated by the calculation of such covenants below, except as set forth below; and

(e) [**subsequent to the delivery of the last Compliance Certificate submitted pursuant to the Credit Agreement, except as set forth in Schedule 2 hereto, no Loan Party has (i) acquired any Titled Collateral (as such term is defined in the Security Agreement), (ii) obtained any registration of a patent or trademark, (iii) applied for the registration of a patent or trademark, (iv) acquired any license that is material to the conduct of such Person's business or (v) executed any statement of use or amendment to allege use with respect to intent-to-use trademark application.**]

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this certificate, solely as an officer of Borrower Agent and not individually, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

TAPP LABEL COMPANY, LLC

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_ of the Borrower Agent

**Annex 1**

**CONSOLIDATED TOTAL NET LEVERAGE RATIO<sup>1</sup>**

Total Net Debt is defined as follows:

Outstanding principal balance of the Revolving Loans as of the last day of the applicable measurement period (the "Defined Period") \$ \_\_\_\_\_

Plus (without duplication):

Outstanding principal balance of the Term Loan as of the last day of the Defined Period \_\_\_\_\_

L/C Obligations as of the last day of the Defined Period \_\_\_\_\_

Outstanding principal balance of all other Indebtedness of Holdings and its Subsidiaries as of the last day of the Defined Period \_\_\_\_\_

Less: Qualified Cash \_\_\_\_\_

Less: Indebtedness under the Holdco Notes \_\_\_\_\_

Total Net Debt \$ \_\_\_\_\_

Adjusted Consolidated EBITDA for the Defined Period is defined as follows:

Net income (or loss) for the Defined Period of Holdings and its Subsidiaries, but excluding: (a) the income (or loss) of any Person (other than Subsidiaries of Holdings) in which Holdings or any of its Subsidiaries has an ownership interest unless received by Holdings or its Subsidiaries in a cash distribution; (b) the income (or loss) of any Person accrued prior to the date it became a Subsidiary of Holdings or is merged into or consolidated with Holdings or any of its Subsidiaries; and (c) the undistributed earnings of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Documents) or requirement of law applicable to such Subsidiary \$ \_\_\_\_\_

Plus (without duplication):

Any provision for (less, even if it results in a negative number, any benefit, including income tax credits, from) federal, state, local or other income and franchise taxes deducted in the determination of net income for the Defined Period or, without duplication, any Tax Distribution under Section 7.06(e) of the Credit Agreement for the Defined Period \_\_\_\_\_

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<sup>1</sup> All amounts in Canadian Dollars shall be expressed in their U.S. Dollar Equivalent.

Interest expense, non-use fees, letter of credit fees, amortization or write-off of debt discount, debt issuance, warrant or other equity issuance discounts, and net costs associated with permitted Swap Contracts in respect of the Loans and other indebtedness permitted under the Credit Agreement (less, even if it results in a negative number, interest income) deducted (or included) in the determination of net income for the Defined Period

---

Amortization and depreciation deducted in the determination of net income for the Defined Period

---

Losses (less, even if it results in a negative number, gains) from Asset Dispositions included in the determination of net income for the Defined Period

---

Non-cash charges or expenses (less, even if it results in a negative number, non-cash gains or income) deducted (or included) in the determination of net income for the Defined Period and for which no cash outlay (or cash receipt) is foreseeable prior to the Revolving Credit Maturity Date or, if later, the final scheduled installment in respect of the Term Loan; provided that if notwithstanding such foreseeability any such amount is paid in cash in a subsequent Defined Period, such amount shall be deducted from net income to arrive at EBITDA in such subsequent Defined Period

---

Expenses and fees (including expenses and fees paid to Administrative Agent and Lenders) deducted in the determination of net income and incurred during the Defined Period and after the Closing Date in connection with the consummation or administration of the Loan Documents, and the Subordinated Indebtedness Documents up to an aggregate amount not to exceed \$500,000 (or such other amount acceptable to Administrative Agent) in the case of such expenses and fees other than fees paid to Administrative Agent and Lenders

---

Extraordinary losses (less, even if it results in a negative number, extraordinary gains) deducted (or included) in the determination of net income during the Defined Period, net of related tax effects

---

Expenses deducted in the determination of net income during the Defined Period and covered by indemnification or purchase price adjustments in connection with any Acquisition, to the extent actually received in cash during the Defined Period

---

Expenses and fees deducted in the determination of net income during the Defined Period and paid to non-Affiliates and which are incurred in connection with (i) the consummation (or attempted consummation) of any Permitted Acquisitions or any Acquisitions which would reasonably be expected to have (if they had been consummated) satisfied the requirements of the defined term "Permitted Acquisition" but for the fact they are not consummated and/or (ii) issuances of equity securities, debt issuances or other financings, mergers, investments or dispositions permitted by the Loan Documents (in each case whether consummated or not); provided that the amount of such expenses and fees for all such non-consummated transactions shall not exceed 3.0% of Consolidated EBITDA in any Fiscal Year ("Transaction Fees"), in each case, as approved by the Required Lenders

---

Losses deducted in the determination of net income during the Defined Period, but for which insurance or indemnity recovery is actually received in cash during the Defined Period

---

Expenses deducted in the determination of net income during the Defined Period and reimbursed by third parties to the extent such reimbursements are actually received in cash during the Defined Period

---

Non-cash exchange or translation losses (less, even if it results in a negative number, non-cash exchange or translation gains) deducted (or included) in the determination of net income during the Defined Period and arising from foreign currency hedging transactions or currency fluctuations

---

Non-cash deductions or charges (less, even if it results in a negative number, non-cash gains or positive adjustments) to net income attributable to purchase accounting adjustments made in accordance with GAAP

---

To the extent deducted in the determination of net income during the Defined Period, any non-recurring or unusual costs or expenses incurred in connection with facility closures, consummated mergers, acquisitions or investments or any disposition permitted under the Loan Documents, in each case approved by the Required Lenders and the Purchasers (as defined in the Subordinated Indebtedness Documents), provided that the foregoing amounts shall not exceed 3.0% of Consolidated EBITDA in any Defined Period ("Non-Recurring Items")

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Actual expenses incurred through November 30, 2016 with respect to Project Compass to the extent set forth on a schedule delivered to Administrative Agent and the Lenders prior to the First Amendment Effective Date

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Consolidated EBITDA for the Defined Period (for use in Sections 7.12(b))<sup>2</sup> \$ \_\_\_\_\_

Plus: Pro Forma Acquisition EBITDA (as defined below) for each Permitted Acquisition

Permitted Acquisition	#1:	_____
Permitted Acquisition	#2:	_____
Permitted Acquisition	#3:	_____

**[additional line items, as applicable]** \_\_\_\_\_

Adjusted Consolidated EBITDA \$ \_\_\_\_\_

Consolidated Total Net Leverage Ratio (ratio of Total Net Debt to Adjusted Consolidated EBITDA for the Defined Period) \_\_\_\_\_ to 1.0

“Pro Forma Acquisition EBITDA” means Consolidated EBITDA (calculated in the same manner as Consolidated EBITDA is calculated above) attributable to the target of each Permitted Acquisition (with such pro forma adjustments for excess owner’s compensation, owner’s personal expenses and other expenses, all as are directly attributable to such Permitted Acquisition, reasonably identifiable, expected to be realized within 12 months of the date of such Permitted Acquisition, and otherwise reasonably acceptable to Administrative Agent and the Purchasers based upon data presented to Administrative Agent to its reasonable satisfaction) consummated during the one (1) year period preceding the date of determination calculated solely for a number of months immediately preceding the consummation of the applicable Permitted Acquisition, which number equals twelve (12) minus the number of months following the consummation of the applicable Permitted Acquisition for which financial statements of Holdings and its Subsidiaries have been delivered to Administrative Agent pursuant to Section 6.01(b).

<sup>2</sup> Notwithstanding the foregoing, Consolidated EBITDA for each period set forth below shall be deemed to be the amount set forth below opposite such period:

Period	Consolidated EBITDA
September 2015	\$242,101
October 2015	(\$6,706)
November 2015	\$38,800
December 2015	(\$1,192,815)
January 2016	\$187,160
February 2016	\$182,006
March 2016	\$176,053
April 2016	\$665,853
May 2016	\$335,940
June 2016	\$651,815
July 2016	\$395,578
August 2016	\$95,722
September 2016	To be determined in a manner comparable to the figures set forth above

Annex 2

**CONSOLIDATED SENIOR NET LEVERAGE EBITDA RATIO<sup>3</sup>**

Total Net Debt (calculated in Annex 1 of the Compliance Certificate) as of the last day of the Defined Period \$ \_\_\_\_\_

Less: Outstanding principal balance of Subordinated Indebtedness as of the last day of the Defined Period \$ \_\_\_\_\_

Senior Net Debt \$ \_\_\_\_\_

Adjusted Consolidated EBITDA (calculated in Annex 1 of the Compliance Certificate) for the Defined Period \$ \_\_\_\_\_

Consolidated Senior Net Leverage Ratio (ratio of Senior Net Debt to Adjusted Consolidated EBITDA for the Defined Period) \_\_\_\_\_ to 1.0

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<sup>3</sup> All amounts in Canadian Dollars shall be expressed in their U.S. Dollar Equivalent.

Annex 3

**CONSOLIDATED FIXED CHARGE COVERAGE RATIO<sup>4</sup>**

Fixed Charges (calculated for Holdings and its Subsidiaries on a consolidated basis) for the Defined Period is defined as follows:

Interest expense, non-use fees, letter of credit fees and costs associated with permitted Swap Contracts in respect of the Loans and other indebtedness permitted under the Credit Agreement, in each case paid or required to be paid in cash (\$[\_\_\_\_\_]), net of interest income received in cash (\$[\_\_\_\_\_]), by Holdings and its Subsidiaries for the Defined Period

\$ \_\_\_\_\_

Plus (without duplication):

Any federal, state, local, foreign or other income and franchise taxes paid or required to be paid in cash and included in the determination of net income for the Defined Period, net of any cash tax credit or other cash tax benefits received during the Defined Period, plus, without duplication, the amount of any Tax Distribution paid in cash during the Defined Period

\_\_\_\_\_

Scheduled payments of principal for the Defined Period with respect to all Indebtedness (including previously capitalized interest and the portion of scheduled payments under Capital Leases allocable to principal but excluding mandatory prepayments required by Section 2.06(b) and excluding repayments of Revolving Loans and other Indebtedness subject to re-borrowing to the extent not accompanied by a concurrent and permanent reduction of the Revolving Credit Commitment (or equivalent loan commitment))

\_\_\_\_\_

Restricted Payments made in cash during the Defined Period, to the extent not deducted in the determination of net income for the Defined Period

\_\_\_\_\_

Deferred purchase price payments (including earnout payments) made during the Defined Period with respect to the Closing Date Acquisition or any Permitted Acquisition

\_\_\_\_\_

Transaction Fees paid in cash and Non-Recurring Items paid in cash, in each case added back to net income to arrive at Consolidated EBITDA for the Defined Period

Fixed Charges<sup>5</sup>

\$ \_\_\_\_\_

<sup>4</sup> All amounts in Canadian Dollars shall be expressed in their U.S. Dollar Equivalent.

<sup>5</sup> Each component of Fixed Charges shall exclude the operating results of any target of a Permitted Acquisition prior to the date the target became a Subsidiary of a Borrower, in the case of Permitted Acquisitions consummated as a purchase of the capital stock of such target.

Consolidated Operating Cash Flow:

Consolidated EBITDA for the Defined Period (calculated in the manner required by Annex 1 of the Compliance Certificate)

\$ \_\_\_\_\_

Less: Consolidated Capital Expenditures (as calculated below) (\$[\_\_\_\_\_]), excluding the portion thereof financed under Capital Leases or other Indebtedness (excluding drawings under the Revolving Credit Facility) (\$[\_\_\_\_\_]) (“Unfinanced Capital Expenditures”)<sup>6</sup>

\_\_\_\_\_

<sup>6</sup> For purposes of calculating the Fixed Charge Coverage Ratio for the Defined Periods ending December 31, 2016, March 31, 2017, June 30, 2017 and September 30, 2017, Fixed Charges and Unfinanced Capital Expenditures for each such Defined Period shall be calculated as follows:

- (i) interest (A) for the Defined Period ending December 31, 2016, shall equal interest during the period from the First Amendment Effective Date through such end date multiplied by a fraction, the numerator of which is 365 and the denominator of which is the number of days from the First Amendment Effective Date through the last date of such Defined Period, (B) for the Defined Period ending March 31, 2017, shall equal interest during the period from the First Amendment Effective Date through such end date multiplied by a fraction, the numerator of which is 365 and the denominator of which is the number of days from the First Amendment Effective Date through the last date of such Defined Period, (C) for the Defined Period ending June 30, 2017, shall equal interest during the period from the First Amendment Effective Date through such end date multiplied by a fraction, the numerator of which is 365 and the denominator of which is the number of days from the First Amendment Effective Date through the last date of such Defined Period and (D) for the Defined Period ending September 30, 2017, shall equal interest during the period from the First Amendment Effective Date through such end date multiplied by a fraction, the numerator of which is 365 and the denominator of which is the number of days from the First Amendment Effective Date through the last date of such Defined Period;
- (ii) Restricted Payments, tax items and deferred purchase price payments shall be calculated as the actual amount of such payments paid on and after the Closing Date;
- (iii) scheduled principal payments of Indebtedness (excluding deferred purchase price payments) (A) for the Defined Period ending December 31, 2016, shall equal scheduled principal payments of Indebtedness paid during the period from the First Amendment Effective Date through such end date multiplied by a fraction, the numerator of which is 365 and the denominator of which is the number of days from the First Amendment Effective Date through the last date of such Defined Period, (B) for the Defined Period ending March 31, 2017, shall equal scheduled principal payments of Indebtedness paid during the period from the First Amendment Effective Date through such end date multiplied by a fraction, the numerator of which is 365 and the denominator of which is the number of days from the First Amendment Effective Date through the last date of such Defined Period, (C) for the Defined Period ending June 30, 2017, shall equal scheduled principal payments of Indebtedness paid during the period from the First Amendment Effective Date through such end date multiplied by a fraction, the numerator of which is 365 and the denominator of which is the number of days from the First Amendment Effective Date through the last date of such Defined Period and (D) for the Defined Period ending September 30, 2017, shall equal scheduled principal payments of Indebtedness paid during the period from the First Amendment Effective Date through such end date multiplied by a fraction, the numerator of which is 365 and the denominator of which is the number of days from the First Amendment Effective Date; and
- (iv) Unfinanced Capital Expenditures (A) for the Defined Period ending December 31, 2016, shall equal Unfinanced Capital Expenditure amounts paid during the period from the First Amendment Effective Date through such end date multiplied by a fraction, the numerator of which is 365 and the denominator of which is the number of days from the First Amendment Effective Date through the last date of such Defined Period, (B) for the Defined Period ending March 31, 2017, shall equal Unfinanced Capital Expenditure amounts paid during the period from the First Amendment Effective Date through such end date multiplied by a fraction, the numerator of which is 365 and the denominator of which is the number of days from the First Amendment Effective Date through the last date of such Defined Period, (C) for the Defined Period ending June 30, 2017, shall equal Unfinanced Capital Expenditure amounts paid during the period from the First Amendment Effective Date through such end date multiplied by a fraction, the numerator of which is 365 and the denominator of which is the number of days from the First

Consolidated Operating Cash Flow

\$ \_\_\_\_\_

Consolidated Fixed Charge Coverage Ratio (Ratio of Consolidated Operating Cash Flow to Fixed Charges) for the Defined Period

\_\_\_\_\_ to 1.0

\*\*\*\*\*

Consolidated Capital Expenditures for the Defined Period are defined as follows:

Expenditures capitalized during the Defined Period by Holdings and its Subsidiaries for property, plant and equipment and other fixed assets, and for research and development, but in each case excluding purchase price payments with respect to any Permitted Acquisition

\$ \_\_\_\_\_

Plus: deposits made in the Defined Period in connection with property, plant, and equipment; less deposits of a prior period included above

\_\_\_\_\_

Less (without duplication):

Net Cash Proceeds of Dispositions received during the Defined Period which (i) Borrowers or a Subsidiary are permitted to reinvest pursuant to the terms of the Credit Agreement and (ii) are included in amount capitalized above

\_\_\_\_\_

Proceeds of property insurance policies and condemnation awards received during the Defined Period which (i) Borrowers or a Subsidiary are permitted to reinvest pursuant to the terms of the Credit Agreement and (ii) are included in amount capitalized above

\_\_\_\_\_

To the extent included in amounts capitalized above, expenditures to the extent financed with (i) cash indemnity payments or third party reimbursements received during the Defined Period, (ii) trade-ins of property, plant and equipment Disposed of in a manner permitted by the Credit Agreement or (iii) proceeds of Excluded Issuances

\_\_\_\_\_

Consolidated Capital Expenditures (for use in Annex 4 of the Compliance Certificate)

\$ \_\_\_\_\_

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Amendment Effective Date through the last date of such Defined Period and (D) for the Defined Period ending September 30, 2017, shall equal Unfinanced Capital Expenditure amounts paid during the period from the First Amendment Effective Date through such end date multiplied by a fraction, the numerator of which is 365 and the denominator of which is the number of days from the First Amendment Effective Date.

**Annex 4**

**CONSOLIDATED CAPITAL EXPENDITURES  
(Section 7.12(a))**

Consolidated Capital Expenditures (calculated in the manner required by Annex 3 of the Compliance Certificate) \$ \_\_\_\_\_

Maximum Permitted Consolidated Capital Expenditures for the Defined Period \$ \_\_\_\_\_

In Compliance Yes/No

**Annex 5**

**CONSOLIDATED EBITDA  
(Section 7.12(b))**

Consolidated EBTIDA (from Annex 1 of the Compliance Certificate) \$ \_\_\_\_\_

Minimum Permitted Consolidated EBTIDA for the Defined Period \$ \_\_\_\_\_

In Compliance Yes/No

Annex 6

**LIQUIDITY**  
**(Section 7.12(c))**

Liquidity is defined as follows:

Cash of the Loan Parties in which Administrative Agent has a perfected security interest as of the last day of the Defined Period

\$ \_\_\_\_\_

Less: Qualified Cash

\_\_\_\_\_

Liquidity

\$ \_\_\_\_\_

Minimum Permitted Liquidity for the Defined Period

\$ \_\_\_\_\_

In Compliance

Yes/No



Annex 7

**TORONTO BUSINESS EBITDA  
(Section 7.12(d))**

Toronto Business EBTIDA \$ \_\_\_\_\_

Minimum Permitted Toronto Business EBTIDA for the Defined Period \$ \_\_\_\_\_

In Compliance Yes/No

**Schedule 1 to  
Compliance Certificate**

**[Borrowers to list any existing Defaults or Events of Default, specifying the nature and period of existence of each, and the actions Borrowers have taken, are undertaking and propose to take in respect thereof. If no Defaults and no Events of Default are then in existence, such schedule should read "None".]**

**Schedule 2 to  
Compliance Certificate**

Titled Collateral

Patent and Trademark Registrations and Applications

Material Licenses

Statements of Use/Amendments to Allege Use of Intent-to-Use Trademark Applications

ANNEX III TO SECOND AMENDMENT

SCHEDULE 2.01(A)

**SECOND AMENDMENT TERM LOAN COMMITMENTS AND APPLICABLE PERCENTAGES**

<b>Lender</b>	<b>Second Amendment Term Loan</b>	<b>Applicable Percentage</b>
<b>Stephen Adams Living Trust</b>	<b>\$3,000,000</b>	<b>100%</b>
<b>Total</b>	<b>\$3,000,000</b>	