Court File No. 12- CV-9757-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS (CANADA) COMPANY, AXIS CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON SCHEDULE "A' HERETO

APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

FOURTH SUPPLEMENTAL AFFIDAVIT OF CHRISTOPHER J. EUSTACE
(*Sworn on June 12, 2012*)

I, Christopher J. Eustace, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY**:

1. I am a Partner with Gowling Lafleur Henderson LLP, lawyers for Allied Systems Holdings, Inc. (the "**Applicant**") in its capacity as foreign representative of Allied Systems Holdings, Inc. (**"Allied Systems US"**), Allied Systems (Canada) Company, Axis Canada Company and those other companies listed on Schedule "A" hereto (collectively, the **"Chapter 11 Debtors"**). I swear this supplemental affidavit in support of the Applicant's Application for an order, *inter alia*, recognizing the Chapter 11 Proceeding (as defined below) as a foreign main proceeding pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C 36.

2. On June 10, 2012, Allied Systems US and Allied Systems, Ltd. (L.P.) each consented to the petition for relief filed against each of them pursuant to chapter 11 of title 11 of the United

States Code with the United States Bankruptcy Court for the District of Delaware (the **"US Court"**) (the **"Chapter 11 Proceeding"**). On the same day the balance of the Chapter 11 Debtors each filed voluntary petitions for relief pursuant to Chapter 11 of the Code with the US Court.

3. On June 12, 2012, the US Court in the Chapter 11 Proceeding made the following Orders (collectively, the "**First Day Orders**"), *inter alia*:

(a) an Order authorizing the Chapter 11 Debtors to: (i) maintain their cash management system and bank accounts; (ii) continue the use of existing checks and business forms; (iii) continue to make intercompany advances (the **"Cash Management Order"**). A copy of the Cash Management Order is attached hereto as Exhibit "A";

(b) an Order (i): authorizing the Chapter 11 Debtors to obtain post-petition financing; (ii) authorizing the Chapter 11 Debtors to use cash collateral; (iii) granting adequate protection to the pre-petition lenders; and (iv) modifying the automatic stay and scheduling a hearing pursuant to Bankruptcy Rule 4001(the **"Financing Order"**). A copy of the Financing Order is attached hereto as Exhibit "B";

(c) an Order: (i) authorizing payment of wages, payroll taxes, certain employee benefits and related expenses, and other compensation to employees and independent contractors (the "**Pre-petition Wages Order**"). A copy of the Prepetition Wages Order is attached hereto as Exhibit "C";

(d) an Order authorizing the Chapter 11 Debtors to pay insurance premiums and maintain their insurance policies (the **"Insurance Program & Insurance Premium Financing Order"**). A copy of the Insurance Program & Insurance Premium Financing Order is attached hereto as Exhibit "D";

(e) an Order authorizing the Chapter 11 Debtors to pay pre-petition claims of customers, warehousemen and common carriers and cargo (the **"Pre-Petition Customers, Warehouseman, Common Carriers and Cargo Claims Order"**). A copy of the Pre-Petition Customers, Warehouseman, Common Carriers and Cargo Claims Order is attached hereto as Exhibit "E";

(f) an Order authorizing payment of pre-petition sales and use tax ("**Pre-Petition Sales & Use Tax Order**"). A copy of the Pre-Petition Sales & Use Tax **Order** is attached hereto as Exhibit "F";

(g) an Order authorizing payment of certain critical vendors (the **"Critical Vendor Order"**). A copy of the Critical Vendor Order is attached hereto as Exhibit "G";

(h) an Order: (i) prohibiting utilities from altering, refusing, or discontinuing services to, or discriminating against, the debtors; (ii) determining that the utilities are adequately assured of future payment; (iii) establishing procedures for determining requests for additional assurance; and (iv) permitting utility companies to opt out of the procedures established therein (the "**Utilities Service Order**"). A copy of the Utilities Service Order is attached hereto as Exhibit "H".

4. Certified copies of the First Day Orders will be filed with the Court.

5. I make this affidavit in support of the within Application and for no other or improper purpose.

SWORN before me at the City of Toronto, in the Province of Ontario, this 12th day of June, 2012.

Commissioner for Taking Affidavits

CHRISTOPHER J. EUSTACE

SCHEDULE A – APPLICANTS

Allied Systems Holdings, Inc.

Allied Automotive Group, Inc.

Allied Freight Broker LLC

Allied Systems (Canada) Company

Allied Systems, Ltd. (L.P.)

Axis Areta, LLC

Axis Canada Company

Axis Group, Inc.

Commercial Carriers, Inc.

CT Services, Inc.

Cordin Transport LLC

F.J. Boutell Driveway LLC

GACS Incorporated

Logistic Systems, LLC

Logistic Technology, LLC

QAT, Inc.

RMX LLC

Transport Support LLC

Terminal Services LLC

This is Exhibit "A" referred to in the affidavit of Christopher Faustale sworn before me, this 12th day of June 20 12

A COMMISSIONER FOR TAKING AFFIDAVITS

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	**Chapter 11**
ALLIED SYSTEMS HOLDINGS, INC., *et al.*,[1]	**Case No. 12-11564 (CSS)**
Debtors.	**(Jointly Administered)**
	Re: Docket No. 77

ORDER AUTHORIZING DEBTORS TO (A) MAINTAIN EXISTING CASH MANAGEMENT SYSTEM AND BANK ACCOUNTS, (B) CONTINUE USE OF EXISTING CHECKS AND BUSINESS FORMS, (C) OBTAIN LIMITED WAIVER OF § 345(b), AND (D) CONTINUE TO MAKE INTERCOMPANY ADVANCES WITH § 364(c)(1) ADMINISTRATIVE PRIORITY

This matter is before the Court[2] on the motion of Allied Systems Holdings, Inc. and certain of its direct and indirect wholly-owned subsidiaries, the debtors and debtors in possession herein (collectively, the "**Debtors**"), for authority to (a) maintain existing cash management system and bank accounts, (b) continue use of existing checks and business forms, (c) obtain limited waiver of §345(b), and (d) continue to make intercompany advances with § 364(c)(1) administrative priority (the "**Motion**").

The Court has considered the Motion, the Declaration of Scott D. Macaulay in Support of Chapter 11 Petitions and First Day Motions, and the matters reflected in the record of the hearing held on the Motion. It appears that the Court has jurisdiction over this proceeding pursuant to

[1] The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: Allied Systems Holdings, Inc. (58-0360550); Allied Automotive Group, Inc. (58-2201081); Allied Freight Broker LLC (59-2876864); Allied Systems (Canada) Company (90-0169283); Allied Systems, Ltd. (L.P.) (58-1710028); Axis Areta, LLC (45-5215545); Axis Canada Company (87568828); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2918187); Cordin Transport LLC (38-1985795); F.J. Boutell Driveway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors' corporate headquarters and the Debtors' address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Date filed: 06/12/12
Docket No. 109

28 U.S.C. §§ 157 and 1334; that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); that the Debtors have provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances and that no further notice is necessary; and that the relief sought in the Motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby **ORDERED** as follows:

1. The Motion is **GRANTED** as set forth herein.

2. The Debtors are authorized to continue to use their prepetition cash management system procedures, as described in the Motion, in the ordinary course of business.

3. The Debtors are authorized and empowered to (a) designate, maintain, and continue to use any and all existing bank accounts with the same account numbers, including, without limitation, the accounts identified in **Exhibit A** to this Order; and (b) treat the bank accounts for all purposes as accounts of the Debtors as debtors-in-possession.

4. The banks at which the Debtors' bank accounts are maintained (collectively, the "**Banks**") are authorized to continue to service and administer the applicable bank accounts as accounts of the respective Debtor as a debtor-in-possession without interruption and in the usual and ordinary course, and to receive, process and honor and pay any and all checks, drafts, wires, or automated clearing house transfers ("**ACH Transfers**") drawn on the bank accounts after the Petition Date by holders or makers thereof, as the case may be. The Debtors shall reimburse the Banks for any claim arising prior to or after the Petition Date in connection with customer checks deposited with the Banks which have been dishonored or returned for insufficient funds in the applicable customer account; *provided, however*, that, in addition to the requirements thereof, any checks, drafts, wires, or ACH Transfers drawn or issued by the Debtors before the Petition

Date shall be timely honored by any such Bank to the extent necessary to comply with any order(s) of this Court issued from time to time authorizing payment of certain prepetition claims, unless such Bank is instructed by the Debtors to stop payment on or otherwise dishonor such check, draft, wire or ACH Transfer.

5. The Banks (a) are authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires, or ACH Transfers should be honored or dishonored consistent with any order(s) of this Court, whether the checks, drafts, wires, or ACH Transfers are dated prior to, on, or subsequent to the Petition Date, and whether or not the Bank believes the payment is or is not authorized by any order(s) of this Court, (b) have no duty to inquire as to whether such payments are authorized by any order(s) of this Court, and (c) have no liability to any party on account of following the Debtors' instructions in accordance with this Order.

6. Nothing contained herein shall prevent the Debtors from opening any additional bank accounts, ~~subject to the requirements set forth under the Debtors' proposed debtor-in-possession delayed draw term loan facility (the "DIP Facility")~~, or closing any existing bank account(s) as they may deem necessary and appropriate, and the Banks are authorized to honor the Debtors' requests to open or close, as the case may be, such bank accounts or additional bank accounts; *provided, however*, that any new account shall be with a bank that is insured with the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation and that is organized under the laws of the United States or any State therein, and *provided, further*, the Debtors shall give prompt notice of the opening of any new bank accounts to counsel to the Agent for the DIP Facility, the Office of the United States Trustee for the District of Delaware and any statutory committee appointed in these Chapter 11 Cases.

7. Any and all bank accounts opened by the Debtors on or after the Petition Date at any Bank shall, for all purposes under this Order, similarly be subject to the rights and obligations of this Order; *provided, however* that the Debtors shall open any new bank account only at banks that have executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement.

8. For Banks at which the Debtors hold accounts that are party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, within fifteen (15) days of the date of entry of this Order, the Debtors shall (a) contact each Bank, (b) provide the Bank with each of the Debtors' employer identification numbers and (c) identify each of their bank accounts held at such Banks as being held by a debtor-in-possession in a bankruptcy case.

9. For Banks at which the Debtors hold accounts that are not party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, the Debtors shall use their good-faith efforts to cause the banks to execute a Uniform Depository agreement in a form prescribed by the Office of the United States Trustee within forty-five (45) days after the date of this Order. The United States Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the United States Trustee are fully reserved.

10. The Debtors and the Banks are hereby authorized to continue to perform pursuant to the terms of any prepetition agreements that may exist between them pertaining to the deposit accounts or cash management system, except and to the extent otherwise directed by the terms of

this Order. The parties to such agreements shall continue to enjoy the rights and remedies afforded to them under such agreements, except to the extent modified by the terms of this Order or by operation of the Bankruptcy Code.

11. The Debtors are authorized to continue to consolidate the management of their cash and cash equivalents, including, without limitation, their prepetition bank accounts and procedures related to investments of cash, and to effectuate the transfer of funds by and among the Debtors as and when needed and in the amounts necessary or appropriate to maintain their operations in the ordinary course of business; *provided, however*, that the Debtors shall maintain accurate and detailed records of all transfers, including intercompany transfers, so that all transactions may be readily ascertained, traced, recorded properly and distinguished between prepetition and postpetition transactions.

12. The Debtors are authorized to maintain the L/C Collateral Accounts.

13. The Debtors are authorized to continue to use their existing checks, business forms and documents related to their bank accounts for a period of forty-five (45) days from the entry of this Order while the Debtors determine if compliance with the U.S. Trustee Guidelines and Local Rule 2015-2 regarding the inclusion of the "debtor-in-possession" designation on the checks is a viable option for the Debtors. If, at the conclusion of the forty-five (45) day period, the Debtors are able to reach an agreement with the Office of the United States Trustee regarding such requirement, the Debtors will submit to the Court an order under certification of counsel authorizing the resolution for the Court's approval. Alternatively, if at the conclusion of the forty-five (45) day period, the Debtors determine that they will be unable to comply with such requirement, the Debtors shall promptly file a motion seeking authority to deviate from such requirement to be heard at the next available omnibus hearing date.

14. The Debtors are authorized to continue to enter into Intercompany Transactions in the ordinary course of business as described in the Motion.

15. All claims against a Debtor by another Debtor, arising after the Petition Date as a result of the Intercompany Transactions, are hereby accorded administrative expense status under § 341(c)(1) of the Bankruptcy Code (as may be modified by any interim or final orders of this Court authorizing the Debtors to incur post-petition financing).

16. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the Motion or otherwise deemed waived.

17. Notice of the Motion as provided therein shall be deemed good and sufficient and the requirements of Local Rule 6004(a) and the Local Rules are satisfied by such notice.

18. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

20. This Court shall retain jurisdiction to interpret and enforce this Order.

Dated: June 12, 2012
Wilmington, Delaware

THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

21. Nothing herein shall be deemed to alter, modify or waive the Debtors' obligations under applicable Canadian law.

EXHIBIT A

Deposit Accounts of Allied Holdings, Inc. and Debtor Subsidiaries

U.S. Accounts

Debtor	Name of Depository Bank	Account Number	Account Name	Liens
Allied Systems Holdings, Inc.	Bank of America	9429019178	DDA/Benefits[3]	
Allied Systems, Ltd.	Fidelity National Bank	47745	Imprest Distribution Account	
Allied Systems, Ltd.	Bank of America	2108306220	Convenience	
Axis Group Inc.	Fidelity National Bank	73660	Escrow	
Logistics Technology LLC	Fidelity National Bank	81981	Convenience	
Logistics Systems LLC	Fidelity National Bank	81191	Convenience	
AXIS ARETA LLC	Fidelity National Bank	82538	Convenience	
Allied Systems, Ltd.	Fidelity National Bank	80047063	Investment Account	
Allied Systems Holdings, Inc.	Fidelity National Bank	59328	Imprest Concentration Account	
Allied Systems, Ltd.	First Bank- Wentzville	9872802327	Convenience	
FJB	M&I Bank of Janesville	24578609	Convenience	
Allied Systems, Ltd.	Charter One Bank	3850461854	Convenience	
Allied Systems (Canada) Company	J.P. Morgan Chase	958303	Lockbox	Covered by Account Control Agreement in favor of Collateral Agent
Allied Automotive Group, Inc.	J.P. Morgan Chase	363653464	Lockbox	Covered by Account Control Agreement in favor of Collateral Agent
Allied Automotive Group, Inc.	J.P. Morgan Chase	363653384	Lockbox	Covered by Account Control Agreement in favor of Collateral Agent
Axis Group, Inc.	J.P. Morgan Chase	363653534	Lockbox	

				Account Control Agreement in favor of Collateral Agent
Cordin Transport	J.P. Morgan Chase	363653794	Lockbox	Covered by Account Control Agreement in favor of Collateral Agent
CT Services, Inc.	J.P. Morgan Chase	363653614	Lockbox	Covered by Account Control Agreement in favor of Collateral Agent
Allied Systems Holdings, Inc.	Bank of America	5800299454	DDA	Covered by Account Control Agreement in favor of Collateral Agent
Allied Systems Holdings, Inc.	Bank of America	5590056569	CDA[4]	
Allied Systems Holdings, Inc.	Bank of America	5590056577	CDA	
Allied Automotive Group	Bank of America	5590056585	CDA	
Allied Automotive Group	Bank of America	5590056601	CDA	
Allied Automotive Group	Bank of America	5800299520	DDA	
Allied Automotive Group	Bank of America	5590056593	CDA	
Axis Group, Inc.	Bank of America	5590056627	CDA	
Axis Group, Inc.	Bank of America	5590056635	CDA	
Allied Systems LTD	Wells Fargo	3090005855843	Convenience	
Allied Systems LTD	Wells Fargo	2044200166795	Convenience	
Allied Systems LTD	The Ohio State Bank	7092174	Convenience	
Allied Systems LTD	PNC Bank	55-1066-4125	Convenience	
Allied Automotive Group	J.P. Morgan Chase	904123596	DDA	Covered by Account Control Agreement in favor of Collateral Agent
Axis	J.P. Morgan Chase	904123561	DDA	Covered by Account Control Agreement in favor of Collateral Agent

Allied Systems Holdings, Inc.	J.P. Morgan Chase	904123677	DDA	Covered by Account Control Agreement in favor of Collateral Agent
Allied Systems Holdings, Inc.	First Citizens Bank	67694	CDA/Benefits	
Allied Systems Holdings, Inc.	Wells Fargo	83852600	CD Collateralizing State of Missouri LOC	
Allied Systems Holdings, Inc.	Fidelity National Bank	20063861038	CD collateralizing State of Florida LOC	

Canadian Accounts

Debtor	Name of Depository Bank	Account Number	Account Name	Liens
Allied Systems (Canada) Company	Scotia Bank	59782 00611-15	Operating	Covered by Account Control Agreement in favor of Collateral Agent
Allied Systems (Canada) Company	Scotia Bank	59782 00732-10	CDA/Payroll	
Allied Systems (Canada) Company	Scotia Bank	59782 00735-12	CDA/Benefits	
Allied Systems (Canada) Company	Scotia Bank	59782 86627-11	Operating	Covered by Account Control Agreement in favor of Collateral Agent
Axis Canada Company	Scotia Bank	59782 00101-11	Operating	Covered by Account Control Agreement in favor of Collateral Agent
Axis Canada Company	Scotia Bank	59782 00105-10	CDA/Payroll	
Allied Systems (Canada) Company	Scotia Bank	59782 00191-19	Imprest Concentration Account	
Allied Systems (Canada) Company	Scotia Bank	59782 00737-17	Imprest Concentration Account	Covered by Account Control Agreement in favor of Collateral Agent
Allied Systems (Canada) Company	Scotia Bank	59782 87456-17	Imprest Concentration Account	
Allied Systems (Canada) Company	Scotia	597820036412	CDA/Payroll	

This is Exhibit "B" referred to in the affidavit of Christopher Bustace sworn before me, this 12th day of June 20 12

A COMMISSIONER FOR TAKING AFFIDAVITS

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	Chapter 11
ALLIED SYSTEMS HOLDINGS, INC., *et al.*,[1]	Case No. 12-11564 (CSS)
	(Jointly Administered)
Debtor.	

INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503(b) and 507(a), FED. R. BANKR. P. 2002, 4001 AND 9014 AND DEL. BANKR. L.R. 4001-2: (I) AUTHORIZING DEBTORS TO (A) OBTAIN POSTPETITION SECURED DIP FINANCING AND (B) USE CASH COLLATERAL; (II) GRANTING SUPERPRIORITY LIENS AND PROVIDING FOR SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS; (III) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED LENDERS; (IV) MODIFYING AUTOMATIC STAY; AND (V) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c)

Allied Systems Holdings, Inc. ("Holdings"),[2] Allied Systems, Ltd. (L.P.) ("Systems") and their U.S. and Canadian subsidiaries (collectively, the "Debtors"), having moved on June 11, 2012 (the "Motion") for an interim order (the "Interim Order") and a final order (the "Final Order") authorizing them to, among other things, (i) incur post-petition secured indebtedness, (ii) grant superpriority security interests and superpriority claims, and (iii) grant adequate protection, pursuant to sections 105(a), 362, 363(c), 364(c), (d), and (e), 503(b) and 507(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the

[1] The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: Allied Systems Holdings, Inc. (58-0360550); Allied Automotive Group, Inc. (58-2201081); Allied Freight Broker LLC (59-2876864); Allied Systems (Canada) Company (90-0169283); Allied Systems, Ltd. (L.P.) (58-1710028); Axis Areta, LLC (45-5215545); Axis Canada Company (87568828); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2918187); Cordin Transport LLC (38-1985795); F.J. Boutell Driveaway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors' corporate headquarters and the Debtors' address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345.

[2] Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion and if not defined in the Motion, in the DIP Financing Agreement (as defined below).

Date filed: 06/12/12
Docket No. 114

"Bankruptcy Code"), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-2 of the Delaware Bankruptcy Local Rules (the "Local Rules"); a hearing on the Motion having been held on June 12, 2012 (the "Interim Hearing"); and based upon all of the pleadings filed with this Court, the evidence presented at the Interim Hearing and the entire record herein; and the Court having heard and resolved or overruled all objections to the interim relief requested in the Motion; and the Court having noted all appearances at the Interim Hearing; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and creditors; and after due deliberation and consideration, sufficient cause appearing therefore, **IT IS HEREBY FOUND:**[3]

A. Petition Date. On May 17, 2012 (the "Petition Date"), involuntary petitions pursuant to chapter 11 of the Bankruptcy Code were filed against Holdings and Systems by certain creditors (the "Petitioning Creditors"). Holdings and Systems consented to the entry of an order for relief on June 10, 2012 (the "Consent Date"). All of the other Debtors filed voluntary petitions for relief on the same date. The Debtors' cases under chapter 11 are collectively referred to herein as the "Chapter 11 Cases." The Debtors are operating their businesses and managing their affairs as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee, examiner or committee has been appointed in any of the Chapter 11 Cases.

B. Jurisdiction; Venue. This Court has core jurisdiction over the Chapter 11 Cases and the Debtors' property pursuant to 28 U.S.C. §§ §157(b)(2)(D) and 1334. Venue for the Chapter 11 Cases is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

C. Notice. Proper notice under the circumstances has been given by the Debtors of the Motion and the Interim Hearing pursuant to Bankruptcy Rule 4001(b) and Local Rule 4001-2.

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[3] Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

rights of non-Debtor parties as set forth in the

D. Debtors' Stipulations. In entering into the DIP Financing Agreement (as defined below) and as consideration therefor, subject to the provisions of paragraph 12 below, the Debtors acknowledge, represent, stipulate, and agree that:

(i) Prepetition Loan Documents. Holdings and Systems are borrowers under (a) that certain Amended and Restated First Lien Secured Super-Priority Debtor In Possession and Exit Credit and Guaranty Agreement (the "Prepetition First Lien Loan Agreement"), dated as of May 15, 2007 (as amended by that certain Limited Waiver and Amendment No. 1 to Credit Agreement and Pledge and Security Agreement, dated as of May 29, 2007, that certain Amendment No. 2 to Credit Agreement, dated as of June 12, 2007, that certain Amendment No. 3 to Credit Agreement, dated as of April 17, 2008, that certain Amendment No. 4 to Credit Agreement dated as of August 21, 2009 and as otherwise amended through the Consent Date), by and among Holdings and Systems, as borrowers, their subsidiaries identified therein, as guarantors, the lenders party thereto from time to time (collectively, and together with such lenders' successors and assigns, the "Prepetition First Lien Lenders"), Goldman Sachs Credit Partners L.P., as lead arranger and syndication agent, and The CIT Group/Business Credit, Inc. ("CIT"), as administrative agent and collateral agent (in either or both of such capacities, and together with its successors in either or both of such capacities, the "Prepetition First Lien Agent") and (b) that certain Second Lien Secured Super-Priority Debtor In Possession and Exit Credit and Guaranty Agreement (the "Prepetition Second Lien Loan Agreement"), dated as of May 15, 2007 (as amended by that certain Limited Waiver and Amendment No. 1 to Credit Agreement and Pledge and Security Agreement, dated as of May 29, 2007, that certain Amendment No. 2 to Credit Agreement, dated as of June 12, 2007, that certain Amendment No. 3 to Credit Agreement, dated as of April 17, 2008 and as otherwise amended through the Consent Date), by and among Holdings and Systems, as borrowers, their subsidiaries identified therein, as guarantors, the lenders party thereto from time to time (collectively, and together with such lenders' successors and assigns, the "Prepetition Second Lien Lenders," and together with the Prepetition First Lien Lenders, the "Prepetition Lenders"), Goldman Sachs Credit Partners

L.P., as lead arranger and syndication agent, and The Bank of New York Mellon, as administrative agent and collateral agent (in such capacity and together with its successors in either or both of such capacities, the "Prepetition Second Lien Agent," together with the Prepetition First Lien Agent, the "Prepetition Agents," and the Prepetition Second Lien Agent collectively with the Prepetition Lenders and the Prepetition First Lien Agent, the "Prepetition Secured Parties"). CIT resigned as the Prepetition First Lien Agent on or about April 19, 2012. To date, no successor has been appointed and the "Requisite Lenders," as such term is defined in the Prepetition First Lien Loan Agreement (the "Prepetition First Lien Requisite Lenders") have the powers accorded to the Prepetition First Lien Agent pursuant to the terms of the Prepetition First Lien Loan Agreement. Accordingly, as used herein, the term "Prepetition First Lien Agent" shall be deemed to mean the Prepetition First Lien Requisite Lenders until a successor First Lien Agent to CIT is appointed, if ever. The term "Prepetition Loan Documents" means, collectively, the Prepetition First Lien Loan Agreement, the Prepetition Second Lien Loan Agreement, the Prepetition Intercreditor Agreement (as defined below) and all agreements, documents, notes, mortgages, security agreements, pledges, guarantees, subordination or intercreditor agreements, instruments, amendments, and any other agreements or documents executed and/or delivered pursuant thereto or in connection therewith.

(ii) Prepetition Indebtedness. For purposes of this Interim Order, the term (a) "Prepetition First Lien Debt" shall mean all "Obligations" as defined in the Prepetition First Lien Loan Agreement and other amounts owed by the Borrowers or the Guarantors as of the Consent Date to the Prepetition First Lien Agent and the Prepetition First Lien Lenders under the Prepetition First Lien Loan Agreement and the other Prepetition Loan Documents related thereto, (b) "Prepetition Second Lien Debt" shall mean all "Obligations" as defined in the Prepetition Second Lien Loan Agreement and other amounts owed by the Borrowers and the Guarantors as of the Consent Date to the Prepetition Second Lien Agent and Prepetition Second Lien Lenders under the Prepetition Second Lien Loan Agreement and the other Prepetition Loan Documents related thereto, and (c) "Prepetition Secured Debt" shall mean the Prepetition First

Lien Debt and the Prepetition Second Lien Debt. As of the Consent Date, (A) the aggregate principal amount of the Prepetition First Lien Debt outstanding was not less than $244,021,526, plus accrued and unpaid interest, fees, costs, and expenses; (B) the aggregate principal amount of the Prepetition Second Lien Debt outstanding was not less than $30,000,000, plus accrued and unpaid interest, fees, costs, and expenses; (C) all of the Prepetition Secured Debt is unconditionally due and owing by the Debtors to the respective Prepetition Secured Parties; and (D) all claims in respect of the Prepetition Secured Debt and all Prepetition Lender Liens (as defined below) are not subject to any avoidance, reductions, set off, offset, disallowance, recharacterization, subordination (whether equitable, contractual or otherwise and except as set forth in the Prepetition Intercreditor Agreement (as defined below)), counterclaims, cross-claims, defenses or any other challenges under the Bankruptcy Code or any other applicable law or regulation by any person or entity.

(iii) Prepetition Liens. To secure the Prepetition Secured Debt, the Debtors and certain of their affiliates granted (i) the Prepetition First Lien Agent, for its own benefit and the benefit of the Prepetition First Lien Lenders, valid, binding, continuing, enforceable, and properly perfected first priority liens and security interests (the "Prepetition First Liens") upon and in substantially all of the real, personal and mixed property and assets of the Debtors and such affiliates (the "Prepetition Collateral"), and (ii) the Prepetition Second Lien Agent, for its own benefit and the benefit of the Prepetition Second Lien Lenders, valid, binding, continuing, enforceable, and properly perfected second priority liens and security interests (the "Prepetition Second Liens," and together with the Prepetition First Liens, the "Prepetition Lender Liens") upon and in all or substantially all of the Prepetition Collateral. As of the Consent Date, the Prepetition Lender Liens were senior and had priority over all other security interests and liens on the Debtors' assets other than any non-avoidable, valid, enforceable and perfected liens and security interests in the Debtors' assets that existed as of the Petition Date (as defined below) in favor of third parties holding liens or security interests that are superior in priority, after giving effect to any existing subordination arrangements, to the Prepetition First Liens and are

not otherwise subject to subordination under contract, the Bankruptcy Code or otherwise applicable law. Pursuant to that certain Intercreditor Agreement, dated as of May 15, 2007 (as amended, restated or otherwise modified from time to time prior to the Petition Date, the "Prepetition Intercreditor Agreement"), by and among Holdings, Systems, the other grantors party thereto and the Prepetition Agents, the Prepetition Second Liens are subject and subordinate in priority to the Prepetition First Liens. As of the Consent Date, there were no perfected liens on or security interests in the Prepetition Collateral except for the Prepetition Lender Liens and "Permitted Liens" as such term is defined in the Prepetition First Lien Credit Agreement.

(iv) No Claims. As of the Petition Date, no claims of any Debtor exist against any of Prepetition Secured Parties arising from or relating to any of the Prepetition Loan Documents, any loans or financial accommodations made thereunder or any of the other transactions contemplated thereby.

E. Purpose and Necessity of Financing. The Debtors require the DIP Loan to fund, among other things, ongoing working capital requirements and administrative costs and for other purposes permitted by this Interim Order. The Debtors' "cash collateral," as such term is defined in Bankruptcy Code section 363(a) (the "Cash Collateral"), is insufficient to fund the Debtors' on-going business needs and administrative costs. The Debtors are unable to obtain adequate unsecured credit allowable as an administrative expense under Bankruptcy Code section 503, or other financing under Bankruptcy Code sections 364(c) or (d), on equal or more favorable terms than those set forth in the DIP Financing Agreement based on the totality of the circumstances. Moreover, a loan facility in the amount provided by DIP Financing Agreement is not available to the Debtors without granting superpriority claims and priming liens pursuant to the Bankruptcy Code, as provided in this Interim Order and the DIP Financing Agreement. After considering all alternatives, the Debtors have concluded, in the exercise of their prudent business judgment, that the DIP Financing Agreement represents the best financing package available to them at this time and is in the best interests of the estates and their creditors.

F. Use of Cash Collateral. The Debtors also require the use of Cash Collateral to operate their businesses. Without the use of Cash Collateral, the Debtors will not be able to meet their cash requirements for working capital needs. The Prepetition Agents and the DIP Agent do not consent (or are not deemed to consent) to the use of Cash Collateral except on the terms and conditions, and for the purposes, specified herein. The adequate protection provided herein and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code and are necessary in order to obtain such consent or non-objection of such parties and to adequately protect their interests in the Prepetition Collateral.

G. Good Cause. The ability of the Debtors to obtain sufficient working capital and liquidity and use of Cash Collateral under this Interim Order is vital to the Debtors' estates and creditors, and in particular, to the ability of the Debtors to preserve their businesses and restructure their indebtedness under the Bankruptcy Code. The liquidity to be provided under the DIP Financing Agreement and through the use of Cash Collateral will enable the Debtors to continue to operate their businesses in the ordinary course and preserve their value. Good cause has, therefore, been shown for the relief sought in the Motion.

H. Good Faith. The DIP Financing Agreement has been negotiated in good faith and at arm's-length by and among the Debtors, the DIP Agent and the DIP Lenders. Any DIP Loan and/or other financial accommodations made to the Debtors by the DIP Agent and the DIP Lenders pursuant to this Interim Order and/or the DIP Financing Agreement shall be deemed to have been extended by the DIP Agent and the DIP Lenders in good faith, as that term is used in Bankruptcy Code section 364(e), and the DIP Agent and the DIP Lenders shall be entitled to all protections afforded thereunder. The terms of this Interim Order are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration. In entering into the DIP Financing Agreement and committing to make the DIP Loan, the DIP Agent and the DIP Lenders are relying on the terms of this Interim Order as an integrated whole, including without limitation paragraph 22 hereof.

I. Immediate Entry of Interim Order. The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2). The Motion and this Interim Order comply with Local Bankruptcy Rule 4001-2. In order to avoid immediate and irreparable harm to the Debtors, their estates and their businesses, the Debtors need up to $10,000,000 (the "Maximum Interim Borrowing") under the DIP Loan to fund the amounts contemplated by the budget and initial approved cash projections attached hereto as Exhibit A (as such budget may be amended with the consent of the DIP Agent, the "Approved Budget"). This Court concludes that immediate entry of this Interim Order is in the best interests of the Debtors' estates and creditors as its implementation will, among other things, allow for access to the financing necessary for the continued flow of supplies and services to the Debtors necessary to sustain the operation of the Debtors' existing business and further enhance the Debtors' prospects for a successful restructuring.

Based upon the foregoing findings, acknowledgements, and conclusions, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED:

1. Disposition. The Motion is granted on an interim basis, subject to the terms set forth herein. Any objections to the Motion that have not previously been withdrawn or resolved are hereby overruled on their merits. This Interim Order shall be valid and binding on all parties-in-interest, and effective immediately upon entry notwithstanding the possible application of Bankruptcy Rules 6003(b), 6004(a), 6004(h), 7062, and 9014.

2. Authorization. Upon entry of this Interim Order, the Debtors are authorized to: (i) enter into and perform their obligations under that certain Senior Secured Super-Priority Debtor in Possession Credit and Guaranty Agreement dated as of June 11, 2012 (as amended, restated or otherwise modified from time to time in accordance with the terms hereof and thereof, the "DIP Financing Agreement"), by and among Holdings and Systems, as borrowers (in such capacity, the "Borrowers"), certain of the Debtors, as guarantors (the "Guarantors"),

a copy of the DIP Financing Agreement is attached hereto as Ex. B and incorporated by reference which shows changes made from the form of credit agreement filed on June 11, 2012.

Yucaipa American Alliance Fund II, L.P. and Yucaipa American Alliance (Parallel) Fund II, L.P. (together, "Yucaipa") as agent (in such capacity, the "DIP Agent"), and the persons and entities from time to time party thereto as lenders (the "DIP Lenders"); (ii) obtain postpetition delayed draw term loans (the "DIP Loan")[4] under the DIP Financing Agreement in an aggregate principal amount not to exceed the Maximum Interim Borrowing; and (iii) use Cash Collateral and the proceeds of the DIP Loan for the purposes set forth on the Approved Budget and subject to the terms and conditions set forth herein and in the DIP Financing Agreement; provided the Debtors shall first use Cash Collateral before using proceeds of the DIP Loan; and provided further that, notwithstanding anything to the contrary contained in the DIP Financing Agreement or this Interim Order, any claim, demand, obligation or liability for severance or termination compensation or benefits for any employee or officer of any Debtor that arose or accrued before, on or after the Consent Date may be paid by any of the Debtors with proceeds of the DIP Loan or Cash Collateral only with the prior consent of the DIP Agent, which consent may be given or withheld in its sole discretion. The DIP Financing Agreement (including the documents, agreement and instruments described in paragraph 5(a) below) shall constitute legal, valid, and binding obligations of the Debtors, enforceable against the Debtors, their successors and assigns (including, without limitation, any successor trustee or other estate representative in any Chapter 11 Case or subsequent chapter 7 or chapter 11 case (each, a "Successor Case")) in accordance with their terms. The Debtors are hereby authorized to pay (whether through Cash Collateral or the DIP Loan) interest, fees, expenses and any other amounts required or allowed to be paid in accordance with this Interim Order or the DIP Financing Agreement.

3. Termination of Postpetition Credit and Cash Collateral Usage. Notwithstanding anything in this Interim Order to the contrary, the DIP Lenders' obligation to make the DIP Loan and the consent of the DIP Agent and the Prepetition Agents to the use of Cash Collateral shall

[4] The term "DIP Loan" shall include all principal, interest, fees, expenses and other obligations (including, without limitation, all "Obligations" as such term is defined in the DIP Financing Agreement and all DIP Expenses (as defined below)) that are at any time owed by any Borrower or Guarantor to the DIP Agent or the DIP Lenders in connection with the DIP Loan, the DIP Financing Agreement or this Interim Order.

automatically terminate without any further action by this Court, the DIP Agent, or any of the Prepetition Secured Parties, upon the earliest to occur of (the "Termination Date"): (i) the date of final indefeasible payment and satisfaction in full in cash of the DIP Loan and the termination of the loan commitments under the DIP Financing Agreement; (ii) the effective date of any plan of reorganization or liquidation in any of the Chapter 11 Cases; (iii) the consummation of the sale or other disposition of all or substantially all of the assets of the Debtors; and (iv) subject to paragraph 18(b)iii of this Interim Order with respect to the use of Cash Collateral, immediately upon delivery of a Termination Notice (as defined below).

4. Fees and Expenses.

(a) The Debtors shall pay the DIP Agent's and the DIP Lenders' reasonable costs, fees and expenses incurred in connection with the consideration, investigation, negotiation, documentation, consummation, administration, amendment and enforcement of the DIP Loan and any Cash Collateral order and participation in the Chapter 11 Cases (in their capacities as DIP Agent and DIP Lenders), including without limitation, legal, accounting, appraisal, investigation, audit, inspection, insurance, title insurance, and other similar fees and costs, ~~regardless of whether or not the DIP Loan or any other financing is consummated~~ (the "DIP Expenses"). Except as set forth in paragraph 4(b) below, the DIP Agent or the professional or firm seeking payment of a DIP Expense (an "Expense Claimant") shall submit a written invoice for any DIP Expense (in summary form, certifying that fees and charges have been incurred in connection with the DIP Financing Agreement, the DIP Loan or the use of Cash Collateral or otherwise in connection with this Interim Order, and setting forth hours, billing rates and timekeepers only and otherwise redacted to preserve privileges) to the Debtors, with a copy to the United States Trustee, counsel for the Debtors, counsel for the Committee (as defined below) and counsel for the Petitioning Creditors. If no written objection stating with specificity the basis for the objection (an "Objection") is received by the DIP Agent or such Expense Claimant within 10 days after delivery of such invoice, the Debtors shall promptly pay such DIP Expense. If an Objection is received by the DIP Agent or such Expense Claimant within such 10-day

period, the Debtors shall pay that portion, if any, of the DIP Expense that was not disputed. If the DIP Agent and/or the Expense Claimant are unable consensually to resolve an Objection with the objecting party, then this Court shall determine the disputed portion of such DIP Expense. Except as otherwise set forth in the preceding sentence or as may otherwise be hereafter ordered by the Court, no DIP Expense shall be subject to Court approval or required to be maintained in accordance with the U.S. Trustee Guidelines, and no Expense Claimant shall be required to file any interim or final fee application or request for payment with the Court. To the extent the Debtors fail to pay any undisputed or resolved DIP Expense, the DIP Agent or the Expense Claimant shall be permitted to (i) apply any amounts held in escrow or retainer (whether obtained prior to or after the Consent Date) to such unpaid DIP Expense without further Court approval; and/or (ii) file a motion with this Court seeking an order compelling the Debtors to pay such DIP Expense.

(b) Notwithstanding the foregoing, but subject to entry of the Final Order, DIP Expenses payable under Section 10.3 of the DIP Financing Agreement shall be governed solely by the DIP Financing Agreement and shall not be subject to any Objection or the procedures related to an Objection described in paragraph 4(a) above.

5. Authority to Execute and Deliver Necessary Documents. The Debtors are authorized ~~and directed~~ to enter into, execute and deliver to the DIP Agent any and all documents, agreements and instruments that are contemplated by, related to or to be delivered pursuant to or in connection with the DIP Financing Agreement or this Interim Order or that are reasonably requested by the DIP Agent to evidence or effectuate any of the transactions or other matters contemplated by or set forth in the DIP Financing Agreement or this Interim Order, each as may be amended hereafter from time to time (the documents, instruments and agreements referenced in this paragraph 5, collectively, shall be included in the definition of the "DIP Financing Agreement").

6. Amendments, Consents, Waivers, and Modifications. The Debtors may enter into non-material amendments, waivers or modifications of or consents to the DIP Financing

following notice to any statutory Committee appointed in the Case

Agreement with the prior written consent of the DIP Agent, which consent shall be granted or withheld in the DIP Agent's sole discretion; provided, however, that any material amendment, waiver, modification or consent shall require the approval of this Court. Copies of all amendments, waivers, modifications, whether or not material, shall be provided by Debtors to petitioning creditors.

7. DIP Lenders' Superpriority Claims. The DIP Agent, for the benefit of itself and the DIP Lenders, is hereby granted allowed superpriority administrative expense claims (the "Superpriority Claims") pursuant to Bankruptcy Code section 364(c)(1) for the DIP Loan.

8. Postpetition Liens. To secure the DIP Loan and subject to the provisions of paragraph 10, the DIP Agent is hereby granted, for the benefit of itself and the DIP Lenders, valid, enforceable, non-avoidable and fully perfected, first priority priming liens on and security interests in (collectively, the "Postpetition Liens") all Prepetition Collateral, all other property, assets and interests in property and assets of the Debtors (or any successor trustee or other estate representative in any Chapter 11 Case or Successor Case) and all other "property of the estate" (within the meaning of the Bankruptcy Code) of the Debtors (or any successor trustee or other estate representative in any Chapter 11 Case or Successor Case), of any kind or nature whatsoever, real, personal or mixed, tangible or intangible now existing or hereafter acquired or created, including, without limitation, all accounts, inventory, goods, contracts, contract rights, investment property, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, all other intellectual property, general intangibles, payment intangibles, rights, interests, intercompany notes and obligations, tax or other refunds, insurance proceeds, letters of credit, letter-of-credit rights, supporting obligations, documents, titled vehicles, machinery and equipment, real property (including all facilities), fixtures, leases (and proceeds from the disposition thereof), all of the (x) issued and outstanding capital stock entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)), (y) issued and outstanding capital stock not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of each subsidiary of each Debtor and (z) capital stock of all other Persons that are not Subsidiaries directly owned by each Debtor (subject, in the case of (x), (y) and (z), to any express limitations set forth in the DIP Financing Agreement), money, investment property, deposit accounts, all commercial tort claims

and other causes of action (other than Avoidance Actions of the Debtors), Cash Collateral, and all cash and non-cash proceeds, rents, products, substitutions, accessions, and profits of any of the collateral described above (collectively, the "Collateral"). Notwithstanding the foregoing or any provisions to the contrary contained in this Interim Order or the DIP Financing Agreement, where the DIP Agent has been granted a security interest hereunder in any shares or other equity interests in the capital stock ("ULC Shares") of an issuer that is an unlimited company, unlimited liability company or unlimited liability corporation under the laws of Canada or any of its provinces or political subdivisions (each, a "ULC"), the Debtor that owns such ULC Shares will remain the sole registered and beneficial owner of such ULC Shares until such time as such ULC Shares are effectively transferred into the name of the DIP Agent or any of its successors or assigns (in either case, a "ULC Beneficiary") or any other person or entity on the books and records of the applicable ULC. Nothing in this Interim Order or the DIP Financing Agreement is intended to, and nothing in this Interim Order or the DIP Financing Agreement shall, constitute the DIP Agent, any other ULC Beneficiary or any other person or entity other than the applicable debtor, a member or shareholder of a ULC for the purposes of the *Companies Act* (Nova Scotia), the *Business Corporations Act* (Alberta), the *Business Corporations Act* (British Columbia) and any other present or future laws governing ULCs (the "ULC Laws") (whether listed or unlisted, registered or beneficial), until such time as notice is given to such Debtor and further steps are taken pursuant hereto or thereto so as to register the DIP Agent, any other ULC Beneficiary or such other person or entity, as specified in such notice, as the holder of the ULC Shares.

9. Adequate Protection for Prepetition Secured Parties. The Debtors acknowledge and stipulate that the Prepetition Secured Parties are entitled, pursuant to Bankruptcy Code sections 361, 363(e), and 364(d)(1), to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, in exchange for the Debtors' use of such Prepetition Collateral, to the extent of the aggregate diminution in value, if any, of, respectively, the Prepetition First Lien Lenders' interest in the Prepetition Collateral and the Prepetition Second Lien Lenders' interest in the Prepetition Collateral, including, without limitation, any such

diminution resulting from or attributable to, any or all of the Carve-Out, the imposition of the automatic stay, the use of Cash Collateral, any sale, lease or use by the Debtors, physical deterioration, or other decline in value of any other Prepetition Collateral, and the priming of the Prepetition Secured Debt by the Postpetition Liens. As adequate protection, the Prepetition Agents are hereby granted (i) valid, enforceable, binding, non-avoidable and fully perfected postpetition security interests and liens (the "Adequate Protection Liens") on all of the Collateral, and (ii) priority superpriority administrative expense claims under section 364(c)(1) of the Bankruptcy Code (the "Adequate Protection Priority Claims").

(a) Without limiting the foregoing, the Prepetition Secured Parties shall have all of the rights accorded to them under sections 503 and 507(b) of the Bankruptcy Code in respect of the adequate protection provided herein.

(b) Reserved ~~Subject to paragraph 10 and 12 below and the Prepetition Intercreditor Agreement, the Prepetition Agents shall retain continuing liens on all of the Prepetition Collateral until, as applicable, (i) indefeasible payment in full in cash of the Prepetition Secured Debt, (ii) such other satisfaction of the Prepetition First Lien Debt that is acceptable to the Prepetition First Lien Agent, the Prepetition First Lien Requisite Lenders or the Prepetition First Lien Lenders, as applicable under the terms of the Prepetition First Lien Loan Agreement, in its or their sole discretion, (iii) such other satisfaction of the Prepetition Second Lien Debt that is acceptable to the Prepetition Second Lien Agent, the "Requisite Lenders" as defined in the Prepetition Second Lien Loan Agreement or the Prepetition Second Lien Lenders, as applicable under the terms of the Prepetition Second Lien Loan Agreement, in its or their sole discretion, (iv) approval and consummation of a sale pursuant to section 363(f) of the Bankruptcy Code (in which event the liens of the Prepetition Agents shall attach to the net proceeds of such sale after payment or other satisfaction of the DIP Loan), or (v) confirmation and consummation of a plan of reorganization in these Chapter 11 Cases.~~

(c) The Prepetition Secured Parties consent, or are deemed to have consented, to the adequate protection and the priming provided for herein; provided, however, that the consent of

the Prepetition Secured Parties to the priming, the use of Cash Collateral, and the sufficiency of the adequate protection provided for herein is expressly conditioned upon the entry of this Interim Order ~~(in form and substance satisfactory to the Prepetition First Lien Agent)~~ and such consent shall not be deemed to extend to any other replacement financing or debtor in possession financing other than the DIP Loan; and provided, further, that such consent shall be of no force and effect in the event (i) this Interim Order is not entered and the DIP Loan and DIP Financing Agreement as set forth herein are not approved, and (ii) the Final Order is not entered by July 12, 2012 (provided that such date may be extended to no later than July 27, 2012, if necessitated by this Court's schedule); and provided, further, that in the event of the occurrence of the Termination Date, nothing herein shall alter the burden of proof set forth in the applicable provisions of the Bankruptcy Code at any hearing concerning the continued use of Prepetition Collateral (including Cash Collateral) by the Debtors. Subject to entry of a Final Order

10. Perfection and Priority of ~~Liens~~ and Claims; Other Rights.

(a) ~~The~~ Postpetition Liens and, except as otherwise set forth in this Interim Order, the Adequate Protection Liens shall not at any time be made subject or subordinate to, or made *pari passu* with, any other lien, security interest or claim existing as of the Consent Date, or created under Bankruptcy Code sections 363 or 364(d) or otherwise other than the Carve-Out and any non-avoidable, valid, enforceable and perfected lien or security interest in any asset of the Debtors (x) that was granted, created and perfected prior to the Consent Date, (y) that is not otherwise subject to subordination to, as applicable, the Postpetition Liens and/or the Adequate Protection Liens under contract or applicable non-bankruptcy law and (z) as to which the holder of such lien or security interest has not consented and is not deemed to have consented under applicable non-bankruptcy law or contract to, as applicable, the Postpetition Liens and/or the Adequate Protection Liens (collectively, the "Existing Priority Liens"); provided that, subject to entry of the Final Order, the Postpetition Liens and the Adequate Protection Liens shall be senior to any Existing Priority Liens that were junior to the Prepetition First Liens as of the Consent Date whether by operation of contract or applicable non-bankruptcy law. In furtherance of the

foregoing, the Postpetition Liens and the Adequate Protection Liens shall at all times be senior to, among other things, (i) the rights of the Debtors in any Chapter 11 Cases and any successor trustee or other estate representative in an Chapter 11 Case or Successor Case, (ii) the liens and security interests of any party holding prepetition liens or security interests junior or subordinate to the Prepetition Lender Liens, (iii) any intercompany claim of or against any Debtor, and (iv) any prepetition lien that is determined to be avoidable pursuant to sections 544, 545, 547, 548, 551 and/or 553 of the Bankruptcy Code or otherwise; provided, however, the Adequate Protection Liens shall be junior and subordinate in all respects to the Postpetition Liens, and the Adequate Protection Liens of the Prepetition Second Lien Agent shall be junior and subordinate in all respect to the Adequate Protection Liens of the Prepetition First Lien Agent.

Subject to entry of a final Order

~~(b)~~ The Superpriority Claims and the Adequate Protection Priority Claims shall have priority over any and all other administrative claims against the Debtors or their estates (whether in the Chapter 11 Cases or in any Successor Case), now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kinds specified in or arising or ordered under Bankruptcy Code sections 105(a), 326, 328, 330, 331, 503(b), 506(c) (subject to entry of a Final Order), 507, 546(c) (subject to entry of a Final Order), 726, 1113, and 1114 or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which Superpriority Claims and Adequate Protection Priority Claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof including, without limitation, but subject to the entry of the Final Order, any proceeds or property recovered in connection with the pursuit of claims or causes of action arising under chapter 5 of the Bankruptcy Code, if any (the "Avoidance Actions"); provided, that (i) the Superpriority Claims and the Adequate Protection Priority Claims shall be subject and subordinate to the payment of the Carve-Out, (ii) the Adequate Protection Priority Claims shall be subject and subordinate to the Superpriority Claims, and (iii) the Adequate Protection Priority Claims of the Prepetition Second Lien Agent and the Prepetition Second Lien Lenders shall be subject and subordinate to

the Adequate Protection Priority Claims of the Prepetition First Lien Agent and the Prepetition First Lien Lenders. In furtherance and not in limitation of the foregoing, the Superpriority Claims and the Adequate Protection Claims shall at all times be senior to, among other things, (x) the rights of the Debtors in the Chapter 11 cases and any successor trustee or other estate representative in any Chapter 11 case or successor case, and (y) any intercompany claim of or against any Debtor.

(c) Subject to entry of a Final Order No liens, claims, interests or priority status (other than with respect to the Carve-Out and the Existing Priority Liens as described herein), having, as applicable, a lien or administrative priority superior to or *pari passu* with that of the Postpetition Liens, the Superpriority Claims, the Adequate Protection Liens or the Adequate Protection Priority Claims granted by this Interim Order, shall be granted while any portion of the DIP Loan or the Prepetition Secured Debt remains outstanding, or any loan commitment under the DIP Financing Agreement or Prepetition Loan Documents remains in effect, without the prior written consent of the DIP Agent, the Prepetition First Lien Agent and, subject to the terms of the Prepetition Intercreditor Agreement, the Prepetition Second Lien Agent.

(d) The Postpetition Liens and the Adequate Protection Liens shall be and hereby are effective, binding and perfected immediately upon entry of this Interim Order without further action by any of the Debtors, the other grantors, the DIP Agent, the DIP Lenders or the Prepetition Secured Parties. None of the Debtors, the DIP Agent, the DIP Lenders or the Prepetition Secured Parties shall be required to enter into, obtain, file or record, as applicable, any mortgage, security agreement, pledge agreement, financing agreement, financing statement, deed of trust, leasehold mortgage, notice of lien or similar instrument (including any trademark, copyright, trade name or patent assignment filing with the United States Patent and Trademark Office, Copyright Office or any similar agency with respect to intellectual property, or any filing with any other federal agency/authority), landlord waiver, mortgagee waiver, bailee waiver, warehouseman waiver, licensor consent, or other filing, consent, agreement or instrument (each, a "Non-Bankruptcy Lien Document") in any jurisdiction to the fullest extent allowed by law,

such that no additional steps need be taken by the DIP Agent, the DIP Lenders or any of the Prepetition Secured Parties to evidence or perfect the Postpetition Liens or Adequate Protection Liens or establish the priority or realize the benefit thereof (except as otherwise expressly set forth in this Interim Order).

(e) Each of the DIP Agent and the Prepetition Agents may, but shall not be obligated to, enter into, obtain, file or record any Non-Bankruptcy Lien Document that it deems in its sole discretion to be necessary or desirable, in which case: (i) all such documents shall be deemed to have been recorded and filed immediately upon entry of this Interim Order; provided, however, that any documents evidencing the Postpetition Liens shall be deemed to have been recorded and filed immediately prior to any documents evidencing Adequate Protection Liens, and the Adequate Protection Liens of the Prepetition First Lien Agent shall be deemed to have been recorded and filed immediately prior to the documents evidencing any Adequate Protection Liens of the Prepetition Second Lien Agent; and (ii) no defect in any such act shall affect or impair the validity, perfection, enforceability or priority of the liens granted hereunder.

(f) In lieu of obtaining or filing any Non-Bankruptcy Lien Document, each of the DIP Agent and the Prepetition Agent may, but shall not be obligated to, file a true and complete copy of this Interim Order in any place at which any such Non-Bankruptcy Lien Document would or could be filed, together with a description of Collateral or Prepetition Collateral, as applicable, and any such filing by the DIP Agent or a Prepetition Agent shall have the same effect as if such Non-Bankruptcy Lien Document had been filed or recorded immediately upon entry of this Interim Order.

(g) The Postpetition Liens, Superpriority Claims, and other rights and remedies granted under this Interim Order to the DIP Agent shall continue in the Chapter 11 Cases and in any Successor Case, and such Postpetition Liens, Superpriority Claims, and other rights and remedies shall maintain their respective priorities as provided in this Interim Order until the DIP Loan has been indefeasibly paid in full and completely satisfied and the DIP Lenders' commitments have been terminated in accordance with the DIP Financing Agreement.

(h) The DIP Agent, for and on behalf of the DIP Lenders, ~~and, subject to paragraph 12 below,~~ shall have the right to "credit bid" the allowed amount of the DIP Loan during any sale of any of the Debtors' assets pledged as Collateral ~~or Prepetition Collateral, as applicable,~~ including without limitation in connection with any sale pursuant to section 363 of the Bankruptcy Code or included as part of a plan of reorganization subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code.

11. Carve-Out.

(a) The Borrowers shall make deposits into the Professional Fee Reserve (as defined in the DIP Financing Agreement) on or prior to the fifth day and on the twentieth day of every month from which withdrawals shall be taken for the payment of professional fees in accordance with the DIP Financing Agreement. From and after the date of the Termination Notice (as defined below), amounts withdrawn from the Professional Fee Reserve may only be applied to pay fees covered by the Carve-Out (as defined below). Upon the occurrence and during the continuation of an Event of Default,[5] payments on account of the Postpetition Liens and the Superpriority Claims shall be subject and subordinate only to payment of: (i) any amounts payable pursuant to 28 U.S.C. § 1930(a)(6) and to the clerk of the Bankruptcy Court (it being understood that any such amount shall not be subject to any of the caps set forth in this paragraph 11(a)); (ii) allowed and unpaid fees and expenses that are owed to the attorneys, accountants and other professionals retained in the Chapter 11 Cases by the Debtors pursuant to Bankruptcy Code sections 327, 328, 330, 331, 363, 503 or 1103 (collectively, the "Debtor Professionals") (x) incurred from the Consent Date to the date of notice (such notice, the "Termination Notice") from the DIP Agent to the Debtors and the Committee that an Event of Default has occurred (such fees and expenses, whether allowed before or after the Termination

[5] As used herein, "Event of Default" shall mean an Event of Default as such term is defined in the DIP Financing Agreement or any default by any of the Debtors of any of their obligations under this Interim Order except to the extent that the DIP Agent and/or the DIP Lenders are not permitted to exercise rights or remedies hereunder on account of such default except, as applicable, upon the giving of notice by the DIP Agent and/or the expiration of a specified period of time, in which event, an Event of Default shall occur immediately upon the giving of such notice or the expiration of such period.

Notice, and including, without limitation, any monthly fees and any completion fee earned by Rothschild, Inc. prior to the Termination Notice, the "Debtors' Pre-Termination Allowed Fees"); and (y) incurred after the date of the Termination Notice (such period, the "Post-Termination Notice Period") in an amount of up to (but no more than) $200,000 in the aggregate (the "Debtors' Post-Termination Allowed Fees," and such cap the "Debtor Professional Expense Cap"); (iii) subject to paragraph 12(c), allowed and unpaid fees and expenses that are owed to the attorneys, accountants and other professionals retained in the Chapter 11 Cases by the Committee pursuant to Bankruptcy Code sections 328, 330, 331, 363, 503 or 1103 (collectively, the "Committee Professionals," and together with the Debtor Professionals, the "Estate Professionals") (x) incurred from the Consent Date to the date of the Termination Notice (such fees and expenses, whether allowed before or after the Termination Notice, the "Committee's Pre-Termination Allowed Fees," and together with the Debtor's Pre-Termination Allowed Fees, the "Pre-Termination Allowed Fees") in an amount of up to (but no more than) $100,000 in the aggregate (the "Committee Pre-Termination Expense Cap") and (y) incurred during the Post-Termination Notice Period (the "Committee's Post-Termination Allowed Fees," and together with the Debtors' Post-Termination Allowed Fees, the "Post-Termination Allowed Fees"), in an amount of up to (but no more than) $75,000 in the aggregate the "Committee Post-Termination Expense Cap," and together with the Committee Pre-Termination Expense Cap, the "Committee Expense Cap"); and (iv) allowed and unpaid fees of the information officer designated pursuant to the Canadian Supplemental Order (as defined in the DIP Financing Agreement) that are incurred from the Consent Date to the date of delivery of the Termination Notice. The fees and expenses described in clauses (i) through (iv) of the preceding sentence are referred to herein as the "Carve-Out."

(b) Notwithstanding anything to the contrary in paragraph 11(a), the Debtor Professional Expense Cap and the Committee Professional Expense Cap shall be reduced on a dollar-for-dollar basis by the amount of any retainers held by, respectively, the Debtors' professional and the Committee's professionals as of the date of the Termination Notice. In

addition, for purposes of the Carve-Out, Allowed Professional Fees (i) shall include only those fees and expenses that are owed pursuant to the terms of the applicable Estate Professional's engagement letter or other agreement of engagement and (ii) shall not include any success fee, transaction fee, or other similar fee whether or not set forth in such Estate Professional's engagement letter or other agreement other than as expressly set forth in paragraph 10(a). Following the delivery of a Termination Notice, (w) any payment made to any Estate Professional from any source on account of Allowed Professional Fees shall reduce the Carve-Out (and to the extent made on account of a Post-Termination Allowed Fee, the Debtor Professional Fee Cap or the Committee Professional Fee Cap, as applicable) on a dollar-for-dollar basis, (x) any payment made to any Committee Professional from any source on account of Committee Pre-Termination Allowed Fees shall reduce the Committee Pre-Termination Expense Cap on a dollar-for-dollar basis, (y) any payment made to, respectively, any Debtor Professional or any Committee Professional from any source on account of any Post-Termination Allowed Fees shall reduce, as applicable, the Debtor Post-Termination Expense Cap or the Committee Post-Termination Expense Cap and (y) no Allowed Professional Fee shall be paid from the proceeds of the DIP Loan or Collateral (including Cash Collateral) to any Estate Professional holding a retainer until such time as that retainer has been reduced to zero by application of such retainer to the Allowed Professional Fees of such Estate Professional.

(c) Except for Committee Challenge Fees (as defined below), no portion of the Carve-Out may be used for any Committee Challenge Action (as defined below).

12. Challenge Period.

(a) Proceeds of the DIP Loan, the Collateral and the Prepetition Collateral (including, without limitation, Cash Collateral) shall not be used by any person or entity, including the Debtors (or any successor trustee or other estate representative in any Chapter 11 Case or Successor Case), but excluding the Committee subject to the limitations set forth below, in connection with the investigation, pursuit or assertion of, or joinder in, any claim, cause of action, defense, counterclaim, proceeding, application, motion, objection, defense or other

contested matter or discovery against any of the DIP Agent, the DIP Lenders or the Prepetition Secured Parties (or any officers, directors, employees, agents, representatives, legal advisors and attorneys, financial advisors and accountants, consultants, other professionals, members, managers, partners, shareholders, owners, subsidiaries, predecessors in interest or affiliates of each the foregoing (collectively, the "Related Parties")), the purpose of which is to seek, or the result of which would be, to obtain any order, judgment, determination, declaration or similar relief: (x) invalidating, setting aside, avoiding, recharacterizing or subordinating, in whole or in part, any claim, indebtedness, liens and/or security interests of any of the DIP Agent, the DIP Lenders or the Prepetition Secured Parties; (y) objecting to or commencing any action that prevents or affirmatively delays the exercise by any of the DIP Agent, the DIP Lenders or the Prepetition Secured Parties of any of their respective rights and remedies under any agreement or document or this Interim Order or the Final Order; or (z) seeking any affirmative legal or equitable remedy against any of the DIP Agent, the DIP Lenders or the Prepetition Secured Parties.

(b) Notwithstanding anything herein to the contrary, any official committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to Bankruptcy Code Section 1102 (the "Committee") and other non-Debtor parties-in-interest shall have the right to file a complaint pursuant to Bankruptcy Rule 7001, or assert (through appropriate filings with the Court) a setoff, claim, offset or defense that seeks to invalidate, subordinate, recharacterize or otherwise challenge any of the Prepetition Lender Liens, Prepetition Secured Claims or the actions taken by any Prepetition Secured Party in its capacity as such (a "Committee Challenge Action"); provided, however, that any Committee Challenge Action must be brought on or before the later to occur of (i) seventy-five (75) days after the Consent Date and (ii) sixty (60) days after the formation of the Committee (the "Challenge Period"). If no Committee Challenge Action is filed before the end of the Challenge Period, the Committee, all holders of claims and interests and all other parties-in-interest shall be forever barred from bringing or taking any Committee Challenge Action on behalf of themselves, the Debtors or these estates, and the

Debtors' stipulations made in paragraph D, above and the release (as set forth below in paragraph 13) shall be binding on all parties in interest. If a Committee Challenge Action is timely brought during the Challenge Period, only those causes of action, claims, offsets, setoff and defenses expressly included in such Committee Challenge Action shall be preserved, and any and all other Committee Challenge Actions and any causes of action, claims, offsets, setoffs and defenses not expressly brought during the Challenge Period in such Committee Challenge Action shall be forever barred. In the event of a timely and successful Committee Challenge Action, this Court shall fashion the appropriate remedy with respect to the applicable Prepetition Secured Party(ies). For avoidance of doubt, the foregoing shall not preclude (i) the Petitioning Creditors from continuing to prosecute that certain action entitled *BDCM Opportunity Fund II, LP, et al. v. Yucaipa American Alliance Fund I, LP, et al.*, filed January 18, 2012 and pending in the Supreme Court of the State of New York for the County of New York (the "Petitioning Creditor Action") or (ii) Yucaipa from asserting any claims, crossclaims or counterclaims against any of the Petitioning Creditors.

(c) The Committee shall be permitted to spend up to (but no more than) $25,000 in the aggregate of proceeds of the DIP Loan and Cash Collateral in investigating, taking discovery with respect to, filing and prosecuting any and all Committee Challenge Actions (the "Committee Challenge Fees").

(d) If a trustee is appointed pursuant to Bankruptcy Code section 702 or 1104 prior to the end of the then-extant Challenge Period, the trustee shall have until the later of the end of the Challenge Period and 10 days after his or her appointment to file any Committee Challenge Action. The appointment of a trustee shall not extend the Challenge Period for any other party.

(e) The Challenge Period may be extended by the Court by motion filed prior to its expiration and upon notice and a showing of good cause, or by stipulation by the DIP Agent and the Prepetition First Lien Agent in their respective sole discretion.

13. Releases.

(a) Subject to the rights set forth in paragraph 12 above, the Debtors, on behalf of themselves and their estates (including any successor trustee or other estate representative in any Chapter 11 Case or Successor Case), forever and irrevocably (i) release, discharge, and acquit the DIP Agent, each of the DIP Lenders, in their capacity as DIP Lenders, and each of their respective former, current or future Related Parties, solely in each of their capacity as such, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, of every type, including, without limitation, any so-called "lender liability" or equitable subordination claims or defenses, with respect to or relating to the negotiation and execution of the DIP Financing, this Interim Order and the negotiation of the terms hereof or thereof and (ii) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability and nonavoidability of the Postpetition Liens and Superpriority Claims.

(b) Subject to entry of the Final Order and the rights set forth in paragraph 12 above, the Debtors, on behalf of themselves and their estates (including any successor trustee or other estate representative in any Chapter 11 Case or Successor Case), forever and irrevocably (i) release, discharge, and acquit each of Prepetition Secured Parties, in its capacity as such, and each of its respective former, current or future Related Parties, each in its capacity as such, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, of every type, including, without limitation, any so-called "lender liability" or equitable subordination claims or defenses, with respect to or relating, as applicable, to the Prepetition Secured Debt, the Prepetition Lender Liens, the Prepetition Loan Documents, the Debtors' attempts to restructure the Prepetition Secured Debt, any and all claims and causes of action arising under title 11 of the United States Code, and any and all claims regarding the validity, priority, perfection or avoidability of the Prepetition Lender Liens or any secured or unsecured claims arising from the Prepetition Secured Debt, and (ii) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the

validity, perfection, priority, enforceability and nonavoidability of any of the Prepetition Secured Debt and the Prepetition Lender Liens.

14. Limitation on Additional Surcharges. No action, inaction or acquiescence by any of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties, including funding the Debtors' ongoing operations under this Interim Order, shall be deemed to be, or shall be considered as evidence of, any alleged consent by any of the DIP Agent, the DIP Lenders or the Prepetition Secured Parties to a charge against the Collateral or the Prepetition Collateral pursuant to Bankruptcy Code sections 105(a) (subject to entry of a Final Order), 506(c) (subject to entry of a Final Order) and 552(b) (subject to entry of a Final Order), and no such costs, fees or expenses shall be so charged against the Collateral or Prepetition Collateral without the prior written consent of the DIP Agent (in the case of the Collateral) and the Prepetition First Lien Agent (in the case of the Prepetition Collateral), such consent to be granted or withheld in the respective party's sole and absolute discretion. The DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall not be subject in any way whatsoever to the equitable doctrine of "marshaling" or any similar doctrine with respect to, as applicable, the Collateral or the Prepetition Collateral. In addition, without limiting the foregoing, the Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and, subject to entry of a Final Order, the "equities of the case" exception under section 552(b) of the Bankruptcy Code. shall not apply to the Prepetition Secured Parties with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

15. Application of Collateral Proceeds.

(a) To the extent required by this Interim Order or the DIP Financing Agreement, after the occurrence of an Event of Default and until such time as the DIP Loan has been repaid in full in cash, the Debtors are hereby authorized ~~and directed~~ to remit to the DIP Agent, for the benefit of the DIP Lenders, one-hundred percent (100%) of all collections on, and proceeds of, the Collateral, including as a result of sales in and outside the ordinary course of business, and all other cash or cash equivalents which shall at any time on or after the Consent

Date come into the possession or control of the Debtors (whether from sales, licenses, condemnation and casualty events or other transfers of assets), or to which the Debtors shall become entitled at any time, and the automatic stay provisions of Bankruptcy Code section 362 are hereby modified to permit the DIP Agent and the DIP Lenders (subject to the terms of this Interim Order) to retain and apply all collections, remittances, and proceeds of the Collateral in accordance with this Interim Order and the DIP Financing Agreement to the DIP Loan, first to fees, costs and expenses owed under the DIP Financing Agreement (including the Carve-Out), then to interest, and then to principal.

(b) Pursuant to the DIP Financing Agreement, net cash proceeds from any sale, transfer or other disposition of asserts or property (other than inventory in the ordinary course of business) by the Debtors and the other credit parties shall be promptly paid to the DIP Agent and applied to the repayment of the DIP Loan.

16. Access to Collateral; Reports and Other Information.

(a) Notwithstanding anything contained herein to the contrary, and without limiting any other rights or remedies of the DIP Agent contained in this Interim Order or the DIP Financing Agreement, or otherwise available at law or in equity, but subject to entry of the Final Order, upon five (5) business days' written notice to the Debtors, the U.S. Trustee, counsel to the Committee, if any, counsel to the Petitioning Creditors, and any landlord, lienholder, licensor or other third party owner of any leased or licensed premises or intellectual property that an Event of Default has occurred and is continuing, the DIP Agent may, unless otherwise provided in any separate agreement by and between the applicable landlord or licensor and the DIP Agent (the terms of which shall be reasonably acceptable to the parties thereto), enter upon any leased or licensed premises of the Debtors for the purpose of exercising any remedy with respect to Collateral located thereon and shall be entitled to all of the Debtors' rights and privileges as lessee or licensee under the applicable license and to use any and all trademarks, trade names, copyrights, licenses, patents or any other similar assets of the Debtors, which are owned by or subject to a lien of any third party and which are used by Debtors in its businesses without

interference from lienholders or licensors thereunder, subject to such lienholders or licensors rights under applicable law. Nothing herein shall require the Debtors, the DIP Agent or the DIP Lenders to assume any lease or license under Bankruptcy Code Section 365 as a condition to the rights afforded to the DIP Agent and the DIP Lenders in this paragraph.

(b) The Debtors (and/or their legal or financial advisors) shall cooperate, confer with, and deliver to the DIP Agent and DIP Lenders (and their respective legal and financial advisors), all financial reports, budgets, forecasts, and all other legal or financial documentation, pleadings, and/or filings (together, the "Documentation") that are required to be provided to the DIP Agent, the DIP Lenders, and/or the DIP Agent's legal and financial advisors pursuant to the DIP Financing Agreement or are reasonably requested by any of them. The Debtors shall further deliver to the Petitioning Creditors (or their respective legal and financial advisors) all Documentation required to be provided to the ~~Petitioning Creditors~~ pursuant to the DIP Financing Agreement (including without limitation section 5.1 thereof).

and CIT, subject to the execution of an NDA,

DIP Agent or DIP Lenders

17. Cash Management Systems. The Debtors are authorized and directed to maintain their cash management system in a manner consistent with the DIP Financing Agreement, this Interim Order, and the order of this Court approving the maintenance of the Debtors' cash management system, provided, however, that such order is on terms and conditions acceptable to the DIP Agent and such order is not inconsistent with the terms specified herein and/or the DIP Financing Agreement.

18. Automatic Stay Modified.

(a) The automatic stay is modified as to the DIP Agent, the DIP Lenders and the Prepetition Secured Parties to allow implementation of the provisions of this Interim Order without further notice or order of the Court. The automatic stay is also modified as to the Debtors, the DIP Agent and the DIP Lenders to allow any and all actions necessary or desirable to seek recognition of the Chapter 11 Cases in Canada and to take any and all actions necessary or desirable to enforce or implement any orders entered by any Canadian court in connection therewith, including, without limitation, filing any registration to preserve or perfect any existing

or future security interest or in connection with the charges created under this Interim Order or registering any existing or future claim for any lien.

(b) In addition to the foregoing, but subject to the provisions of subparagraphs (c) and (d) hereof, the automatic stay provisions of Bankruptcy Code section 362 hereby are, to the extent applicable, vacated, and modified to the extent necessary to allow the DIP Agent and DIP Lenders:

i. whether or not an Even of Default has occurred, to require all cash, checks or other collections or proceeds from Collateral received by the Debtors to be deposited in accordance with the requirements of the DIP Financing Agreement, and to apply any amounts so deposited and other amounts paid to or received by any DIP Agent or the DIP Lenders in accordance with any requirements of the DIP Financing Agreement;

ii. upon the occurrence of an Event of Default and after giving five (5) business days' prior written notice (the "Waiting Period") to the Debtors and their counsel, counsel to any Committee, counsel to the Prepetition First Lien Agent, counsel to the Petitioning Creditors and the United State Trustee of the DIP Lenders' decision to exercise rights and remedies provided for in the DIP Financing Agreement, this Interim Order or under other applicable bankruptcy and nonbankruptcy law (including the right to setoff funds in accounts maintained by the Debtors with any of the DIP Lenders or the DIP Agent to repay the DIP Loan), to exercise such rights and remedies without further notice to or approval of the Court or any other party in interest; and

iii. immediately upon the occurrence of an Event of Default, without providing any prior notice thereof, (A) the DIP Agent, for the benefit of the DIP Lenders, may charge interest at the default rates pursuant to the DIP Financing Agreement, (B) neither the DIP Agent nor any of the DIP Lenders shall have any further obligation to provide financing under the DIP Financing Agreement, this Interim Order or otherwise, or to permit release to the Debtors of proceeds of loans that were previously funded, and may, in their sole discretion, terminate all commitments with respect to the DIP Loan, and (C) after the expiration of the

Waiting Period and subject to the provision of this paragraph 18 (b) hereof, terminate the Debtors' authorization to use Cash Collateral.

(c) During the Waiting Period, the Debtors shall not use any Cash Collateral or any DIP Loan proceeds to pay any expenses except those expressly set forth in the Approved Budget.

(d) This Court shall retain ~~exclusive~~ jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this Interim Order and relating to the application, re-imposition or continuance of the automatic stay of Bankruptcy Code section 362(a), use of Cash Collateral, or other injunctive relief requested.

19. Prepetition Intercreditor Agreement. Pursuant to Bankruptcy Code section 510, the Prepetition Intercreditor Agreement shall remain in full force and effect in the Chapter 11 Cases and in any subsequent proceedings under the Bankruptcy Code, including, without limitation, a Successor Case. Notwithstanding anything to the contrary contained in this Interim Order, the Prepetition Lender Liens , the Adequate Protection Liens and the Adequate Protection Priority Claims shall be subject to the terms of the Prepetition Intercreditor Agreement. Notwithstanding anything to the contrary contained herein or in the DIP Financing Agreement, all rights and obligation of the Prepetition Secured Parties and the Debtors under the Prepetition Intercreditor Agreement (including, without limitation, Section 2 of the Prepetition Intercreditor Agreement) are hereby expressly reserved.

20. Successors and Assigns. The DIP Financing Agreement and the provisions of this Interim Order shall be binding upon the Debtors, the DIP Agent, the DIP Lenders and the Prepetition Secured Parties and each of their respective successors and assigns, and shall inure to the benefit of the Debtors, the DIP Agent, the DIP Lenders and the Prepetition Secured Parties, and each of their respective successors and assigns including, without limitation, any trustee, responsible officer, estate administrator or representative, or similar person appointed in a case for any of the Debtors under any chapter of the Bankruptcy Code. ~~The provisions of this Interim Order shall also be binding on all of the Debtors' creditors, equity holders and other parties in~~

~~interest~~. Without limiting the foregoing and for the avoidance of doubt, and except as set forth in the Prepetition Intercreditor Agreement, the DIP Agent, the DIP Lenders and the Prepetition Secured Creditors shall have no obligation to permit the use of Cash Collateral or other proceeds of Collateral or extend any financing to any chapter 7 trustee or any other estate representative or representative appointed for any of the Debtors' estates.

21. Binding Nature of Agreement. The rights, remedies, powers, privileges, liens, and priorities of the DIP Agent and the DIP Lenders provided for in this Interim Order and in the DIP Financing Agreement shall not be modified, altered or impaired in any manner by any subsequent order (including a confirmation order), by any plan of reorganization or liquidation in the Chapter 11 Cases, by the dismissal or conversion of the Chapter 11 Cases or in any Successor Case under the Bankruptcy Code without the consent of the DIP Agent unless the DIP Loan has first been indefeasibly paid in full in cash and completely satisfied and the commitments terminated in accordance with this Interim Order and the DIP Financing Agreement. Except to the extent permitted or required herein or by the Prepetition Intercreditor Agreement, the rights, remedies, powers, privileges, liens, and priorities of the Prepetition Secured Parties granted herein shall not be modified, altered or impaired in any manner by any subsequent order (including a confirmation order), by any plan of reorganization or liquidation in the Chapter 11 Cases, by the dismissal or conversion of the Chapter 11 Cases or in any Successor Case.

22. Subsequent Reversal or Modification. This Interim Order is entered pursuant to Bankruptcy Code section 364 and Bankruptcy Rules 4001(b) and (c), granting the DIP Agent, the DIP Lenders and the Prepetition Secured Parties all protections afforded by Bankruptcy Code section 364(e). If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed (whether on appeal or otherwise), that action will not affect (i) the validity of any obligation, indebtedness or liability incurred hereunder by the Debtors to the DIP Agent, the DIP Lenders and the Prepetition Secured Parties, as applicable, prior to the date of receipt by the DIP Agent, the DIP Lenders and the Prepetition Secured Parties of written notice of the effective date of such action, (ii) any fees, costs, expenses and other amounts earned by

and/or paid to the DIP Agent and the DIP Lenders pursuant to this Interim Order or the DIP Financing Agreement prior to the date of receipt by the DIP Agent and the DIP Lenders of written notice of the effective date of such action, (iii) the validity and enforceability of any lien, claim or priority authorized or created under this Interim Order or pursuant to the DIP Financing Agreement, or (iv) the ability to enforce any rights or remedies contained herein. Notwithstanding any such reversal, stay, modification or vacatur, any postpetition indebtedness, obligation or liability incurred by the Debtors to any of the DIP Agent, the DIP Lenders or the Prepetition Secured Parties prior to written notice to the DIP Agent, the DIP Lenders and the Prepetition Secured Parties of the effective date of such action, shall be governed in all respects by the original provisions of this Interim Order and the DIP Financing Agreement, as applicable, and the DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges, and benefits granted herein and, as to the DIP Agent and the DIP Lenders, in the DIP Financing Agreement with respect to all such indebtedness, obligations or liability.

23. Restriction on Use of Lender's Funds. Except with respect to the Committee Challenge Fees, no proceeds from the DIP Loan, Collateral, Cash Collateral (including any prepetition retainer funded with Prepetition Secured Debt), or Prepetition Collateral or the Carve-Out may be used by the Debtors, the Committee, any trustee or other estate representative appointed in any Chapter 11 Case or Successor Case or any other person or entity to: (a) seek or obtain postpetition loans or other financial accommodations pursuant to Bankruptcy Code section 364(c) or (d), or otherwise, other than from the DIP Lenders, except for the purpose of indefeasible repayment of the DIP Loan in full and in cash; or (b) investigate any Committee Challenge Actions (as outlined in paragraph 12 above).

24. Collateral Rights. Subject to entry of the Final Order, in the event that any party who has both received notice of the Interim Hearing and holds a lien or security interest in Collateral or Prepetition Collateral that is junior and/or subordinate to any of the Postpetition Liens, the Adequate Protection Liens or the Prepetition Lender Liens in such Collateral or

Prepetition Collateral receives or is paid the proceeds of such Collateral or Prepetition Collateral, or receives any other payment with respect thereto from any other source, prior to indefeasible payment in full in cash and the complete satisfaction of (i) the DIP Loan under the DIP Financing Agreement and termination of the loan commitments thereunder in accordance with the DIP Financing Agreement and (ii) subject to the Final Order, the Prepetition Secured Debt under the Prepetition Loan Documents, such junior or subordinate lienholder shall be deemed to have received, and shall hold, the proceeds of any such Prepetition Collateral or other Collateral in trust for the DIP Agent, DIP Lenders and the Prepetition Secured Parties (subject to the terms of the Prepetition Intercreditor Agreement), and shall immediately turnover such proceeds for application, in the following order: (a) to the DIP Agent for application to the DIP Loan under the DIP Financing Agreement until paid in full in cash; (b) to the Prepetition First Lien Agent for application to the Prepetition First Lien Debt under the Prepetition First Lien Loan Documents until paid in full in cash; and (c) to the extent such payment consists of Prepetition Second Lien Collateral, to the Prepetition Second Lien Agent for application to the Prepetition Second Lien Debt under the Prepetition Second Lien Loan Agreement until paid in full in cash.

25. Plan of Reorganization or Liquidation. No plan of reorganization or liquidation may be confirmed in any of these Chapter 11 Cases unless, in connection and concurrently with the effective date of such plan, the plan provides for the indefeasible payment in full, in cash, and in complete satisfaction of the DIP Loan, and the loan commitments under the DIP Financing Agreement and this Interim Order are terminated on or before the effective date of such plan.

26. Sale/Conversion/Dismissal. Unless otherwise agreed by the DIP Agent, neither the Debtors nor any trustee will file a motion seeking a sale of all or substantially all of the assets of the Debtors under Bankruptcy Code section 363 (a "363 Substantial Asset Sale") unless (i) the proceeds of such sale are used to indefeasibly pay in full and completely satisfy in cash the DIP Loan and (ii) the loan commitments under the DIP Financing Agreement and this Interim Order are terminated in accordance therewith on the closing date of such sale. If an order dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise is at any

time entered, (i) the claims and Liens (including, without limitation, the Postpetition Liens, the Superpriority Claims, the Adequate Protection Liens and the Adequate Protection Claims) granted pursuant to this Interim Order to or for the benefit of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until, as applicable, all DIP Financing Obligations, Prepetition First Lien Debt and/or Prepetition Second Lien Debt shall have been indefeasibly paid in full in cash (and that such claims and liens shall, notwithstanding such dismissal, remain binding on all parties in interest), and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such claims and Liens. The provisions set forth in clauses (i) and (ii) of the preceding sentence shall be deemed (in accordance with sections 104 and 349(b) of the Bankruptcy Code) to be incorporated by this reference in any order dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise, unless such provisions are expressly set forth therein.

27. No Waiver. This Interim Order shall not be construed in any way as a waiver or relinquishment of any rights that any of the DIP Agent, the DIP Lenders or the Prepetition Secured Parties may have to bring or be heard on any matter brought before this Court.

28. Setoff and Recoupment. Notwithstanding anything to the contrary contained herein (but subject to the terms of the Prepetition Intercreditor Agreement), nothing in this Interim Order shall limit or impair the nature, extent, validity and/or priority of the rights against the Debtors, if any, of any party-in-interest in the Chapter 11 Cases under Bankruptcy Code sections 546(c), 545 and 553 and/or the equitable doctrine of recoupment.

29. Priority of Terms. To the extent of any conflict between or among (a) the express terms or provisions of any of the DIP Financing Agreement, the Motion, any other order of this Court, or any other agreements, on the one hand, and (b) the terms and provisions of this Interim Order, on the other hand, unless such term or provision herein is phrased in terms of "as defined in" or "as more fully described in" the Motion or the DIP Financing Agreement, the terms and provisions of this Interim Order shall govern.

30. Indefeasible payment. Subject to the investigatory period provisions of paragraph 12, for purposes of the Interim Order, when payment in cash is received by the DIP Agent, that payment shall be considered indefeasibly made.

31. No Third Party Beneficiary. Except as explicitly set forth herein with respect to the Carve-Out, no rights are created hereunder for the benefit of any third party, any creditor, any party in a Successor Case or any direct, indirect or incidental beneficiary, and no third parties shall be deemed to be third party beneficiaries of this Interim Order.

32. Final Hearing Date. The Final Hearing to consider the entry of the Final Order approving the relief sought in the Motion shall be held on ~~June~~ July [12], 2012 at [11:00 a.m./p.m.] prevailing Eastern time (as the same may be adjourned or continued by this Court) before the Honorable Christopher S. Sontchi, at the United States Bankruptcy Court for the District of Delaware.

33. Adequate Notice. Adequate notice under the circumstances has been given to (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel for the DIP Agent; (iii) counsel for BDCM Opportunity Fund II, LP, Black Diamond CLO 2005-1 Adviser L.L.C., Spectrum Investment Partners LP and The CIT Group/Business Credit, Inc., each of which is a lender under the Prepetition First Lien Loan Agreement; (iii) The Bank of New York Mellon, in its capacity as administrative agent and collateral agent under the Prepetition Second Lien Loan Agreement; (iv) the Debtors' twenty (20) largest unsecured creditors listed in the Debtors' consolidated list of creditors (excluding insiders); (v) Bank of America, Fidelity National Bank, J.P. Morgan Chase Bank and Bank of Nova Scotia, which are the banks with which the Debtors maintain their primary banking relationships; and (vi) all other persons requesting notices. Pursuant to Bankruptcy Rule 4001, no further notice of the request for the relief granted at the Interim Hearing is required. The Debtors shall promptly mail copies of this Interim Order and notice of the Final Hearing to the noticed parties, any known party affected by the terms of the Final Order, and any other party requesting notice after the entry of this Interim Order. Any objection to the relief sought at the Final Hearing shall be made in writing setting

forth with particularity the grounds thereof, and filed with the Court and served on counsel for the Debtors and counsel for Yucaipa so as to be actually received no later than 4:00 p.m. prevailing Eastern time on ~~June~~ July [6], 2012.

34. Entry of Interim Order; Effect. This Interim Order shall take effect immediately upon execution hereof, notwithstanding the possible application of Bankruptcy Rules 6004(g), 7062, 9014, or otherwise, and the Clerk of this Court is hereby directed to enter this Interim Order on the Court's docket in the Chapter 11 Cases.

35. Retention of Jurisdiction. This Court shall retain jurisdiction over all matters pertaining to the implementation, interpretation and enforcement of this Interim Order and/or the DIP Financing Agreement.

36. Binding Effect of Interim Order. The terms of this Interim Order shall be binding on any trustee appointed under chapter 7 or chapter 11 of the Bankruptcy Code or other fiduciary or other estate representative hereafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors; provided that, except to the extent expressly set forth in this Interim Order, the DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall have no obligation to permit the use of Cash Collateral or other proceeds of Collateral or extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors.

Dated: June 12, 2012

THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

37. Nothing herein shall be deemed to alter, modify or waive the Debtors' obligations under applicable Canadian law.

38. Any amendment, stay, reversal or modification of this Interim order without the consent of the DIP Agent 35 (which may be withheld in the DIP Agent's sole discretion) shall be an event of Default under the DIP Financing Agreement and the Interim Order.

Allied Systems Holdings, Inc. & Subsidiaries
AHI Consolidated Allied Systems Holdings, Inc. Plan (DIP Period Forecast)

		Week Ended 17-Jun	Week Ended 24-Jun	Week Ended 1-Jul	Week Ended 8-Jul	Week Ended 15-Jul	Week Ended 22-Jul	Week Ended 29-Jul	Week Ended 5-Aug	Week Ended 12-Aug	Week Ended 19-Aug	Week Ended 26-Aug	Week Ended 2-Sep	Week Ended 9-Sep
Assumptions:														
Sales Revenue		$ 8,333	$ 8,333	$ 8,333	$ 4,632	$ 4,632	$ 4,632	$ 4,632	$ 5,229	$ 5,627	$ 5,627	$ 5,627	$ 5,627	$ 6,474
Hauled Units		37,793	37,793	37,793	26,388	26,388	26,388	26,388	30,617	33,771	33,771	33,771	33,771	39,046
Days Sales Outstanding (DSO)		19.2	19.2	17.5	17.5	17.5	17.5	17.5	17.7	17.7	17.7	17.7	21.8	21.3
Days Payable Outstanding (DPO)		27.2	27.2	26.4	26.4	26.4	26.4	26.4	23.4	23.4	23.4	23.4	26.5	26.5
DPO excluding Wages & Fringe Benefits		54.6	54.6	51.2	51.2	51.2	51.2	51.3	46.0	46.0	46.0	46.0	51.2	51.2
Receipts:														
A/R Receipts		$ 6,133	$ 8,220	$ 6,256	$ 6,210	$ 5,884	$ 5,070	$ 4,620	$ 4,700	$ 4,869	$ 5,233	$ 5,386	$ 5,423	$ 5,183
Non- AR Receipts		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Receipts		$ 6,133	$ 8,220	$ 6,256	$ 6,210	$ 5,884	$ 5,070	$ 4,620	$ 4,700	$ 4,869	$ 5,233	$ 5,386	$ 5,423	$ 5,183
Operating Disbursements														
Payroll & Payroll Taxes		$ 2,815	$ 1,881	$ 2,699	$ 1,880	$ 2,526	$ 1,487	$ 1,996	$ 2,147	$ 2,145	$ 2,147	$ 1,733	$ 2,758	$ 1,773
Central States Health Welfare and Pension		$ 2,026	$ -	$ -	$ -	$ -	$ 1,891	$ -	$ -	$ -	$ 1,546	$ -	$ -	$ -
Fuel		$ 764	$ 764	$ 764	$ 552	$ 552	$ 552	$ 552	$ 552	$ 735	$ 735	$ 735	$ 735	$ 763
Insurance		$ -	$ -	$ -	$ 139	$ -	$ -	$ -	$ 139	$ -	$ -	$ -	$ -	$ 139
Other Disbursements		$ 3,306	$ 3,252	$ 3,251	$ 3,254	$ 4,165	$ 3,036	$ 2,766	$ 2,522	$ 1,363	$ 777	$ 999	$ 1,032	$ 1,191
Total Operating Disbursements	a	$ 8,910	$ 5,908	$ 6,714	$ 5,826	$ 7,243	$ 6,765	$ 5,314	$ 5,360	$ 4,263	$ 5,204	$ 3,467	$ 4,525	$ 3,866
Total Operating Cash Flow		$ (2,776)	$ 314	$ (458)	$ 384	$ (1,559)	$ (1,695)	$ (693)	$ (661)	$ 606	$ 29	$ 1,919	$ 897	$ 1,317
Capital Expenditures	b	$ 55	$ 44	$ 4	$ 4	$ 4	$ 4	$ 5	$ 193	$ 193	$ 193	$ 154	$ 154	$ 154
Total Operating Cash Flow less Capex		$ (2,832)	$ 269	$ (462)	$ 380	$ (1,564)	$ (1,700)	$ (699)	$ (854)	$ 413	$ (164)	$ 1,765	$ 743	$ 1,162
Reorg Costs		$ 575	$ 348	$ 348	$ 206	$ 206	$ 206	$ 206	$ 212	$ 216	$ 216	$ 218	$ 216	$ 248
Financing Disbursements:														
Interest	c	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 93	$ -	$ -	$ -	$ -	$ 97
Principal		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Amendment Fees		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Financing Disbursements		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 93	$ -	$ -	$ -	$ -	$ 97
Non-recurring Cash Disbursements		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Aggregate cash outlays (budget test)	a+b+c	$ 6,965	$ 6,950	$ 6,716	$ 6,511	$ 7,248	$ 6,770	$ 5,319	$ 5,646	$ 4,456	$ 5,397	$ 3,622	$ 4,680	$ 4,015
Total Cash Outlays		$ 9,540	$ 6,298	$ 7,066	$ 5,616	$ 7,453	$ 6,975	$ 5,525	$ 5,858	$ 4,872	$ 5,614	$ 3,839	$ 4,897	$ 4,335
Net Increase/ (Decrease) in Cash		(3,407)	(78)	(810)	394	(1,769)	(1,905)	(705)	(1,159)	197	(381)	1,548	527	848
Unrestricted Cash														
Beginning Balance		$ 8,224	$ 5,006	$ 5,351	$ 5,637	$ 5,443	$ 5,321	$ 5,261	$ 5,251	$ 4,855	$ 4,797	$ 4,742	$ 4,654	$ 4,677
Revolver Borrowings / (Repayments)		$ 5,189	$ 424	$ 1,096	$ (588)	$ 1,648	$ 1,845	$ 695	$ 762	$ (254)	$ 325	$ (1,636)	$ (504)	$ (777)
Net Increase / (decrease) in Cash		$ (3,407)	$ (78)	$ (810)	$ 394	$ (1,769)	$ (1,905)	$ (705)	$ (1,159)	$ 197	$ (381)	$ 1,548	$ 527	$ 848
Ending Balance		$ 5,006	$ 5,351	$ 5,637	$ 5,443	$ 5,321	$ 5,261	$ 5,251	$ 4,855	$ 4,797	$ 4,742	$ 4,654	$ 4,677	$ 4,747
Revolver														
Beginning Balance		$ (0)	$ 5,189	$ 5,612	$ 6,708	$ 6,120	$ 7,767	$ 9,613	$ 10,308	$ 11,070	$ 10,815	$ 11,141	$ 9,504	$ 9,001
Borrowings / (Repayments)		$ 5,189	$ 424	$ 1,096	$ (588)	$ 1,648	$ 1,845	$ 695	$ 762	$ (254)	$ 325	$ (1,636)	$ (504)	$ (777)
Ending Balance		$ 5,189	$ 5,612	$ 6,708	$ 6,120	$ 7,767	$ 9,613	$ 10,308	$ 11,070	$ 10,815	$ 11,141	$ 9,504	$ 9,001	$ 8,223
Revolver Availability														
Commitment		$ 20,000	$ 20,000	$ 20,000	$ 20,000	$ 20,000	$ 20,000	$ 20,000	$ 20,000	$ 20,000	$ 20,000	$ 20,000	$ 20,000	$ 20,000
Less Borrowings		$ (5,189)	$ (5,612)	$ (6,708)	$ (6,120)	$ (7,767)	$ (9,613)	$ (10,308)	$ (11,070)	$ (10,815)	$ (11,141)	$ (9,504)	$ (9,001)	$ (8,223)
Total Availability		$ 14,811	$ 14,388	$ 13,292	$ 13,880	$ 12,233	$ 10,387	$ 9,692	$ 8,930	$ 9,185	$ 8,859	$ 10,496	$ 10,999	$ 11,777
Liquidity														
Revolver Availability		$ 14,811	$ 14,388	$ 13,292	$ 13,880	$ 12,233	$ 10,387	$ 9,692	$ 8,930	$ 9,185	$ 8,859	$ 10,496	$ 10,999	$ 11,777
Unrestricted Cash on Hand		$ 5,006	$ 5,351	$ 5,637	$ 5,443	$ 5,321	$ 5,261	$ 5,251	$ 4,855	$ 4,797	$ 4,742	$ 4,654	$ 4,677	$ 4,747
Total Forecasted Liquidity		$ 19,817	$ 19,739	$ 18,929	$ 19,323	$ 17,554	$ 15,648	$ 14,944	$ 13,785	$ 13,982	$ 13,601	$ 15,149	$ 15,676	$ 16,524
Effect of Operating Initiatives		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Revised Forecasted Liquidity		$ 19,817	$ 19,739	$ 18,929	$ 19,323	$ 17,554	$ 15,648	$ 14,944	$ 13,785	$ 13,982	$ 13,601	$ 15,149	$ 15,676	$ 16,524
Less Unavailable Cash		$ (1,600)	$ (1,600)	$ (1,600)	$ (1,600)	$ (1,600)	$ (1,600)	$ (1,600)	$ (1,600)	$ (1,600)	$ (1,600)	$ (1,600)	$ (1,600)	$ (1,600)
Net Usable Cash		$ 3,406	$ 3,751	$ 4,037	$ 3,843	$ 3,721	$ 3,661	$ 3,651	$ 3,255	$ 3,197	$ 3,142	$ 3,054	$ 3,077	$ 3,147

Exhibit "A"

Exhibit "B"

L&W DRAFT 6/~~11~~12/12

SENIOR SECURED SUPER-PRIORITY DEBTOR IN POSSESSION CREDIT AND GUARANTY AGREEMENT

dated as of June 12, 2012

among

ALLIED SYSTEMS HOLDINGS, INC.

and

ALLIED SYSTEMS, LTD. (L.P.),

as Borrowers

CERTAIN SUBSIDIARIES OF

ALLIED SYSTEMS HOLDINGS, INC.

and

ALLIED SYSTEMS, LTD. (L.P.),

as Guarantors,

VARIOUS LENDERS,

and

YUCAIPA AMERICAN ALLIANCE FUND II, LLC,

as Agent

TABLE OF CONTENTS

SENIOR SECURED SUPER-PRIORITY DEBTOR IN POSSESSION CREDIT AND GUARANTY AGREEMENT

This SENIOR SECURED SUPER-PRIORITY DEBTOR IN POSSESSION CREDIT AND GUARANTY AGREEMENT, dated as of June 12, 2012, is entered into by and among ALLIED SYSTEMS HOLDINGS, INC., a Georgia corporation and a debtor and debtor in possession under Chapter 11 of the Bankruptcy Code (as defined below) ("**Holdings**"), ALLIED SYSTEMS, LTD. (L.P.), a Georgia limited partnership and a debtor and debtor in possession under Chapter 11 of the Bankruptcy Code ("**Systems**" and, together with Holdings, the "**Borrowers**"), CERTAIN SUBSIDIARIES OF BORROWERS, as Subsidiary Guarantors, the Lenders party hereto from time to time, and Yucaipa American Alliance Fund II, LLC as Agent (together with its permitted successors in such capacity, "**Agent**").

RECITALS:

WHEREAS, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

WHEREAS, on May 17, 2012 (the "**Petition Date**"), certain of the Debtors' creditors (the "**Petitioning Creditors**") filed involuntary petitions against the Borrowers in the Bankruptcy Court;

WHEREAS, on June 10, 2012 (the "**Consent Date**"), Borrowers consented to the entry of an order for relief under Chapter 11 of the Bankruptcy Code and each of the other Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code with the Bankruptcy Court and ancillary proceedings were commenced under Part IV of the CCAA with the Canadian Court (collectively, the "**Cases**");

WHEREAS, from and after the Consent Date, Debtors are continuing to operate their respective businesses and manage their respective properties as debtors in possession under Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, Borrowers, their subsidiaries identified therein, as guarantors, the lenders party thereto from time to time, Goldman Sachs Credit Partners L.P., as lead arranger and syndication agent and The CIT Group/Business Credit, Inc., as administrative agent and collateral agent previously entered into a credit facility (the "**Existing First Lien Credit Facility**") established pursuant to that certain Amended and Restated First Lien Secured Super-Priority Debtor In Possession and Exit Credit and Guaranty Agreement, dated as of May 15, 2007 (as amended by that certain Limited Waiver and Amendment No. 1 to Credit Agreement and Pledge and Security Agreement, dated as of May 29, 2007, that certain Amendment No. 2 to Credit Agreement, dated as of June 12, 2007, that certain Amendment No. 3 to Credit Agreement, dated as of April 17, 2008 and that certain Amendment No. 4 to Credit Agreement dated as of August 21, 2009) (as amended, the "**Existing First Lien Credit Agreement**"), under which the lenders party thereto extended to Borrowers certain credit facilities consisting of $180,000,000 aggregate principal amount of term loans (the "**Existing First Lien Term Loans**"), $35,000,000 aggregate principal amount of revolving commitments and $50,000,000 aggregate principal amount of letter of credit commitments;

WHEREAS, Borrowers, their subsidiaries identified therein, as guarantors, the lenders party thereto from time to time, Goldman Sachs Credit Partners L.P., as lead arranger and syndication agent and The Bank of New York Mellon, as administrative agent and collateral agent previously entered into a credit facility (the "**Existing Second Lien Credit Facility**", and together with the Existing First Lien Credit Facility, the "**Existing Credit Facilities**") established pursuant to that certain Second Lien Secured Super-Priority Debtor in Possession and Exit Credit and Guaranty Agreement, dated as of May 15, 2007 (as amended by that certain Limited Waiver and Amendment No. 1 to Credit Agreement and Pledge and Security Agreement, dated as of May 29, 2007, as further amended by that certain Amendment No. 2 to Credit Agreement, dated as of June 12, 2007, and that certain Amendment No. 3 to Credit Agreement, dated as of April 17, 2008) (as amended, the "**Existing Second Lien Credit Agreement**").

WHEREAS, Borrowers have agreed to secure all of their Obligations by granting to Agent, for the benefit of Secured Parties, a First Priority Lien on substantially all of their assets, including a pledge of all of the Equity Interests of each of their respective Domestic Subsidiaries, 100% of all the Equity Interests of each of their Canadian Subsidiaries and 65% of all the Equity Interests of each of their other respective first-tier Foreign Subsidiaries; and

WHEREAS, Guarantors have agreed to guarantee the obligations of Borrowers hereunder and to secure their respective Obligations by granting to Agent, for the benefit of Secured Parties, a First Priority Lien on substantially all of their respective assets, including a pledge of all of the Equity Interests of each of their respective Domestic Subsidiaries (including Systems), 100% of all the Equity Interests of each of their respective Canadian Subsidiaries and 65% of all the Equity Interests of each of their other respective directly owned Foreign Subsidiaries.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

"**Act**" as defined in Section 3.1(o).

"**Adjusted Eurodollar Rate**" means, for any Interest Rate Determination Date with respect to an Interest Period for a Eurodollar Rate Loan, the rate per annum obtained by dividing (and rounding upward to the next whole multiple of 1/16 of 1%) (i) (a) the rate per annum (rounded to the nearest 1/100 of 1%) equal to the rate determined by Agent to be the offered rate which appears on the page of the Reuters Screen which displays an average British Bankers Association Interest Settlement Rate (such page currently being LIBOR01 page and formerly Telerate Page 3750) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (b) in the event the rate referenced in the preceding clause (a) does not appear on such page or service or if such page or service shall cease to be available, the rate per annum (rounded to the nearest 1/100 of 1%) equal to the rate

determined by Agent to be the offered rate on such other page or other service which displays an average British Bankers Association Interest Settlement Rate for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (c) in the event the rates referenced in the preceding clauses (a) and (b) are not available, the rate per annum (rounded to the nearest 1/100 of 1%) equal to the offered quotation rate to first class banks in the London interbank market by Agent for deposits (for delivery on the first day of the relevant period) in Dollars of amounts in same day funds comparable to the principal amount of the applicable DIP Loan of Agent, in its capacity as a Lender, for which the Adjusted Eurodollar Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, by (ii) an amount equal to (a) one minus (b) the Applicable Reserve Requirement.

"**Administration Charge**" has the meaning set forth in the Canadian Supplemental Order or the Canadian Comeback Order.

"**Adverse Proceeding**" means any action, suit, proceeding, hearing (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Holdings or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of Holdings or any of its Subsidiaries, threatened against or affecting Holdings or any of its Subsidiaries or any property of Holdings or any of its Subsidiaries.

"**Affected Lender**" as defined in Section 2.15(b).

"**Affected Loans**" as defined in Section 2.15(b).

"**Affiliate**" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 5% or more of the Securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

"**Agent**" as defined in the preamble hereto.

"**Agent Affiliates**" as defined in Section 10.1(b)(iii).

"**Aggregate Amounts Due**" as defined in Section 2.14.

"**Aggregate Payments**" as defined in Section 7.2.

"**Agreement**" means this Senior Secured Super-Priority Debtor in Possession Credit and Guaranty Agreement, dated as of June 12, 2012, as it may be amended, supplemented or otherwise modified from time to time.

"**Applicable Reserve Requirement**" means, at any time, for any Eurodollar Rate Loan, the maximum rate, expressed as a decimal, at which reserves (including any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against "Eurocurrency liabilities" (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors or other applicable banking regulator. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (i) any category of liabilities which includes deposits by reference to which the applicable Adjusted Eurodollar Rate or any other interest rate of a Eurodollar Rate Loan is to be determined, or (ii) any category of extensions of credit or other assets which include Eurodollar Rate Loans. A Eurodollar Rate Loan shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credit for proration, exceptions or offsets that may be available from time to time to the applicable Lender. The rate of interest on Eurodollar Rate Loans shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

"**Approved Cash Projections**" means the Initial Approved Cash Projections and the Subsequent Approved Cash Projections, as applicable.

"**Approved Electronic Communications**" means any notice, demand, communication, information, document or other material that any Credit Party provides to Agent pursuant to any Credit Document or the transactions contemplated therein which is distributed to the Agent or to the lenders by means of electronic communications pursuant to Section 10.1(b).

"**Asset Sale**" means a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, exclusive license (as licensor or sublicensor), transfer or other disposition to, or any exchange of property with, any Person (other than Borrower or any Guarantor Subsidiary), in one transaction or a series of transactions, of all or any part of Holdings' or any of its Subsidiaries' businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, including the Equity Interests of any of Holdings' Subsidiaries, other than (i) inventory (or other assets) sold, leased or licensed out in the ordinary course of business (excluding any such sales, leases or licenses out by operations or divisions discontinued or to be discontinued), (ii) sales or other dispositions of obsolete or worn out rigs or (iii) sales, leases or licenses out of other assets for aggregate consideration of less than $100,000 with respect to any transaction or series of related transactions and less than $2,000,000 in the aggregate during any Fiscal Year.

"**Assignment Agreement**" means an Assignment and Assumption Agreement substantially in the form of Exhibit D, with such amendments or modifications as may be approved by Agent.

"**Assignment Effective Date**" as defined in Section 10.6(b).

"**Authorized Officer**" means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president or one of its vice presidents (or the equivalent thereof), and such Person's chief financial officer, controller, assistant controller, treasurer or assistant treasurer.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute; provided, however, that, with respect to the Cases, "Bankruptcy Code" means Title 11 of the United States Code, as in effect on the Petition Date and as thereafter amended, if such amendments are made applicable to the Cases.

"**Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware or any other court having competent jurisdiction over the Cases.

"**Base Rate**" means, for any day, a rate per annum equal to the greatest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus ½ of 1% and (iii) LIBOR for a 30-day interest period commencing on such day plus 1%. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or LIBOR shall be effective on the effective day of such change in the Prime Rate, the Federal Funds Effective Rate or LIBOR, respectively.

"**Base Rate Loan**" means a DIP Loan bearing interest at a rate determined by reference to the Base Rate.

"**Beneficiary**" means Agent and each Lender.

"**BIA**" means the Bankruptcy and Insolvency Act (Canada), as now or hereafter in effect or any successor statute.

"**Board of Governors**" means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"**Borrowers**" as defined in the preamble hereto.

"**Budget**" means a budget which shall reflect projected cash receipts, operating disbursements, payroll disbursements, non-operating disbursements and cash balances, as may be amended, updated or supplemented with the prior consent of the Requisite Lenders in their sole discretion. The Budget will cover the period from the Closing Date through the Maturity Date.

"**Business Day**" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close.

"**Canadian Comeback Order**" means an order of the Canadian Court pursuant to Part IV of the CCAA, together with all extensions, modifications and amendments thereto, in each case in form and substance satisfactory to Requisite Lenders, giving full effect to the Final DIP Order, which order shall specifically but not exclusively provide for a fixed charge, mortgage, hypothec, security interest and lien in favor of the Agent in all of the Collateral in which any of the Canadian Credit Parties now or hereafter has an interest ranking in priority to all other encumbrances.

"**Canadian Court**" means the Ontario Superior Court of Justice (Commercial List).

"**Canadian Credit Party**" means any Credit Party incorporated, organized or otherwise established under the laws of Canada or any political subdivision of Canada.

"**Canadian DIP Charge**" means a fixed charge, mortgage, hypothec, security interest and lien granted in favor of the Agent under either the Canadian Supplemental Order or the Canadian Comeback Order.

"**Canadian DIP Order**" means the Canadian Supplemental Order or the Canadian Comeback Order, as applicable.

"**Canadian Initial Recognition Order**" means an order of the Canadian Court pursuant to Part IV of the CCAA, together with all extensions, modifications and amendments thereto, in each case in form and substance satisfactory to the Requisite Lenders, which, among other matters but not by way of limitation, recognizes the Cases commenced in the U.S. Court and imposes a stay of proceedings against creditors and others in Canada.

"**Canadian Insolvency Law**" shall mean any of the BIA and the CCAA, and any other applicable insolvency or other similar law.

"**Canadian PPSA**" means the Personal Property Security Act (Ontario) and the Regulations thereunder, as from time to time in effect, provided, however, if the validity, perfection (or opposability), effect of perfection or of non-perfection or priority of Agent's security interest in any Collateral are governed by the personal property security laws or laws relating to movable property of any jurisdiction other than Ontario, Canadian PPSA shall mean those personal property security laws or laws relating to movable property in such other jurisdiction for the purpose of the provisions hereof relating to such validity, perfection (or opposability), effect of perfection or of non-perfection or priority and for the definitions related to such provisions.

"**Canadian Subsidiary**" means any Subsidiary that is incorporated, organized or otherwise established under the laws of Canada or any political subdivision of Canada.

"**Canadian Supplemental Order**" means an order of the Canadian Court pursuant to Part IV of the CCAA, together with all extensions, modifications and amendments thereto, in each case in form and substance satisfactory to Requisite Lenders, giving full effect to the Interim DIP Order, which order shall specifically but not exclusively provide for a fixed charge, mortgage, hypothec, security interest and lien in favor of the Agent in all of the Collateral in which any of the Canadian Credit Parties now or hereafter has an interest ranking in priority to all other encumbrances.

"**Capital Expenditures**" means for any period, the sum (without duplication) of all expenditures (whether paid in cash or accrued as liabilities) during such period that are or are required to be treated as capital expenditures under GAAP.

"**Capital Lease**" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"**Carve-Out**" means the following claims: (i) amounts payable pursuant to 28 U.S.C. § 1930(a)(6) and to the clerk of the Bankruptcy Court; (ii) allowed and unpaid fees and expenses that are owed to the attorneys, accountants, other professionals retained in the Cases by the Debtors or any Committee pursuant to Bankruptcy Code sections 327, 328, 330, 331, 363, 503 or 1103 (provided, that amounts payable to the attorneys, accountants, and other professionals retained by any Committee shall not exceed $100,000) and the information officer appointed pursuant to the Canadian Supplemental Order that are incurred from the Consent Date to the date of notice (such notice, the "**Termination Notice**") from the Agent that an Event of Default has occurred and that Borrowers' authorization to use cash collateral and right to request DIP Loans under this Agreement have terminated (all such fees and expenses, whether allowed before or after the date of the Termination Notice, the "**Pre-Termination Notice Date Allowed Fees and Expenses**"); and (iii) allowed and unpaid fees and expenses that are incurred after the date of the Termination Notice (such period, the "**Post-Termination Notice Period**") in an amount of up to (but no more than) $200,000 in the aggregate for the Debtors' professionals and $75,000 in the aggregate for the Committee's professionals, if any, in each case minus any retainers held by the applicable professionals as of the date of the Termination Notice (allowed fees and expenses described in this clause (iii) are referred herein to as the "**Post-Termination Date Allowed Fees and Expenses**," and the fee and expense cap set forth in this clause (iii) is referred to herein as the "**Professional Expense Cap**"); provided, that to be Pre-Termination Notice Allowed Fees and Expenses or Post-Termination Notice Allowed Fees and Expenses, the subject fees and expenses must be owed pursuant to the terms of the applicable professionals' respective engagement letters, retention applications or other agreements of engagement; and provided further that following the delivery of a Termination Notice, any payments actually made to any of the foregoing professionals incurred during such Post-Termination Notice Period pursuant to Bankruptcy Code sections 327, 328, 330, 331, 503 or 1103 or otherwise, shall (A) reduce (1) the Post-Termination Notice Allowed Fees and Expenses on a dollar-for-dollar basis to the extent such payments relate to allowed fees and expenses incurred during the Post-Termination Notice Period and (2) the Pre-Termination Date Allowed Fees and Expenses to the extent such payments relate to allowed fees and expenses incurred prior to the Post-Termination Date Notice Period and (B) not be paid from the proceeds of any DIP Loans or Collateral (including Cash Collateral) until such time as any retainer held by such professional has been reduced to zero by application of such retainer to the Pre-Termination Date Allowed Fees and Expenses or the Post-Termination Notice Allowed Fees and Expenses of such professional, as applicable; provided, further, that except for the Committee Challenge Fees, no portion of the Carve-Out may be used by any person to investigate or pursue any investigation or pursue any claims, causes of action, defenses, counterclaims, litigation or discovery against the Agent, Lenders, those agents and the lenders party to the Existing First Lien Credit Facility (or their respective agents, professionals, employees, officers, subsidiaries, affiliates etc.); provided, further, that Borrowers shall make deposits into the Professional Fee Reserve on or prior to the fifth day and on the twentieth day of every month from which withdrawals shall be taken for the payment of professional fees as set forth above; provided, further, that in the event of any inconsistency in the definition of "Carve-Out" between the provisions of this Agreement and the Interim DIP Order or Final DIP Order, the provisions of the Interim DIP Order or Final DIP Order shall govern.

"**Carve-Out Event**" as defined in Section 8.2.

"**Cases**" as defined in the recitals hereto.

"**Cash**" means money, currency or a credit balance in any demand or Deposit Account.

"**Cash Equivalents**" means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or the Government of Canada or (b) issued by any agency of the United States, in each case maturing within one year after the date of acquisition; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after the date of acquisition and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iii) commercial paper maturing no more than one year from the date of acquisition thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iv) certificates of deposit or bankers' acceptances maturing within one year after the date of acquisition and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (a) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator) and (b) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000; (v) fully collateralized repurchase agreements with a term of not more than 90 days for securities described in clause (i) above and entered into with a financial institution satisfying the criteria of clause (iv) above; and (vi) shares of any money market mutual fund that (a) has substantially all of its assets invested continuously in the types of investments referred to in clauses (i) through (v) above, (b) has net assets of not less than $500,000,000, and (c) has the highest rating obtainable from either S&P or Moody's.

"**CCAA**" means Companies' Creditors Arrangement Act (Canada), as in effect, or any successor statute.

"**Certificate re Non-Bank Status**" means a certificate in form and substance reasonably satisfactory to the Agent and the Borrowers setting forth the information required under 2.17(c).

"**Change of Control**" means (i) Sponsor and its Controlled Investment Affiliates shall not beneficially own and control at least 40% on a fully diluted basis of the economic and voting interests in the Equity Interests of Holdings, (ii) Sponsor and its Controlled Investment Affiliates fail to elect a majority of the members of the board of directors (or similar governing body) of Holdings or (iii) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) shall at any time have acquired beneficial ownership on a fully diluted basis of the voting and/or economic interests in the Equity Interests of Holdings greater than the beneficial ownership on a fully diluted basis of the voting and/or economic interests in the Equity Interests of Holdings owned by the Sponsor and its Controlled Investment Affiliates at such time; (ii) Holdings shall cease to beneficially own and control, directly or indirectly, 100% on a fully diluted basis of the economic and voting interest in the Equity Interests of Systems; (iii) the majority of the seats (other than vacant seats) on the board of directors (or similar governing body) of Holdings cease to be occupied by Persons who either (a) were members of the board of directors of Holdings on the Closing Date or (b) were nominated for election by the board of directors of Holdings, a majority of whom were directors on the Closing Date or whose election or nomination for election was previously approved by a majority of such directors.

"**Claim**" has the meaning specified in Section 101(5) of the Bankruptcy Code.

"**Closing Date**" means June 12, 2012.

"**Closing Date Certificate**" means a Closing Date Certificate substantially in the form of Exhibit F.

"**Collateral**" means, collectively, all of the real, personal and mixed property (including Equity Interests) in which Liens are purported to be granted pursuant to this Agreement or the Collateral Documents as security for the Obligations.

"**Collateral Documents**" means all instruments, documents and agreements delivered by any Credit Party pursuant to this Agreement or any of the other Credit Documents in order to grant to Agent, for the benefit of Secured Parties, or perfect a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations.

"**Commitment**" means the commitment of a Lender to make or otherwise fund any DIP Loan and "**Commitments**" means such commitments of all Lenders in the aggregate. The amount of each Lender's Commitment, if any, is set forth on Appendix A or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Commitments is $20,000,000.

"**Commitment Fee**" as defined in Section 2.8.

"**Commitment Period**" means the period from the Closing Date to and including the Maturity Date.

"**Committee**" means the official committee of unsecured creditors, if any, appointed in the Cases pursuant to Section 1102 of the Bankruptcy Code, as the same may be reconstituted from time to time.

"**Committee Challenge Actions**" as defined in the Interim DIP Order.

"**Committee Challenge Fees**" as defined in the Interim DIP Order.

"**Compliance Certificate**" means a Compliance Certificate substantially in the form of Exhibit C.

"**Consent Date**" has the meaning specified in the recitals to this Agreement.

"**Consolidated Adjusted EBITDA**" means, for any period, an amount determined for Holdings and its Subsidiaries on a consolidated basis equal to (i) Consolidated Net Income for such period, plus, to the extent deducted in determining such Consolidated Net Income, the sum, without duplication, of amounts for (a) Consolidated Interest Expense for such period; (b) consolidated income, single business, franchise, unitary or gross receipt tax expense for such period; (c) total depreciation expense for such period; (d) total amortization expense for such period; (e) the cumulative effect (whether positive or negative) of any change in accounting principles; (f) management fees and expenses incurred during such period; (g) Transaction Costs

incurred during such period; (h) costs and expenses resulting from administrative expenses incurred with respect to the Cases for professional fees and expenses; (i) amounts paid as cure payments or similar costs in connection with assumptions of executory contracts assumed during the Cases or as part of any plan of reorganization; (j) fees and charges related to any events or transactions that are unusual in nature and infrequent in occurrence, in that it is unrelated to, or only incidentally related to, the current ordinary and typical activities of Borrowers and would not reasonably be expected to recur in a normal operating cycle in an amount up to, but not exceeding, $1,000,000 in the aggregate for any periods occurring during any Fiscal Year and, $3,000,000 in the aggregate from the Closing Date to the date of determination; and (k) other non- Cash charges for such period (excluding any such non- Cash charge to the extent that it represents an accrual or reserve for potential Cash payment in any future period or amortization of a prepaid Cash payment that was made in a prior period); minus (ii) to the extent included in determining such Consolidated Net Income, non- Cash gains for such period (excluding any such non- Cash gain to the extent it represents the reversal of an accrual or reserve for potential Cash gain in any prior period).

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

"**Consolidated Current Assets**" means, as at any date of determination, the total assets of Holdings and its Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding Cash and Cash Equivalents.

"**Consolidated Current Liabilities**" means, as at any date of determination, the total liabilities of Holdings and its Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding the current portion of long term debt.

"**Consolidated Interest Expense**" means, for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of Holdings and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of Holdings and its Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit, but excluding, however, any amounts referred to in Section 2.8(b) payable on or before the Closing Date.

"**Consolidated Net Income**" means, for any period, (i) the net income (or loss) of Holdings and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, minus (ii) (a) the income (or loss) of any Person (other than a Subsidiary of Holdings) in which any other Person (other than Holdings or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to Holdings or any of its Subsidiaries by such Person during such period, (b) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of Holdings or is merged into or consolidated with Holdings or any of its Subsidiaries or that Person's assets are acquired by Holdings or any of its Subsidiaries, (c) the income of any Subsidiary of

Holdings to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (d) any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan, and (e) (to the extent not included in clauses (a) through (d) above) any net extraordinary gains or net extraordinary losses.

"**Consolidated Working Capital**" means, as at any date of determination, the excess of Consolidated Current Assets over Consolidated Current Liabilities.

"**Consolidated Working Capital Adjustment**" means, for any period on a consolidated basis, the amount (which may be a negative number) by which Consolidated Working Capital as of the beginning of such period exceeds (or is less than) Consolidated Working Capital as of the end of such period.

"**Contractual Obligation**" means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"**Contributing Guarantors**" as defined in Section 7.2.

"**Controlled Foreign Corporation**" shall mean a "controlled foreign corporation" as defined in the Internal Revenue Code.

"**Counterpart Agreement**" means a Counterpart Agreement substantially in the form of Exhibit G delivered by a Credit Party pursuant to Section 5.9.

"**Conversion/Continuation Date**" means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

"**Conversion/Continuation Notice**" means a Conversion/Continuation Notice substantially in the form of Exhibit A-2.

"**Credit Date**" means the date of a Credit Extension.

"**Credit Document**" means any of this Agreement, the Notes, if any, the Collateral Documents, and all other documents, instruments or agreements executed and delivered by a Credit Party for the benefit of Agent or any Lender in connection herewith.

"**Credit Extension**" means the making of a DIP Loan.

"**Credit Facilities**" means the credit facilities provided by the Lenders pursuant to this Agreement.

"**Credit Party**" means each Borrower and each Guarantor.

"**Debtors**" means Holdings, Systems, and certain Subsidiaries, each as debtor in the Cases under Chapter 11 of the Bankruptcy Code.

"**Default**" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"**Default Excess**" means, with respect to any Defaulting Lender, the excess, if any, of such Defaulting Lender's Pro Rata Share of the aggregate outstanding principal amount of DIP Loans of all Lenders (calculated as if all Defaulting Lenders (including such Defaulting Lender) had funded all of their respective Defaulted Loans) over the aggregate outstanding principal amount of all DIP Loans of such Defaulting Lender.

"**Default Period**" means, with respect to any Defaulting Lender, the period commencing on the date of the applicable Funding Default and ending on the earliest of the following dates: (i) the date on which all Commitments are cancelled or terminated and/or the Obligations are declared or become immediately due and payable, (ii) the date on which (a) the Default Excess with respect to such Defaulting Lender shall have been reduced to zero (whether by the funding by such Defaulting Lender of any Defaulted Loans of such Defaulting Lender or by the non-pro rata application of any voluntary or mandatory prepayments of the DIP Loans in accordance with the terms of Section 2.10 or Section 2.10 or by a combination thereof) and (b) such Defaulting Lender shall have delivered to Borrowers and Agent a written reaffirmation of its intention to honor its obligations hereunder with respect to its Commitments, and (iii) the date on which Borrowers, Agent and Requisite Lenders waive all Funding Defaults of such Defaulting Lender in writing.

"**Defaulted Loan**" as defined in Section 2.19.

"**Defaulting Lender**" as defined in Section 2.19.

"**Deposit Account**" means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

"**DIP Loan**" means a loan made by a Lender to Borrowers pursuant to Section 2.1(a).

"**DIP Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the DIP Loans of such Lender plus the unfunded Commitment of such Lender; provided, at any time prior to the making of the initial DIP Loans, the DIP Loan Exposure of any Lender shall be equal to such Lender's Commitment.

"**DIP Order**" means the Interim DIP Order or the Final DIP Order, as applicable.

"**Disqualified Equity Interests**" means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the

holder thereof (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), in whole or in part, (iii) provides for the scheduled payments or dividends in cash, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Maturity Date.

"**Dollars**" and the sign "**$**" mean the lawful money of the United States of America.

"**Domestic Subsidiary**" means any Subsidiary organized under the laws of the United States of America, any State thereof or the District of Columbia.

"**Eligible Assignee**" means (i) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), and (ii) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans; provided, neither Borrowers nor any of their Subsidiaries shall be an Eligible Assignee.

"**Employee Benefit Plan**" means, in respect of any Credit Party other than a Canadian Credit Party, any "employee benefit plan" as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates, and in respect of any Canadian Credit Party, any employee benefit plan of any nature or kind that is not a Pension Plan or Multiemployer Plan and is maintained by or contributed to, or required to be maintained by or contributed to, by such Canadian Credit Party.

"**Environmental Claim**" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"**Environmental Laws**" means any and all current or future foreign or domestic, federal, state or provincial (or any subdivision of either of them), statutes, ordinances, standards, decrees, orders-in-council, orders, rules, regulations, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and health, industrial hygiene, land use (as it relates to Hazardous Materials) or the protection of human, plant or animal health or welfare (as it relates to Hazardous Materials) or of the environment or natural resources (including ambient air, surface water, groundwater, wetlands, land surface or subsurface strata), in any manner applicable to Holdings or any of its Subsidiaries or any Facility.

"**Equity Interests**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent

ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

"**ERISA Affiliate**" means, as applied to any Person, (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person is a member. Any former ERISA Affiliate of Holdings or any of its Subsidiaries shall continue to be considered an ERISA Affiliate of Holdings or any such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of Holdings or such Subsidiary and with respect to liabilities arising after such period for which Holdings or such Subsidiary are liable under the Internal Revenue Code or ERISA.

"**ERISA Event**" means (i) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation) with respect to which Holdings, any of its Subsidiaries, or any of their respective ERISA Affiliates has or is reasonably expected to have any liability; (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to Holdings, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the occurrence of an act or omission which could give rise to the imposition on Holdings, any of its Subsidiaries or any of their

respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (xi) the imposition of a Lien pursuant to Section 436(f) or 430(k) of the Internal Revenue Code or pursuant to Section 303(j) of ERISA with respect to any Pension Plan.

"**Eurodollar Rate Loan**" means a DIP Loan bearing interest at a rate determined by reference to the Adjusted Eurodollar Rate.

"**Event of Default**" means each of the conditions or events set forth in Section 8.1.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"**Executive Officer**" means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president (or the equivalent thereof), such Person's chief financial officer or treasurer and (except for purposes of Sections 5.2 and 6.7) such Person's vice president of human resources and risk management.

"**Existing Credit Facilities**" has the meaning specified in the recitals to this Agreement.

"**Existing First Lien Credit Facility**" has the meaning specified in the recitals to this Agreement.

"**Existing First Lien Term Loans**" has the meaning specified in the recitals to this Agreement.

"**Existing Priority Liens**" means valid, perfected and non-avoidable liens that are senior to the liens held by the lenders under the First Lien Credit Facility.

"**Existing Second Lien Credit Facility**" has the meaning specified in the recitals to this Agreement.

"Existing Second Lien Term Loans" means term loans in an aggregate original principal amount of $50,000,000 made on May 15, 2007 under the Existing Second Lien Credit Facility.

"**Existing Term Loans**" means the aggregate of the Existing First Lien Term Loans plus the Existing Second Lien Term Loans.

"**Existing Indebtedness**" means all Indebtedness and other Obligations (as defined therein) outstanding under the Existing Credit Facilities and other documents related thereto.

"**Facility**" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Holdings or any of its Subsidiaries or any of their respective predecessors or Affiliates.

"**Fair Share**" as defined in Section 7.2.

"**Fair Share Contribution Amount**" as defined in Section 7.2.

"**Federal Funds Effective Rate**" means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to Agent, in its capacity as a Lender, on such day on such transactions as determined by Agent.

"**Final DIP Order**" means an order (in form and substance substantially similar to the Interim DIP Order and otherwise satisfactory to Requisite Lenders) of the Bankruptcy Court pursuant to Section 364 of the Bankruptcy Code approving this Agreement and the other Credit Documents that (a) has not been modified or amended without the consent of Requisite Lenders, or vacated, reversed, revoked, rescinded, stayed or appealed from, except as Requisite Lenders may otherwise specifically consent, (b) with respect to which the time to appeal, petition for certiorari, application or motion for reversal, rehearing, reargument, stay, or modification has expired, (c) no petition, application or motion for reversal, rehearing, reargument, stay or modification thereof or for a writ of certiorari with respect thereto has been filed or granted or the order or judgment of the Bankruptcy Court has been affirmed by the highest court to which the order or judgment was appealed and (d) is no longer subject to any or further appeal or petition, application or motion for reversal, rehearing, reargument, stay or modification thereof or for any writ of certiorari with respect thereto or further judicial review in any form.

"**Financial Officer Certification**" means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of Holdings that such financial statements fairly present, in all material respects, the financial condition of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

"**First Priority**" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than any Permitted Lien.

"**Fiscal Quarter**" means a fiscal quarter of any Fiscal Year.

"**Fiscal Year**" means the fiscal year of Holdings and its Subsidiaries ending on December 31 of each calendar year.

"**Flood Hazard Property**" means any Real Estate Asset subject to a mortgage in favor of Agent, for the benefit of the Secured Parties, and located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**Funding Default**" as defined in Section 2.19.

"**Funding Guarantors**" as defined in Section 7.2.

"**Funding Notice**" means a notice substantially in the form of Exhibit A.

"**GAAP**" means, subject to the limitations on the application thereof set forth in Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

"**Governmental Acts**" means any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

"**Governmental Authority**" means any federal, state, provincial, municipal, national or other government, governmental department, commission, board, bureau, court, tribunal, agency or instrumentality or political subdivision thereof or any entity, officer or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

"**Governmental Authorization**" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"**Grantors**" means the Credit Parties.

"**Guaranteed Obligations**" as defined in Section 7.1.

"**Guarantor**" means each Domestic Subsidiary of either Borrower and each Canadian Subsidiary of either Borrower, excluding in each case, any Inactive Subsidiary.

"**Guarantor Subsidiary**" means each Guarantor.

"**Guaranty**" means the guaranty of each Guarantor set forth in Section 7.

"**Hazardous Materials**" means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

"**Hazardous Materials Activity**" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"**Highest Lawful Rate**" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

"**Historical Financial Statements**" means as of the Closing Date, (i) the audited financial statements of Holdings and its Subsidiaries, for the Fiscal Years ended December 31, 2009 and December 31, 2010, consisting of balance sheets and the related consolidated statements of income, stockholders' equity and cash flows for such Fiscal Years, (ii) unaudited financial statements for the Fiscal Year ended 2011, consisting of a balance sheet and the related consolidated statements of income, stockholders' equity and cash flows for such Fiscal Year (subject to audit adjustments), (iii) the unaudited financial statements of Holdings and its Subsidiaries as at the most recent Fiscal Quarter ending 45 days or more prior to the Closing Date, consisting of a balance sheet and the related consolidated statements of income, stockholders' equity and cash flows for the twelve month period ending on such date (subject to year-end adjustments), and (iv) the unaudited financial statements of Holdings and its Subsidiaries as at the most recent calendar month ending 45 days or more prior to the Closing Date, consisting of a balance sheet and the related consolidated statements of income, stockholders' equity and cash flows for such month (subject to year-end adjustments) and, in the case of clauses (i), (ii), (iii) and (iv), certified by the chief financial officer of Holdings that they fairly present, in all material respects, the financial condition of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

"**Holdings**" as defined in the preamble hereto.

"**Inactive Subsidiary**" means any Subsidiary of Holdings that has (i) no assets other than de minimus assets not exceeding $250,000, (ii) no revenues and (iii) no income.

"**Increased-Cost Lenders**" as defined in Section 2.20.

"**Indebtedness**", as applied to any Person, means, without duplication, (i) all indebtedness for borrowed money; (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (iii) notes payable and bankers acceptances; (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA), which purchase price is (a) due more than six months from the date of incurrence of the obligation in respect thereof or (b) evidenced by a note or similar written instrument; (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person (other than a Lien on

leased property (real or personal) granted by the landlord or lessor thereof) regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vi) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (vii) Disqualified Equity Interests, (viii) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation which would be Indebtedness of another; (ix) any obligation which would be Indebtedness of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect thereof; (x) any liability of such Person for an obligation which would be Indebtedness of another through any agreement (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this clause (x), the primary purpose or intent thereof is as described in clause (ix) above; and (xi) all obligations which would be Indebtedness of such Person in respect of any exchange traded or over the counter derivative transaction.

"**Indemnified Liabilities**" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), actions, judgments, suits, costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby (including the Lenders' agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)); (ii) the statements contained in the commitment letter delivered by any Lender to Borrowers with respect to the transactions contemplated by this Agreement; or (iii) any Environmental Claim or any Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of Holdings or any of its Subsidiaries.

"**Indemnitee**" as defined in Section 10.3.

"**Initial Approved Cash Projections**" means, if and when approved by Agent, a 13-week cash flow projection for the 13-week period which includes the Closing Date, which shall reflect projected cash receipts, operating disbursements, payroll disbursements, non-operating disbursements and cash balances, and such projections shall be subject to the approval of the Agent in its sole discretion.

"**Intellectual Property**" means, collectively, (i) all United States and foreign copyrights (including Community designs), including but not limited to copyrights in software and databases, and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered, and, with respect to any and all of the foregoing: (A) all registrations and applications therefor, (B) all extensions and renewals thereof, (C) all rights corresponding thereto throughout the world, (D) all rights to sue for past, present and future infringements thereof and (E) all proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages and proceeds of suit; (ii) United States and foreign patents and certificates of invention, or similar industrial property rights, and applications for any of the foregoing, including, but not limited to: (A) each patent and patent application, (B) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof, (C) all rights corresponding thereto throughout the world, (D) all inventions and improvements described therein, (E) all rights to sue for past, present and future infringements thereof, (F) all licenses, claims, damages, and proceeds of suit arising therefrom, and (G) all proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit; (iii) all United States, and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, other source or business identifiers, designs and general intangibles of a like nature, all registrations and applications for any of the foregoing including, but not limited to: (A) all trademark registrations and applications, (B) all extensions or renewals of any of the foregoing, (C) all of the goodwill of the business connected with the use of and symbolized by the foregoing, (D) the right to sue for past, present and future infringement or dilution of any of the foregoing or for any injury to goodwill, and (E) all proceeds of the foregoing, including, without limitation, licenses, royalties. income, payments, claims, damages, and proceeds of suit; (iv) all trade secrets and all other confidential or proprietary information and know-how whether or not such trade secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to such trade secret, including but not limited to (A) the right to sue for past, present and future misappropriation or other violation of any trade secret, and (B) all proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit; and (v) any and all agreements for the granting of any right in or to the items described in clauses (i)-(iv) hereof.

"**Intellectual Property Asset**" means, at the time of determination, any interest (fee, license or otherwise) then owned by any Credit Party in any Intellectual Property.

"**Interest Payment Date**" means with respect to (i) any DIP Loan that is a Base Rate Loan, each January 1, "April 1, July 1 and October 1 of each year, commencing on the first such date to occur after the Closing Date and the Maturity Date; and (ii) any DIP Loan that is a Eurodollar Rate Loan, the last day of each Interest Period applicable to such Eurodollar Rate Loan; provided, in the case of each Interest Period of longer than three months "**Interest Payment Date**"

shall also include each date that is three months, or an integral multiple thereof, after the commencement of such Interest Period.

"**Interest Period**" means, in connection with a Eurodollar Rate Loan, an interest period of one-, two-, three- or six months, as selected by Borrowers in the applicable Funding Notice or Conversion/Continuation Notice, (i) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (ii) thereafter, commencing on the day on which the immediately preceding Interest Period expires, provided, (a) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (c), of this definition, end on the last Business Day of a calendar month; and (c) no Interest Period with respect to any portion of the DIP Loans shall extend beyond the Maturity Date.

"**Interest Rate Determination Date**" means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

"**Interim DIP Order**" means an order (in form and substance satisfactory to Requisite Lenders in their sole discretion) of the Bankruptcy Court pursuant to Sections 361, 362, 363, 364, 503 and 507 of the Bankruptcy Code entered after an interim hearing approving this Agreement and the other Credit Documents, granting the Liens and superpriority administrative claims described herein, granting adequate protection to the agents and lenders of the Existing Credit Facilities and granting certain other relief, as to which no stay has been entered and which has not been reversed, vacated or overturned, and from which no appeal or motion to reconsider has been timely filed, or if timely filed, such appeal or motion to reconsider has been dismissed or denied unless Requisite Lenders waive such requirement, and which has not been amended, supplemented or otherwise modified in any respect adverse to the Lenders without the prior written consent of Requisite Lenders.

"**Internal Revenue Code**" means the Internal Revenue Code of 1986, as amended from time to time hereafter, and any successor statute.

"**Investment**" means (i) any direct or indirect purchase or other acquisition by Holdings or any of its Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person (other than a Guarantor Subsidiary); (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of Holdings from any Person (other than Holdings or any Guarantor Subsidiary), of any Equity Interests of such Person; and (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by Holdings or any of its Subsidiaries to any other Person (other than Holdings or any Guarantor Subsidiary), including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment

plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

"**Joint Venture**" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

"**Leasehold Property**" means any leasehold interest of any Credit Party as lessee under any lease of real property, other than any such leasehold interest designated from time to time by Agent in its sole discretion as not being required to be included in the Collateral.

"**Lender**" means each financial institution listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment Agreement.

"**LIBOR**" means, for any fiscal quarter, the quoted offered rate (expressed in a percentage) for three-month United States dollar deposits with leading banks in the London interbank market that appears as of 11:00 a.m. (London time) initially as of the Closing Date and thereafter on the first LIBOR Business Day of such Fiscal Quarter on the page of the Reuters Screen which displays an average British Bankers Association Interest Settlement Rate (such page currently being LIBOR01 page and formerly Telerate Page 3750), as determined by Agent. The establishment of the LIBOR by Agent shall be final and binding, absent manifest error.

"**LIBOR Business Day**" means a day upon which (i) United States dollar deposits may be dealt in on the London interbank markets and (ii) commercial banks and foreign exchange markets are open in London, England and in New York.

"**Lien**" means (i) any lien, mortgage, pledge, assignment, security interest, hypothec, deemed trust, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease or license in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing and (ii) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

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

"**Material Adverse Effect**" means (i) a material adverse effect on and/or material adverse developments with respect to the business, operations, properties, assets or condition (financial or otherwise) of Holdings and its Subsidiaries taken as a whole; (ii) a material impairment of the ability of Credit Parties to fully and timely perform their Obligations; (iii) a material adverse effect on and/or material adverse developments with respect to the legality, validity, binding effect or enforceability against a Credit Party of a Credit Document to which it is a party; or (iv) a material impairment of the rights, remedies and benefits available to, or conferred upon, Agent and any Lender or any Secured Party under any Credit Document.

"**Material Contract**" means (i) any contract or other arrangement between Holdings or any of its Subsidiaries and their customers that represented 10% or more of the

Consolidated Net Income of Holdings and its Subsidiaries for the most recently ended Fiscal Year and (ii) any collective bargaining agreement to which Holdings or any of its Subsidiaries is a party.

"**Maturity Date**" means the earlier of (i) June 11, 2013, (ii) the date on which a plan of reorganization confirmed in the Cases becomes effective, and (iii) the date that all DIP Loans shall become due and payable in full hereunder whether by acceleration or otherwise.

"**Moody's**" means Moody's Investor Services, Inc.

"**Multiemployer Plan**" means in respect of any Credit Party other than a Canadian Credit Party, any Employee Benefit Plan which is a "multiemployer plan" as defined in Section 3(37) of ERISA and in respect of any Canadian Credit Party, any "multiemployer pension plan" as defined in subsection 1(1) of the Pension Benefits Act (Ontario) or section 2 of the Pensions Benefits Standard Act, 1985 (Canada).

"**NAIC**" means The National Association of Insurance Commissioners, and any successor thereto.

"**Narrative Report**" means, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of Holdings and its Subsidiaries in the form prepared for presentation to senior management thereof for the applicable Fiscal Quarter or Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate.

"**Net Asset Sale Proceeds**" means, with respect to any Asset Sale, an amount equal to: (i) Cash payments (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received by Holdings or any of its Subsidiaries from such Asset Sale, minus (ii) any bona fide direct costs incurred in connection with such Asset Sale, including (a) income or gains taxes payable by the seller as a result of any gain recognized in connection with such Asset Sale, (b) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the DIP Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale and (c) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by Holdings or any of its Subsidiaries in connection with such Asset Sale.

"**Net Cash Proceeds**" means, (i) with respect to any Asset Sale, the Net Asset Sale Proceeds and (ii) with respect to any Recovery Event, the Net Insurance/Condemnation Proceeds.

"**Net Insurance/Condemnation Proceeds**" means, with respect to any Recovery Event, an amount equal to: (i) any Cash payments or proceeds received by Holdings or any of its Subsidiaries in connection with a Recovery Event, minus (ii) (a) any actual and reasonable costs incurred by Holdings or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Holdings or such Subsidiary in respect of such Recovery Event, and (b) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (ii) of the definition of Recovery Event, including income taxes payable as a result of any gain recognized in connection therewith.

"**Non-Consenting Lender**" as defined in Section 2.20.

"**Nonpublic Information**" means information which has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD.

"**Non-US Lender**" as defined in Section 2.17(c).

"**Note**" means a promissory note in the form of Exhibit B, as it may be amended, supplemented or otherwise modified from time to time.

"**Obligations**" means all obligations of every nature of each Credit Party, including obligations from time to time owed to the Agent (including former Agents) or the Lenders under any Credit Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Credit Party, would have accrued on any Obligation, whether or not a claim is allowed against such Credit Party for such interest in the related bankruptcy proceeding).

"**Obligee Credit Party**" as defined in Section 7.7.

"**Organizational Documents**" means (i) with respect to any corporation, its certificate or articles of incorporation, amalgamation or organization, as amended, and its by-laws, as amended, (ii) with respect to any limited partnership, its certificate or declaration of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, (iv) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended, and (v) with respect to an unlimited liability company, its memorandum and articles of association. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"**PBGC**" means the Pension Benefit Guaranty Corporation or any successor thereto.

"**Pension Plan**" means, in respect of any Credit Party other than any Canadian Credit Party, any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA and in respect of any Canadian Credit Party, each pension, supplementary pension, retirement savings or other retirement income plan or arrangement of any kind, registered or non-registered, established, maintained or contributed to by such Canadian Credit Party for its employees or former employees, but does not include a Multiemployer Plan or the Canada Pension Plan or the Quebec Pension Plan that is maintained by the Government of Canada or the Province of Quebec, respectively.

"**Permitted Liens**" means each of the Liens permitted pursuant to Section 6.2.

"**Person**" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, unlimited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust

companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"**Petition Date**" has the meaning specified in the recitals to this Agreement.

"Petitioning Creditors" as defined in the recitals hereto.

"Petitioning Creditor Action" means that certain action entitled *BDCM Opportunity Fund II, LP, et al. v. Yucaipa American Alliance Fund I, LP, et al.*, filed January 18, 2012 and pending in the Supreme Court of the State of New York for the County of New York

"**Platform**" as defined in Section 5.1(o).

"**Prepetition Indebtedness**" means all Indebtedness of any of Borrowers and their Subsidiaries outstanding on the Consent Date immediately prior to the filing of the Cases.

"**Postpetition Liens**" as defined in Section 2.21(d).

"**Prime Rate**" means the rate of interest quoted in *The Wall Street Journal*, Money Rates Section, as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation's thirty (30) largest banks), as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"**Principal Office**" means Agent's "Principal Office" as set forth on Appendix B, or such other office or office of a third party or sub-agent, as appropriate, as such Person may from time to time designate in writing to Borrowers, Agent and each Lender.

"**Pro Rata Share**" means with respect to all payments, computations and other matters relating to the DIP Loan of any Lender, the percentage obtained by dividing (a) the DIP Loan Exposure of that Lender by (b) the aggregate DIP Loan Exposure of all Lenders.

"**Professional Fee Reserve**" means the reserve into which the Debtors shall make deposits on or prior to the fifth day and on the twentieth day of every month from which withdrawals shall be taken for the payment of professional fees in accordance with this Agreement. From and after the date of the Termination Notice, amounts withdrawn from the Professional Fee Reserve may only be applied to pay fees covered by the Carve-Out.

"**Public Information**" means information which has been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD.

"**Quebec Security**" means one or more demand debentures, pledges of debenture and deeds of hypothec, as may be required by Agent in order to grant a First Priority Lien in favor of Agent for the benefit of the Secured Parties in property or assets in which any Canadian Credit Party may have an interest and which is located in the Province of Quebec, in each case, in form

and substance satisfactory to Agent and as may be amended, supplemented or otherwise modified from time to time.

"**Real Estate Asset**" means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by any Credit Party in any real property.

"**Record Document**" means, with respect to any Leasehold Property, (i) the lease evidencing such Leasehold Property or a memorandum thereof, executed and acknowledged by the owner of the affected real property, as lessor, or (ii) if such Leasehold Property was acquired or subleased from the holder of a Recorded Leasehold Interest, the applicable assignment or sublease document, executed and acknowledged by such holder, in each case in form sufficient to give such constructive notice upon recordation and otherwise in form reasonably satisfactory to Agent.

"Recorded Leasehold Interest" means a Leasehold Property with respect to which a Record Document has been recorded in all places necessary or desirable, in Agent's reasonable judgment, to give constructive notice of such Leasehold Property to third-party purchasers and encumbrancers of the affected real property.

"**Recovery Event**" means (i) any settlement of or payment in respect of any property or casualty insurance claim in respect of a covered loss thereunder or (ii) as a result of the taking of any assets of Holdings or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking.

"**Register**" as defined in Section 2.4(b).

"**Regulation D**" means Regulation D of the Board of Governors, as in effect from time to time.

"**Regulation FD**" means Regulation FD as promulgated by the US Securities and Exchange Commission under the Securities Act and Exchange Act as in effect from time to time.

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

"**Release**" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

"**Replacement Lender**" as defined in Seetion 2.20.

"**Requisite Lenders**" means Agent and one or more Lenders having or holding DIP Loan Exposure representing more than 50% of the sum of the aggregate DIP Loan Exposure of all Lenders.

"**Restricted Junior Payment**" means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of Holdings now or hereafter outstanding, except a dividend payable solely in shares of that class of stock to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of Holdings now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock of Holdings now or hereafter outstanding; and (iv) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to the Indebtedness outstanding under the Existing Credit Facilities or any Indebtedness which is subordinated in right of payment to the Obligations (other than the conversion of any of such Indebtedness to common or other Equity Interests of Holdings other than Disqualified Equity Interests).

"**S&P**" means Standard & Poor's Ratings Group, a division of The McGraw Hill Corporation.

"**Secured Parties**" means the Agent and Lenders.

"**Securities**" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

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

"**Sponsor**" means, collectively, Yucaipa American Alliance Fund I, LP and Yucaipa American Alliance (Parallel) Fund I, LP.

"**Subsequent Approved Cash Projections**" means, if and when approved by the Agent, and prior to the end of the period covered by the Initial Approved Cash Projections and each additional Approved Cash Projections, the Borrowers shall deliver a 13-week cash flow projection for the next subsequent 13-week period, which shall reflect projected cash receipts, operating disbursements, payroll disbursements, non-operating disbursements and cash balances, and such cash projections shall be subject to the approval of the Agent in its sole discretion.

"**Subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, unlimited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other

Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

"**Systems**" as defined in the preamble hereto.

"**Tax**" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed; provided, "Tax on the overall net income" of a Person shall be construed as a reference to a tax imposed by the jurisdiction in which that Person is organized or in which that Person's applicable principal office (and/or, in the case of a Lender, its lending office) is located or in which that Person (and/or, in the case of a Lender, its lending office) is deemed to be doing business on all or part of the net income, profits or gains (whether worldwide, or only insofar as such income, profits or gains are considered to arise in or to relate to a particular jurisdiction, or otherwise) of that Person (and/or, in the case of a Lender, its applicable lending office).

"**Terminated Lender**" as defined in Section 2.20.

"**Transaction Costs**" means the fees, costs and expenses incurred by Borrowers, or any of Subsidiaries of Borrowers on or before the Closing Date in connection with the transactions contemplated by the Credit Documents.

"**ULC**" means an issuer of shares that is an unlimited company, unlimited liability company or unlimited liability corporation as set forth in Section 8.2.

"**ULC Beneficiary**" as defined in Section 8.2

"**ULC Laws**" as defined in Section 8.2

"**ULC Shares**" as defined in Section 8.2

"**UCC**" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

"**U.S. Lender**" as defined in Section 2.17(c).

"**Useful Assets**" means, in the case of an Asset Sale, assets useful in the business of Holdings and its Subsidiaries and, in the case of a Recovery Event, long term or otherwise non-current productive assets of the general type used in the business of Holdings and its Subsidiaries.

1.2 Accounting Terms. (a) Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Holdings to Lenders pursuant to Section 5.1(a), 5.1(b) and 5.1(c) shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.1(e), if applicable).

(b) If at any time any change in GAAP or the adoption of fresh-start accounting would affect the computation of any financial ratio or requirement set forth in this Agreement and either Borrowers or the Requisite Lenders shall so request, Agent and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change or such adoption of fresh-start accounting (subject to the approval of the Requisite Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP, as applicable, prior to such change therein and (ii) Borrowers shall provide the reconciliation statements required by Section 5.1(e).

1.3 Interpretation, etc. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The terms lease and license shall include sub-lease and sub-license, as applicable.

SECTION 2. DIP LOANS

2.1 DIP Loans.

(a) Commitments. Subject to the terms and conditions hereof, during the Commitment Period, each Lender severally agrees to make DIP Loans to Borrowers in an aggregate amount up to but not exceeding such Lender's Commitment; provided that after giving effect to the making of any DIP Loans in no event shall the amount of DIP Loans made hereunder exceed the Commitments then in effect. Any amount borrowed under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Sections 2.9 and 2.10, all amounts owed hereunder with respect to the DIP Loans shall be paid in full no later than the Maturity Date.

(b) Borrowing Mechanics for DIP Loans.

(i) DIP Loans shall be made in an aggregate minimum amount of $1,000,000 and integral multiples of $500,000 in excess of that amount.

(ii) An initial draw of $5,000,000 of the Commitment will be permitted immediately upon entry of the Interim DIP Order subject to the satisfaction (or waiver) of the conditions set forth in Section 3.1. Thereafter, whenever any Borrower desires that Lenders make a DIP Loan, such Borrower shall deliver to Agent a fully executed and delivered Funding Notice no later than 11:00 a.m. (New York City time) at least three Business Days in advance of the proposed Credit Date.

(iii) The Borrowers shall use cash collateral prior to using the proceeds of draws on the DIP Loans, with draws being permitted to be made to the extent

that the amount of cash on hand minus cash disbursements as reflected in the Approved Cash Projections for the then current week and the next week plus deposits to be made into the Professional Fee Reserve in the current week and the next week is less than $5,000,000.

(iv) Notice of receipt of each Funding Notice, together with the amount of each Lender's Pro Rata Share thereof, if any, together with the applicable interest rate, shall be provided by Agent to each applicable Lender by telefacsimile with reasonable promptness, but (provided Agent shall have received such notice by 11:00 a.m. (New York City time)) not later than 2:00 p.m. (New York City time) on the same day as Agent's receipt of such Funding Notice from such Borrower.

(v) Each Lender shall make its DIP Loan available to Agent not later than 1:00 p.m. (New York City time) on the applicable Credit Date, by wire transfer of same day funds in Dollars, at the Principal Office designated by Agent. Upon satisfaction or waiver of the conditions precedent specified herein, Agent shall make the proceeds of the DIP Loans available to Borrowers on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such DIP Loans received by Agent from Lenders to be credited to the account of Borrowers at the Principal Office designated by Agent or to such other account as may be designated in writing to Agent by Borrowers.

2.2 Pro Rata Shares; Availability of Funds.

(a) Pro Rata Shares. All DIP Loans shall be made, and all participations purchased, by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a DIP Loan requested hereunder or purchase a participation required hereby nor shall any Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a DIP Loan requested hereunder or purchase a participation required hereby.

(b) Availability of Funds. Unless Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to Agent the amount of such Lender's DIP Loan requested on such Credit Date, Agent may assume that such Lender has made such amount available to Agent on such Credit Date and Agent may, in its sole discretion, but shall not be obligated to, make available to Borrowers a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to Agent by such Lender, Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to Agent, at the customary rate set by Agent for the correction of errors among banks for three Business Days. If such Lender does not pay such corresponding amount forthwith upon Agent's demand therefor, Agent shall promptly notify Borrowers and Borrowers shall immediately pay such corresponding amount to Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to Agent, at the rate payable hereunder for the applicable DIP Loans. Nothing in this Section 2.2(b) shall be deemed to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that Borrowers may have against any Lender as a result of any default by such Lender hereunder.

2.3 Use of Proceeds. The proceeds of the DIP Loans shall be applied by Borrowers to pay certain fees and expenses relating to the credit facilities established hereunder and for working capital and general corporate purposes of Holdings and its Subsidiaries. No portion of the proceeds of any Credit Extension shall be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act. Nothing herein shall in any way prejudice or prevent any Agent or the Lenders from objecting, for any reason, to any requests, motions, or applications made in the Bankruptcy Court, including any application of final allowances of compensation for services rendered or reimbursement of expenses incurred under Sections 105(a), 330 or 331 of the Bankruptcy Code, by any party in interest. Holdings and its Subsidiaries shall not use the proceeds of the DIP Loans for any purpose that is prohibited under the Bankruptcy Code. Except in connection with any Committee Challenge Action, and expressly subject to the limits of Committee Challenge Fees, no proceeds of the DIP Loans may be used by any party to (a) investigate or pursue any claims, causes of action, defenses, counterclaims, litigation or discovery against the Agent, the Lenders, any lenders or any agent under either of the Existing Credit Facilities (or their respective agents, professionals, employees, officers, subsidiaries, affiliates etc.) or (b) pay any or all claims for fees and expenses of any other person or entity, in connection with the investigation of, the assertion of or joinder in any claim, cause of action, counterclaim, action, proceeding, application, litigation, motion, objection, defense or other contested matter, the purpose of which is to seek or the result of which would be to obtain any order, judgment, determination, declaration or similar relief: (x) invalidating, setting aside, avoiding, recharacterizing or subordinating, in whole or in part, any claim, indebtedness, liens and/or security interests of the Agent, the Lenders, any agents or lenders under either of the Existing Credit Facilities; or (y) objecting to or commencing any action that prevents or affirmatively delays the exercise by the Agent, the Lenders, or any agent or lenders under either of the Existing Credit Facilities of any of their respective rights and remedies under any agreement or document or the Interim DIP Order or the Final DIP Order or (z) seeking any affirmative legal or equitable remedy against the Agent, the Lenders, or any agents or lenders under either of the Existing Credit Facilities (or their respective agents, professionals, advisors, representatives, officers, directors, employees, managers, members, shareholders, equity holders, subsidiaries, affiliates, successor and assigns).

2.4 Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Borrowers to such Lender, including the amounts of the DIP Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Borrowers, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or Borrowers' Obligations in respect of any applicable DIP Loans; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. Agent (or its agent or sub-agent appointed by it) shall maintain at the Principal Office a register for the recordation of the names and addresses of Lenders, the Commitments and DIP Loans of each Lender from time to time (the "**Register**"). The Register shall be available for inspection by Borrowers or any Lender (with respect to any entry relating to

such Lender's Commitments or DIP Loans) at any reasonable time and from time to time upon reasonable prior notice. Agent shall record, or shall cause to be recorded, in the Register the Commitments and the DIP Loans of each Lender, each in accordance with the provisions of Section 10.6, and each repayment or prepayment in respect of the principal amount of the DIP Loans, and any such recordation shall be conclusive and binding on Borrowers and each Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or Borrowers' Obligations in respect of any DIP Loan. Borrowers hereby designate Yucaipa American Alliance Fund II, LLC to serve as Borrowers' agent solely for purposes of maintaining the Register as provided in this Section 2.4, and Borrowers hereby agree that, to the extent Yucaipa American Alliance Fund II, LLC serves in such capacity, Yucaipa American Alliance Fund II, LLC and its officers, directors, employees, agents, sub-agents and affiliates shall constitute "Indemnitees."

(c) Notes. If so requested by any Lender by written notice to Borrowers (with a copy to Agent) at least two Business Days prior to the Closing Date, or at any time thereafter, Borrowers shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Borrower's receipt of such notice) a Note or Notes to evidence such Lender's DIP Loan.

2.5 Interest on DIP Loans.

(a) Except as otherwise set forth herein, the DIP Loans shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) if a Base Rate Loan, at (A) the greater of (x) three and one-half percent (3.50%) and (y) the Base Rate plus (B) six and one-half percent (6.50%), and

(ii) if a Eurodollar Rate Loan, at (A) the greater of (x) two and one-half percent (2.50%) and (y) the Adjusted Eurodollar Rate plus (B) seven and one-half percent (7.50%)

(b) The basis for determining the rate of interest with respect to any DIP Loan, and the Interest Period with respect to any Eurodollar Rate Loan, shall be selected by Borrowers and notified to Agent and Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice. If on any day a DIP Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such DIP Loan shall be a Base Rate Loan.

(c) In connection with Eurodollar Rate Loans there shall be no more than five (5) Interest Periods outstanding at any time. In the event Borrowers fail to specify between a Base Rate Loan or a Eurodollar Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, such DIP Loan (if outstanding as a Eurodollar Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then current Interest Period for such DIP Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base

Rate Loan). In the event Borrowers fail to specify an Interest Period for any Eurodollar Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, Borrowers shall be deemed to have selected an Interest Period of one month. As soon as practicable after 11:00 a.m. (New York City time) on each Interest Rate Determination Date, Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurodollar Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to Borrowers and each Lender.

(d) Interest payable pursuant to Section 2.9(a) shall be computed (i) in the case of Base Rate Loans on the basis of a 365 day or 366 day year, as the case may be, and (ii) in the case of Eurodollar Rate Loans, on the basis of a 360 day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any DIP Loan, the date of the making of such DIP Loan or the first day of an Interest Period applicable to such DIP Loan or, with respect to a Base Rate Loan being converted from a Eurodollar Rate Loan, the date of conversion of such Eurodollar Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such DIP Loan or the expiration date of an Interest Period applicable to such DIP Loan or, with respect to a Base Rate Loan being converted to a Eurodollar Rate Loan, the date of conversion of such Base Rate Loan to such Eurodollar Rate Loan, as the case may be, shall be excluded; provided, if a DIP Loan is repaid on the same day on which it is made, one day's interest shall be paid on that DIP Loan.

(e) Except as otherwise set forth herein, interest on each DIP Loan (i) shall accrue on a daily basis and shall be payable in arrears on each Interest Payment Date with respect to interest accrued on and to each such payment date; (ii) shall accrue on a daily basis and shall be payable in arrears upon any prepayment of that DIP Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) shall accrue on a daily basis and shall be payable in arrears at maturity of the DIP Loans, including final maturity of the DIP Loans.

(f) If any requirement of law or any change therein or in the interpretation or application thereof, shall hereafter make it unlawful for any Lender in good faith to make or maintain the DIP Loans bearing interest with reference to Adjusted Eurodollar Rate, then upon notice to the Borrowers by Agent or any Lender, all DIP Loans that are Eurodollar Rate Loans shall automatically convert to Base Rate Loans on the next succeeding Interest Payment Date or earlier period as required by applicable law. Until such notice is revoked, all DIP Loans shall be Base Rate Loans.

(g) For purposes of disclosure pursuant to the Interest Act (Canada), the annual rates of interest or fees to which the rates of interest or fees provided in this Agreement and the other Credit Documents (and stated herein or therein, as applicable, to be computed on the basis of a period of time less than a calendar year) are equivalent are the rates so determined multiplied by the actual number of days in the applicable calendar year and divided by the number of days in such period of time.

2.6 Conversion/Continuation.

(a) Subject to Section 2.15 and so long as no Default or Event of Default shall have occurred and then be continuing, Borrowers shall have the option:

(i) to convert at any time all or any part of any DIP Loan equal to $1,000,000 and integral multiples of $250,000 in excess of that amount from one Type of DIP Loan to another Type of DIP Loan; provided, a Eurodollar Rate Loan may only be converted on the expiration of the Interest Period applicable to such Eurodollar Rate Loan unless Borrowers shall pay all amounts due under Section 2.15 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any Eurodollar Rate Loan, to continue all or any portion of such DIP Loan equal to $1,000,000 and integral multiples of $250,000 in excess of that amount as a Eurodollar Rate Loan.

(b) Borrowers shall deliver a Conversion/Continuation Notice to Agent no later than 11:00 a.m. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a Eurodollar Rate Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any Eurodollar Rate Loans (or telephonic notice in lieu thereof) shall be irrevocable on and after the related Interest Rate Determination Date, and Borrowers shall be bound to effect a conversion or continuation in accordance therewith.

2.7 Default Interest. The principal amount of all DIP Loans outstanding and not paid when due and, to the extent permitted by applicable law, any interest payments on the DIP Loans or any fees or other amounts owed hereunder and not paid when due, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable on demand at a rate that is 2% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable DIP Loans (or, in the case of any such fees and other amounts, at a rate which is 2% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans); provided, in the case of Eurodollar Rate Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such Eurodollar Rate Loans shall thereupon become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate which is 2% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.7 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Agent or any Lender.

2.8 Fees.

(a) Borrowers agree to pay to Lenders a fee (the "**Commitment Fee**") equal to 0.75% per annum multiplied by the average undrawn portion of the DIP Loans. The Commitment Fee is payable on the first day of each calendar month for the prior month.

(b) In addition to any the foregoing fees, Borrowers agree to pay to Agents such other fees in the amounts and at the times separately agreed upon.

2.9 Scheduled Payments. The principal amount of the DIP Loans, together with all other amounts owed hereunder with respect thereto, shall be paid in full no later than the Maturity Date.

2.10 Voluntary Prepayments/Commitment Reductions.

(a) Voluntary Prepayments.

(i) Any time and from time to time, Borrowers may prepay any such DIP Loans on any Business Day in whole or in part, in an aggregate minimum amount of $1,000,000 and integral multiples of $250,000 in excess of that amount.

(ii) All such prepayments shall be made upon not less than (A) in the case of Base Rate Loans, one Business Day's and (B) in the case of Eurodollar Rate Loans, three Business Days', prior written or telephonic notice given to Agent by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed in writing to Agent (and Agent will promptly transmit such telephonic or original notice for DIP Loans by telefacsimile or telephone to each Lender). Upon the giving of any such notice, the principal amount of the DIP Loans specified in such notice shall become due and payable on the prepayment date specified therein; provided that if specified in such notice that such prepayment is being made with the proceeds of another transaction, such prepayment may be contingent on the closing of such other transaction; provided further, that Borrowers shall pay any amounts payable pursuant to Section 2.15(c) upon the failure of Borrowers to make such prepayment on the date specified in such notice. Any such voluntary prepayment shall be applied as specified in Section 2.12.

(b) Voluntary Commitment Reductions.

(i) Borrowers may, upon not less than three Business Days' prior written or telephonic notice confirmed in writing to Agent (which original written or telephonic notice Agent will promptly transmit by telefacsimile or telephone to each applicable Lender), at any time and from time to time permanently reduce in part, without premium or penalty, the Commitments; provided, any such reduction of the Commitments shall be in an aggregate minimum amount of $1,000,000 and integral multiples of $250,000 in excess of that amount.

(ii) Any Borrower's notice to Agent shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of Commitments shall be effective on the date specified in such Borrower's notice and shall reduce the Commitment of each Lender proportionately to its Pro Rata Share thereof.

2.11 Mandatory Prepayments.

(a) Asset Sales; Insurance/Condemnation Proceeds. If on any date Holdings or any of its Subsidiaries shall receive Net Cash Proceeds from any Asset Sale or Recovery Event, then such Net Cash Proceeds shall be applied not later than on the third Business Day following the receipt of such Net Cash Proceeds as set forth in Section 2.12.

(b) Prepayment Certificate. Concurrently with any prepayment of the DIP Loans pursuant to Section 2.11, Holdings shall deliver to Agent a certificate of an Authorized Officer demonstrating the calculation of the amount of the applicable net proceeds. In the event that Holdings shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Holdings shall promptly make an additional prepayment of the DIP Loans in an amount equal to such excess, and Holdings shall concurrently therewith deliver to Agent a certificate of an Authorized Officer demonstrating the derivation of such excess.

2.12 Application of Prepayments.

(a) Application of Voluntary Prepayments. Any prepayment of any DIP Loan pursuant to Section 2.10 shall be applied as specified by Borrowers in the applicable notice of prepayment; provided, in the event Borrowers fail to specify the DIP Loans to which any such prepayment shall be applied, such prepayment shall be applied to prepay the DIP Loans on a pro rata basis.

(b) Application of Mandatory Prepayments. Any amount required to be paid pursuant to Sections 2.10 shall be applied to prepay the DIP Loans on a pro rata basis.

(c) Application of Prepayments of DIP Loans to Base Rate Loans and Eurodollar Rate Loans. Any prepayment of DIP Loans shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case in a manner which minimizes the amount of any payments required to be made by Borrowers pursuant to Section 2.15(c).

2.13 General Provisions Regarding Payments.

(a) All payments by Borrowers of principal, interest, fees and other Obligations shall be made in Dollars in same day funds, without defense, setoff or counterclaim, free of any restriction or condition, and delivered to Agent not later than 12:00 p.m. (New York City time) on the date due at the Principal Office designated by Agent for the account of Lenders; for purposes of computing interest and fees, funds received by Agent after that time on such due date shall be deemed to have been paid by Borrowers on the next succeeding Business Day.

(b) All payments in respect of the principal amount of any DIP Loan shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any DIP Loan on a date when interest is due and payable with respect to such DIP Loan) shall be applied to the payment of interest then due and payable before application to principal.

(c) Agent (or its agent or sub-agent appointed by it) shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with

all other amounts due thereto, including all fees payable with respect thereto, to the extent received by Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/ Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any Eurodollar Rate Loans, Agent shall give effect thereto in apportioning payments received thereafter.

(e) Whenever any payment to be made hereunder with respect to any DIP Loan shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day.

(f) Agent shall deem any payment by or on behalf of Borrowers hereunder that is not made in same day funds prior to 12:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Agent shall give prompt telephonic notice to Borrowers and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.7 from the date such amount was due and payable until the date such amount is paid in full.

(g) If an Event of Default shall have occurred and not otherwise been waived and the maturity of the Obligations shall have been accelerated pursuant to Section 8.1, or as to any mandatory prepayments under Section 2.10 at any time after an Event of Default shall have occurred and not otherwise been waived in accordance with the terms hereof, then, in each case, all payments or proceeds received by Agent hereunder in respect of any of the Obligations, shall be applied as set forth in this Section 8.1 of this Agreement.

2.14 Ratable Sharing. Except as provided in Sections 2.16, 2.19, 10.6(j)(iii) or 10.6(k)(i), the Lenders hereby agree among themselves that if any of them shall, whether by voluntary or mandatory payment (other than a voluntary or mandatory prepayment of DIP Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the "**Aggregate Amounts Due**" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts

Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of any Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Each Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, set-off or counterclaim with respect to any and all monies owing by Borrowers to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

2.15 Making or Maintaining Eurodollar Rate Loans.

(a) Inability to Determine Applicable Interest Rate. In the event that Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to any Eurodollar Rate Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such DIP Loans on the basis provided for in the definition of Adjusted Eurodollar Rate, Agent shall on such date give notice (by telefacsimile or by telephone confirmed in writing) to Borrowers and each Lender of such determination, whereupon (i) no DIP Loans may be made as, or converted to, Eurodollar Rate Loans until such time as Agent notifies Borrowers and Lenders that the circumstances giving rise to such notice no longer exist, and (ii) any Funding Notice or Conversion/Continuation Notice given by Borrowers with respect to the DIP Loans in respect of which such determination was made shall be deemed to be a Funding Notice for or Conversion/Continuation Notice into Base Rate Loans.

(b) Illegality or Impracticability of Eurodollar Rate Loans. In the event that on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with Borrowers and Agent) that the making, maintaining or continuation of its Eurodollar Rate Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the London interbank market or the position of such Lender in that market, then, and in any such event, such Lender shall be an "**Affected Lender**" and it shall on that day give notice (by telefacsimile or by telephone confirmed in writing) to Borrowers and Agent of such determination (which notice Agent shall promptly transmit to each other Lender). Thereafter (1) the obligation of the Affected Lender to make DIP Loans as, or to convert DIP Loans to, Eurodollar Rate Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (2) to the extent such determination by the Affected Lender relates to a Eurodollar Rate Loan then being requested by Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, the Affected Lender shall make such DIP Loan as (or continue such DIP Loan as or convert such DIP Loan to, as the case may be) a Base Rate Loan, (3) the Affected Lender's obligation to maintain its outstanding Eurodollar Rate Loans (the "**Affected Loans**") shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (4) the Affected Loans shall

automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a Eurodollar Rate Loan then being requested by any Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, such Borrower shall have the option, subject to the provisions of Section 2.18(c), to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving notice (by telefacsimile or by telephone confirmed in writing) to Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Agent shall promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this Section 2.15(b) shall affect the obligation of any Lender other than an Affected Lender to make or maintain DIP Loans as, or to convert DIP Loans to, Eurodollar Rate Loans in accordance with the terms hereof.

(c) Compensation for Breakage or Non-Commencement of Interest Periods. Borrowers shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid by such Lender to Lenders of funds borrowed by it to make or carry its Eurodollar Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender may sustain: (i) if for any reason (other than a default by such Lender or a rescission pursuant to Section 2.15(b)) a borrowing of any Eurodollar Rate Loan does not occur on a date specified therefor in a Funding Notice or a telephonic request for borrowing, or a conversion to or continuation of any Eurodollar Rate Loan does not occur on a date specified therefor in a Conversion/Continuation Notice or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its Eurodollar Rate Loans occurs on a date prior to the last day of an Interest Period applicable to that DIP Loan; or (iii) if any prepayment of any of its Eurodollar Rate Loans is not made on any date specified in a notice of prepayment given by any Borrower.

(d) Booking of Eurodollar Rate Loans. Any Lender may make, carry or transfer Eurodollar Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Assumptions Concerning Funding of Eurodollar Rate Loans. Calculation of all amounts payable to a Lender under this Section 2.15 and under Section 2.16 shall be made as though such Lender had actually funded each of its relevant Eurodollar Rate Loans through the purchase of a Eurodollar deposit bearing interest at the rate obtained pursuant to clause (i) of the definition of Adjusted Eurodollar Rate in an amount equal to the amount of such Eurodollar Rate Loan and having a maturity comparable to the relevant Interest Period and through the transfer of such Eurodollar deposit from an offshore office of such Lender to a domestic office of such Lender in the United States of America; provided, however, each Lender may fund each of its Eurodollar Rate Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 2.15 and under Section 2.16.

2.16 Increased Costs; Capital Adequacy.

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of Section 2.17 (which shall be controlling with respect to the matters covered thereby), in the event

that any Lender shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a court or Governmental Authority, in each case that becomes effective after the date hereof, or compliance by such Lender with any guideline, request or directive issued or made after the date hereof by any central bank or other governmental or quasi-governmental authority (whether or not having the force of law): (i) subjects such Lender (or its applicable lending office) to any additional Tax (other than any Tax on the overall net income of such Lender) with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder or any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to Eurodollar Rate Loans that are reflected in the definition of Adjusted Eurodollar Rate); or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or its obligations hereunder or the London interbank market; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining DIP Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) with respect thereto; then, in any such case, Borrowers shall promptly pay to such Lender, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender shall deliver to Borrowers (with a copy to Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this Section 2.16(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Lender shall have determined that the adoption, effectiveness, phase-in or applicability after the Closing Date of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its applicable lending office) with any guideline, request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of, or with reference to, such Lender's DIP Loans or participations therein or other obligations hereunder with respect to the DIP Loans to a level below that which such Lender or such controlling corporation could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling corporation with regard to capital adequacy), then from time to time, within five Business Days after receipt by Borrowers from such Lender of the statement referred to in the next sentence, Borrowers shall pay

to such Lender such additional amount or amounts as will compensate such Lender or such controlling corporation on an after-tax basis for such reduction. Such Lender shall deliver to Borrowers (with a copy to Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.16(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(c) Notice. Failure or delay on the part of any Lender to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital shall not constitute a waiver of such Lender's right to demand such compensation; provided that Borrowers shall not be under any obligation to compensate any Lender under paragraph (a) or (b) of this Section 2.16 with respect to increased costs or reductions with respect to any period prior to the date that is 180 days prior to the date of the delivery of the statement required pursuant to paragraph (a) or (b); provided further that the foregoing limitation shall not apply to any increased costs or reductions arising out of the retroactive application of any change in any law, treaty, governmental rule, regulation or order within such 180-day period.

2.17 Taxes; Withholding, etc.

(a) Payments to Be Free and Clear. All sums payable by any Credit Party hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax (other than a Tax on the overall net income of any Lender) imposed, levied, collected, withheld or assessed by or within the United States of America or any political subdivision in or of the United States of America or by or within any other jurisdiction from or to which a payment is made by or on behalf of any Credit Party or by any federation or organization of which the United States of America or any such jurisdiction is a member at the time of payment.

(b) Withholding of Taxes. If any Credit Party or any other Person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by any Credit Party to or for the benefit of Agent or any Lender under any of the Credit Documents: (i) Borrowers shall notify Agent of any such requirement or any change in any such requirement as soon as Borrowers become aware of it; (ii) Borrowers shall pay or cause to be paid any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Credit Party) for its own account or (if that liability is imposed on Agent or such Lender, as the case may be) on behalf of and in the name of Agent or such Lender; (iii) the sum payable by such Credit Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within thirty days after paying any sum from which it is required by law to make any deduction or withholding, and within thirty days after the due date of payment of any Tax which it is required by clause (ii) above to pay, Borrowers shall deliver to Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority; provided, no such additional amount shall be required to be paid to any Lender under clause (iii) above except to the extent that any change after the date hereof (in the case of each Lender listed on the signature pages hereof on the Closing Date) or after the effective date of the Assignment Agreement pursuant to

which such Lender became a Lender (in the case of each other Lender) in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in an increase in the rate of such deduction, withholding or payment from that in effect at the date hereof or at the date of such Assignment Agreement, as the case may be, in respect of payments to such Lender.

(c) Evidence of Exemption From U.S. Withholding Tax. Each Lender that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a "**Non-US Lender**") shall deliver to Agent for transmission to Borrowers, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Borrowers or Agent (each in the reasonable exercise of its discretion), (i) two original copies of Internal Revenue Service Form W-8BEN or W-8ECI (or any successor forms), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrowers to establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Credit Documents, or (ii) if such Lender is not a "bank" or other Person described in Section 881(c)(3) of the Internal Revenue Code and cannot deliver either Internal Revenue Service Form W-8ECI pursuant to clause (i) above, a Certificate re Non-Bank Status together with two original copies of Internal Revenue Service Form W-8BEN (or any successor form), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrowers to establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Lender of interest payable under any of the Credit Documents. Each Lender that is a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for United States federal income tax purposes (a "**U.S. Lender**") shall deliver to Agent and Borrowers on or prior to the Closing Date (or, if later, on or prior to the date on which such Lender becomes a party to this Agreement) two original copies of Internal Revenue Service Form W-9 (or any successor form), properly completed and duly executed by such Lender, certifying that such U.S. Lender is entitled to an exemption from United States backup withholding tax, or otherwise prove that it is entitled to such an exemption. Each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this Section 2.17(c) hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to Agent for transmission to Borrowers two new original copies of Internal Revenue Service Form W-8BEN or W-8ECI , or a Certificate re Non-Bank Status and two original copies of Internal Revenue Service Form W-8BEN (or any successor form), as the case may be, properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrowers to confirm or establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to payments to such Lender under the Credit Documents, or notify Agent and each Borrower of its inability to deliver any such forms, certificates or other evidence. Borrowers shall not be required to pay any additional amount to any Non-US Lender under Section 2.17(b)(iii) if such Lender shall have failed (1) to deliver the forms, certificates or other evidence referred to in

the second sentence of this Section 2.17(c), or (2) to notify Agent and Borrowers of its inability to deliver any such forms, certificates or other evidence, as the case may be; provided, if such Lender shall have satisfied the requirements of the first sentence of this Section 2.17(c) on the Closing Date or on the date of the Assignment Agreement pursuant to which it became a Lender, as applicable, nothing in this last sentence of Section 2.17(c) shall relieve each Borrower of its obligation to pay any additional amounts pursuant this Section 2.17 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender is not subject to withholding as described herein.

2.18 Obligation to Mitigate. Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its DIP Loans becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or would entitle such Lender to receive payments under Section 2.15, 2.16 or 2.17, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (a) make, issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.15, 2.16 or 2.17 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such DIP Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such DIP Loans or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.18 unless each Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Borrowers pursuant to this Section 2.18 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrowers (with a copy to Agent) shall be conclusive absent manifest error.

2.19 Defaulting Lenders. Anything contained herein to the contrary notwithstanding, in the event that any Lender, other than at the direction or request of any regulatory agency or authority, defaults (in each case, a "**Defaulting Lender**") in its obligation to fund (a "**Funding Default**") any DIP Loan (a "**Defaulted Loan**"), then (a) during any Default Period with respect to such Defaulting Lender, such Defaulting Lender shall be deemed not to be a "Lender" for purposes of voting on any matters (including the granting of any consents or waivers) with respect to any of the Credit Documents; (b) such Defaulting Lender's Commitment and outstanding DIP Loans shall be excluded for purposes of calculating the Commitment Fee payable to Lenders in respect of any day during any Default Period with respect to such Defaulting Lender, and such Defaulting Lender shall not be entitled to receive any Commitment Fee with respect to such Defaulting Lender's Commitment in respect of any Default Period with respect to such Defaulting Lender; and (c) the DIP Loan Exposure of all Lenders as at any date of determination shall be calculated as if such Defaulting Lender had funded all Defaulted DIP Loans of such Defaulting Lender. No Commitment of any Lender shall be increased or otherwise affected, and, except as otherwise expressly provided in this Section 2.19, performance by each Borrower of its obligations

hereunder and the other Credit Documents shall not be excused or otherwise modified as a result of any Funding Default or the operation of this Section 2.19. The rights and remedies against a Defaulting Lender under this Section 2.19 are in addition to other rights and remedies which Borrower may have against such Defaulting Lender with respect to any Funding Default and which Agent or any Lender may have against such Defaulting Lender with respect to any Funding Default.

2.20 Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an "**Increased-Cost Lender**") shall give notice to Borrowers that such Lender is an Affected Lender or is entitled to receive payments under Section 2.15, 2.16 or 2.17, (ii) the circumstances which have caused such Lender to be an Affected Lender or which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five Business Days after Borrowers' request for such withdrawal; or (b) (i) any Lender shall become a Defaulting Lender, (ii) the Default Period for such Defaulting Lender shall remain in effect, and (iii) such Defaulting Lender shall fail to cure the default as a result of which it has become a Defaulting Lender within five Business Days after Borrower's request that it cure such default; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.5(b), the consent of Requisite Lenders shall have been obtained but the consent of one or more of such other Lenders (each a "**Non-Consenting Lender**") whose consent is required shall not have been obtained; then, with respect to each such Increased-Cost Lender, Defaulting Lender or Non-Consenting Lender (the "**Terminated Lender**"), Borrowers may, by giving written notice to Agent and any Terminated Lender of their election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding DIP Loans, if any, in full to one or more Eligible Assignees (each a "**Replacement Lender**") in accordance with the provisions of Section 10.6 and Borrowers shall pay or cause to be paid the fees, if any, payable thereunder in connection with any such assignment from an Increased Cost Lender or a Non-Consenting Lender and the Defaulting Lender shall pay the fees, if any, payable thereunder in connection with any such assignment from such Defaulting Lender; provided, (1) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding DIP Loans of the Terminated Lender and (B) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to Section 2.8 and all other amounts owing to such Terminated Lender pursuant to any other provision of any Credit Document; (2) on the date of such assignment, Borrowers shall pay any amounts payable to such Terminated Lender pursuant to Section 2.15, 2.16 or 2.17; or otherwise as if it were a prepayment and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender. Upon the prepayment of all amounts owing to any Terminated Lender and the termination of such Terminated Lender's Commitments, if any, such Terminated Lender shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender.

2.21 Super-Priority Nature of Obligations and Lenders' Liens.

(a) The priority of Agent's and Lenders' Liens on the Collateral owned by the Credit Parties shall be set forth in the Interim DIP Order, the Final DIP Order, the Canadian Supplemental Order and the Canadian Comeback Order.

(b) All Obligations shall constitute administrative expenses of the Credit Parties in the Cases, with administrative priority and senior secured status under Sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code. Subject to the Carve-Out and the Existing Priority Liens, such administrative claim shall have priority over all other costs and expenses of the kinds specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to the entry of the Final DIP Order), 507(a), 507(b), 546(c) (subject to the entry of the Final DIP Order), 726, 1113, 1114 or Chapter 7 of the Bankruptcy Code or any other provision of the Bankruptcy Code or otherwise, and shall at all times be senior to the rights of the Credit Parties, the estates of the Credit Parties, and any successor trustee or estate representative in the Cases, any Chapter 7 trustee, or any subsequent proceeding or case under the Bankruptcy Code or any Canadian Insolvency Law. The Liens granted to Lenders on the Collateral owned by the Credit Parties, and the priorities accorded to the Obligations shall have the priority and senior secured status afforded by Sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code (all as more fully set forth in the Interim DIP Order and Final DIP Order), and the Canadian Court (as more fully set forth in the Canadian Supplemental Order and the Canadian Comeback Order) senior to all claims and interests other than the Carve-Out, Existing Priority Liens and Permitted Senior Liens (to the extent provided for in the DIP Orders and Canadian DIP Orders).

(c) Agent's Liens on the Collateral owned by the Credit Parties and Agent's and Lenders' respective administrative claims under Sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code afforded the Obligations shall also have priority over any claims arising under Section 506(c) of the Bankruptcy Code subject and subordinate only to the Carve-Out and Existing Priority Liens. Except as set forth herein or in the Interim DIP Order, the Final DIP Order, the Canadian Supplemental Order or the Canadian Comeback Order, no other claim having a priority superior or pari passu to that granted to Agent and Lenders by the Interim DIP Order, the Final DIP Order, the Canadian Supplemental Order and the Canadian Comeback Order shall be granted or approved while any Obligations under this Agreement remain outstanding. Except for the Carve Out, no costs or expenses of administration shall be imposed against Agent, Lenders or any of the Collateral under Section 105 or 506(c) of the Bankruptcy Code, or otherwise, and each of the Credit Parties hereby waives for itself and on behalf of its estate in bankruptcy, any and all rights under Section 105 or 506(c), or otherwise, to assert or impose or seek to assert or impose, any such costs or expenses of administration against Agent or the Lenders.

(d) To secure the DIP Loans, each of the Credit Parties hereby grant to the Agent, for the benefit of itself and the Lenders, valid, enforceable, non-avoidable and fully perfected, first priority priming liens on and security interests in (collectively, the "**Postpetition Liens**") all of the real, personal and mixed property and assets of such Credit Party, all other property, assets and interests in property and assets of the Debtors (or any successor trustee or other estate representative in any Chapter 11 case or successor case) and all other "property of the estate" (within the meaning of the Bankruptcy Code) of such Credit Party (or any successor trustee or other estate representative in any Chapter 11 case or successor case), of any kind or nature whatsoever, real, personal or mixed, tangible or intangible now existing or hereafter acquired or created, including, without limitation, all accounts, inventory, goods, contracts, contract rights,

investment property, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, all other intellectual property, general intangibles, payment intangibles, rights, interests, intercompany notes and obligations, tax or other refunds, insurance proceeds, letters of credit, letter-of-credit rights, supporting obligations, documents, titled vehicles, machinery and equipment, real property (including all facilities), fixtures, leases (and proceeds from the disposition thereof), all of the issued and outstanding capital stock entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and all of the issued and outstanding capital stock not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of each Subsidiary of Borrowers (in either case, subject to any express limitations set forth herein), all of the capital stock of all other Persons that are not Subsidiaries directly owned by the Borrowers, money, investment property, deposit accounts, all commercial tort claims and other causes of action (other than causes of action arising under chapter 5 of the Bankruptcy Code, if any, of the Debtors), cash collateral, and all cash and non-cash proceeds, rents, products, substitutions, accessions, and profits of any of the collateral described above. Any terms in this Section 2.21(d) used but not defined in this Agreement shall have the meanings ascribed to them by the UCC. Agent acknowledges and agrees that it has only a security interest in, and not a present assignment of, any trademarks forming a part of the Collateral.

(e) To secure the Guaranteed Obligations of the Canadian Credit Parties, the Agent is hereby granted, for the benefit of itself and the Lenders, valid, enforceable, non-avoidable and fully perfected, first priority priming liens on and security interests in all of the real, personal and mixed property and assets **of the Canadian Credit Parties. In addition, such property and assets of the Canadian Credit Parties are hereby charged by way of hypothec to the extent of an aggregate amount of CDN $25,000,000.00 and interest thereon at a rate of 25% per annum to secure the Guaranteed Obligations** of the Canadian Credit Parties.

2.22 Payment of Obligations. Subject to Section 8.1 hereof, upon the maturity (whether by acceleration or otherwise) of any of the Obligations under this Agreement or any of the other Credit Documents, Lenders shall be entitled to immediate payment of such Obligations without further application to or order of the Bankruptcy Court or the Canadian Court.

2.23 Security Interests in Collateral. The Canadian DIP Charge secures the Guaranteed Obligations of the Canadian Credit Parties. Notwithstanding anything containcd herein to the contrary, the security interest granted under the Canadian DIP Order or granted pursuant to Section 2.23 hereof, shall not include (a) any consumer goods or (b) the last day of tenancy under any lease of real property located in Canada.

2.24 No Discharge; Survival of Claims. The Credit Parties agree that (a) the Obligations hereunder shall not be discharged by (i) the entry of an order confirming a plan of reorganization in any Case (and Credit Parties pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waive any such discharge) or under Canadian Insolvency Law, (ii) converting any of the Cases to a chapter 7 case, (iii) dismissing any of the Cases, or (iv) terminating any of the proceedings under the CCAA in respect of any of the Canadian Credit Parties or the appointment of any monitor, trustee in bankruptcy, interim receiver, receiver or receiver-manager or similar officer or agent with respect to any of the Canadian Credit Parties and (b) the super-priority administrative claim granted to Agent and Lenders pursuant to the Interim DIP Order and the Final DIP Order and the Liens granted to Agent pursuant to the Interim DIP Order, the Final DIP Order,

the Canadian Supplemental Order and the Canadian Comeback Order shall not be affected in any manner by the entry of an order confirming a plan of reorganization in any Case or under Canadian Insolvency Law.

2.25 Waiver of any Priming Rights. Upon the Closing Date, and on behalf of themselves and their estates, and for so long as any Obligations shall be outstanding, Credit Parties hereby irrevocably waives any right, pursuant to Sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the Liens securing the Obligations, or to approve a claim of equal or greater priority than the Obligations, except as expressly permitted under the Interim DIP Order or the Final DIP Order.

2.26 Co-Borrowers.

(a) Joint and Several Liability. All Obligations of Borrowers under this Agreement and the other Credit Documents shall be joint and several Obligations of each Borrower. Anything contained in this Agreement and the other Credit Documents to the contrary notwithstanding, the Obligations of each Borrower hereunder, solely to the extent that such Borrower did not receive proceeds of DIP Loans from any borrowing hereunder, shall be limited to a maximum aggregate amount equal to the largest amount that would not render its Obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of the Bankruptcy Code, 11 U.S.C. § 548, or any applicable provisions of comparable state law (collectively, the "**Fraudulent Transfer Laws**"), in each case after giving effect to all other liabilities of such Borrower, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of such Borrower in respect of intercompany Indebtedness to any other Credit Party or Affiliates of any other Credit Party to the extent that such Indebtedness would be discharged in an amount equal to the amount paid by such Credit Party hereunder) and after giving effect as assets to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation or contribution of such Borrower pursuant to (i) applicable law or (ii) any agreement providing for an equitable allocation among such Borrower and other Affiliates of any Credit Party of Obligations arising under Guaranties by such parties.

(b) Subrogation. Until the Obligations (other than contingent indemnification obligations for which no claim has been made) shall have been paid in full in Cash, each Borrower shall withhold exercise of any right of subrogation, contribution or any other right to enforce any remedy which it now has or may hereafter have against the other Borrower or any other guarantor of the Obligations. Each Borrower further agrees that, to the extent the waiver of its rights of subrogation, contribution and remedies as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any such rights such Borrower may have against the other Borrower, any collateral or security or any such other guarantor, shall be junior and subordinate to any rights Agent may have against the other Borrower, any such collateral or security, and any such other guarantor. Borrowers under this Agreement and the other Credit Documents together desire to allocate among themselves, in a fair and equitable manner, their Obligations arising under this Agreement and the other Credit Documents. Accordingly, in the event any payment or distribution is made on any date by any Borrower under this Agreement and the other Credit Documents (a "**Funding Borrower**") that exceeds its Obligation Fair Share (as defined below) as of such date, that Funding Borrower shall be entitled to a contribution from the

other Borrower in the amount of such other Borrowers' Obligation Fair Share Shortfall (as defined below) as of such date, with the result that all such contributions will cause Borrowers' Obligation Aggregate Payments (as defined below) to equal its Obligation Fair Share as of such date. "**Obligation Fair Share**" means, with respect to a Borrower as of any date of determination, an amount equal to (i) the ratio of (X) the Obligation Fair Share Contribution Amount (as defined below) with respect to such Borrower to (Y) the aggregate of the Obligation Fair Share Contribution Amounts with respect to all Borrowers, multiplied by (ii) the aggregate amount paid or distributed on or before such date by all Funding Borrowers under this Agreement and the other Credit Documents in respect of the Obligations guarantied. "**Obligation Fair Share Shortfall**" means, with respect to a Borrower as of any date of determination, the excess, if any, of the Obligation Fair Share of such Borrower over the Obligation Aggregate Payments of such Borrower. "**Obligation Fair Share Contribution Amount**" means, with respect to a Borrower as of any date of determination, the maximum aggregate amount of the Obligations of such Borrower under this Agreement and the other Credit Documents that would not render its Obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided that, solely for purposes of calculating the Obligation Fair Share Contribution Amount with respect to any Borrower for purposes of this Section 2.26, any assets or liabilities of such Credit Party arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or Obligations of contribution hereunder shall not be considered as assets or liabilities of such Borrower. "**Obligation Aggregate Payments**" means, with respect to a Borrower as of any date of determination, an amount equal to (i) the aggregate amount of all payments and distributions made on or before such date by such Borrower in respect of this Agreement and the other Credit Documents (including in respect of this Section 2.26) minus (ii) the aggregate amount of all payments received on or before such date by such Borrower from the other Borrower as contributions under this Section 2.26. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Borrower. The allocation among Borrowers of their Obligations as set forth in this Section 2.26 shall not be construed in any way to limit the liability of any Borrower hereunder or under any Credit Document.

(c) Representative of Borrowers. Systems hereby appoints Holdings as its agent, attorney-in-fact and representative for the purpose of (i) making any borrowing requests or other requests required under this Agreement, (ii) the giving and receipt of notices by and to Borrowers under this Agreement, (iii) the delivery of all documents, reports, financial statements and written materials required to be delivered by Borrowers under this Agreement, and (iv) all other purposes incidental to any of the foregoing. Systems agrees that any action taken by Holdings as the agent, attorney-in-fact and representative of Systems shall be binding upon Systems to the same extent as if directly taken by Systems.

(d) Allocation of DIP Loans. All DIP Loans shall be made to Holdings as borrower unless a different allocation of the DIP Loans as between Holdings and Systems with respect to any borrowing hereunder is included in the applicable Funding Notice.

2.27 Judgment Currency. If for the purposes of obtaining judgment in any court it is necessary to convert a sum due from any Credit Party hereunder in the currency expressed to be payable herein (the "specified currency") into another currency, the parties hereto agree, to the

fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures Agent could purchase the specified currency with such other currency at Agent's main New York City office on the Business Day preceding that on which final, non appealable judgment is given. The obligations of each Credit Party in respect of any sum due to any Lender or Agent hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by such Lender or Agent (as the case may be) of any sum adjudged to be so due in such other currency such Lender or Agent (as the case may be) may in accordance with normal, reasonable banking procedures purchase the specified currency with such other currency. If the amount of the specified currency so purchased is less than the sum originally due to such Lender or Agent, as the case may be, in the specified currency, each Credit Party agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify such Lender or Agent, as the case may be, against such loss, and if the amount of the specified currency so purchased exceeds (a) the sum originally due to any Lender or Administrative Agent, as the case may be, in the specified currency and (b) any amounts shared with other Lenders as a result of allocations of such excess as a disproportionate payment to such Lender under Section 2.15, such Lender or Agent, as the case may be, agrees to remit such excess to such Credit Party.

SECTION 3. CONDITIONS PRECEDENT

3.1 Closing Date. The obligation of each Lender to make a Credit Extension on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Closing Date:

(a) Credit Documents. Agent shall have received sufficient copies of each Credit Document, in form and substance satisfactory to the Requisite Lenders, and originally executed and delivered by each applicable Credit Party for each Lender.

(b) Interim DIP Order, Canadian Supplemental Order and Other Bankruptcy Court Filings. The Bankruptcy Court shall have entered the Interim DIP Order, which shall be certified by the Clerk of the Bankruptcy Court as having been duly entered, and the Interim DIP Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed without the written consent of the Requisite Lenders and, if the Interim DIP Order is the subject of a pending appeal or motion for reconsideration in any respect, neither the making of the DIP Loans nor the performance by the Credit Parties of their respective obligations under the Credit Documents shall be the subject of a presently effective stay pending appeal. The Credit Parties shall have complied in full with the notice and all other requirements as provided for under the Interim DIP Order. The Canadian Court shall have issued the Canadian Supplemental Order or the Canadian Comeback Order, as applicable, and such Orders shall be in full force and effect, and shall be binding, and shall not have been reversed, modified, amended, stayed, set aside, varied or vacated, without the written consent of the Requisite Lenders and shall not be subject to any appeal, leave to appeal or a motion for reversal, modification, amendment, stay, set aside, vary or vacate. All orders entered by the Bankruptcy Court and the Canadian Court pertaining to cash management and adequate protection shall and all other motions and documents filed or to be filed with, and submitted to, the Bankruptcy Court in connection therewith shall be in form and substance reasonably satisfactory to Agent.

(c) Organizational Documents; Incumbency. Agent shall have received (i) sufficient copies of each Organizational Document executed and delivered by each Credit Party, as applicable, and, to the extent applicable, certified by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (ii) signature and incumbency certificates of the officers of such Person executing the Credit Documents to which it is a party; (iii) resolutions of the Board of Directors or similar governing body of each Credit Party approving and authorizing the execution, delivery and performance of this Agreement and the other Credit Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary (or the equivalent) as being in full force and effect without modification or amendment; (iv) a good standing certificate or equivalent from the applicable Governmental Authority of each System's jurisdiction of incorporation, organization or formation, each dated a recent date prior to the Closing Date; and (v) such other documents as Agent may reasonably request.

(d) Budget and Initial Approved Cash Projections. Requisite Lenders shall have received and approved the Borrowers' Budget and Initial Approved Cash Projections, each of which shall be acceptable to Requisite Lenders in their sole discretion.

(e) Governmental Authorizations and Consents. Each Credit Party shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the transactions contemplated by the Credit Documents to occur on or before the Closing Date and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to Agent.

(f) Personal Property Collateral. In order to create in favor of Agent, for the benefit of Secured Parties, a valid, perfected First Priority security interest in the personal property Collateral, the Credit Parties shall have delivered to Agent a list setting forth the vehicle identification numbers for each vehicle owned by each Canadian Credit Party.

(g) Financial Statements. Lenders shall have received from Holdings the Historical Financial Statements.

(h) Evidence of Insurance. Agent shall have received a certificate from Borrower's insurance broker or other evidence reasonably satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect, together with endorsements naming the Agent, for the benefit of Secured Parties, as additional insured and loss payee thereunder to the extent required under Section 5.5 to be delivered pursuant to the timeframe set forth on Schedule 10.23 attached hereto.

(i) Opinions of Counsel to Credit Parties. Lenders and their respective counsel shall deliver pursuant to the timeframe set forth on Schedule 10.23 attached hereto originally executed copies of the favorable written opinions of (i) Troutman Sanders LLP, counsel for the credit parties and (ii) Gowling Lafleur Henderson LLP, special Canadian counsel for the Credit Parties, in each case as to such matters as Agent may reasonably request, and otherwise in form and substance reasonably satisfactory to Agent (and each Credit Party hereby instructs such counsel to deliver such opinions to Agent and Lenders).

(j) Fees. Borrowers shall have paid to Agent the fees payable on the Closing Date referred to in Section 2.8(b).

(k) Closing Date Certificate. Borrowers shall have delivered to Agent an originally executed Closing Date Certificate, together with all attachments thereto.

(l) No Litigation. There shall not exist any unstayed action, suit, investigation, litigation, proceeding, hearing (other than the Cases) or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority against Holdings or any of its Subsidiaries or any of their respective properties that, in the reasonable opinion of Agent, singly or in the aggregate, materially impairs the transactions contemplated by the Credit Documents, or that could reasonably be expected to have a Material Adverse Effect.

(m) Letter of Direction. Agent shall have received a duly executed letter of direction from Borrowers addressed to Agent, on behalf of itself and Lenders, directing the disbursement on the Closing Date of the proceeds of the DIP Loans made on such date.

(n) Patriot Act. The Agent shall have received all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the U.S.A. Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Act**").

3.2 Conditions to Each Credit Extension.

(a) Conditions Precedent. The obligation of each Lender to make any DIP Loan, on any Credit Date, including the Closing Date, are subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions precedent:

(i) Agent shall have received a fully executed and delivered Funding Notice;

(ii) after making the Credit Extensions requested on such Credit Date, (i) the aggregate amount of DIP Loans made hereunder shall not exceed the Commitments then in effect;

(iii) as of such Credit Date, the representations and warranties containcd herein and in the other Credit Documents shall be true and correct in all material respects on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date;

(iv) as of such Credit Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute an Event of Default or a Default;

(v) as of such Credit Date, the Interim DIP Order or the Final DIP Order, as applicable, is in full force and effect and has not been reversed, modified,

amended, stayed, or vacated without the consent of Requisite Lenders, or subject to an appeal or a motion for reversal, modification, amendment, stay, or vacatur, and the Canadian Supplemental Order or the Canadian Comeback Order, as applicable, shall be in full force and effect, and shall be binding, and shall not have been reversed, modified, amended, stayed set aside, varied or vacated, without the written consent of the Requisite Lenders and shall not be subject to any appeal, leave to appeal or a motion for reversal, modification, amendment, stay, set aside, vary or vacate; and

(vi) aggregate Cash and Cash Equivalents of Holdings and its Subsidiaries, less the sum of cash disbursements as reflected in the Approved Cash Projections for the then current week and the next week, plus deposits to be made into the Professional Fee Reserve in the then current week and the next week, will not exceed $5,000,000.

(b) Notices. Any Funding Notice shall be executed by an Authorized Officer in a writing delivered to Agent. In lieu of delivering a Funding Notice, Borrowers may give Agent telephonic notice by the required time of any proposed borrowing; provided each such notice shall be promptly confirmed in writing by delivery of the applicable Funding Notice to Agent on or before the date of borrowing. Neither Agent nor any Lender shall incur any liability to Borrowers in acting upon any telephonic notice referred to above that Agent believes in good faith to have been given by a duly authorized officer or other person authorized on behalf of Borrowers or for otherwise acting in good faith.

SECTION 4. REPRESENTATIONS AND WARRANTIES

In order to induce Lenders to enter into this Agreement and to make each Credit Extension to be made thereby, each Credit Party represents and warrants to each Lender and Agent, on the Closing Date and on each Credit Date, that the following statements are true and correct (it being understood and agreed that the representations and warranties made on the Closing Date are deemed to be made concurrently with the consummation of the transactions contemplated hereby):

4.1 Organization; Requisite Power and Authority; Qualification. Each of Holdings and its Subsidiaries (other than Inactive Subsidiaries) (a) is duly organized, validly existing and, except in the case of Holdings solely until the good standing certificate of Holdings is obtained or required to be obtained pursuant to Schedule 10.23, in good standing under the laws of its jurisdiction of organization as identified in Schedule 4.1, (b) subject to the entry of the DIP Order and the Canadian DIP Order by the Bankruptcy Court and the Canadian Court, respectively, has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

4.2 Equity Interests and Ownership. Except as set forth on Schedule 4.2, the Equity Interests of each of Holdings and its Subsidiaries has been duly authorized and validly issued and

is fully paid and non-assessable. Except as set forth on Schedule 4.2, as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which Holdings or any of its Subsidiaries is a party requiring, and there is no membership interest or other Equity Interests of any of Holdings' Subsidiaries outstanding which upon conversion or exchange would require, the issuance by any of Holdings' Subsidiaries of any additional membership interests or other Equity Interests of any of Holdings' Subsidiaries or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Equity Interests of any of Holdings' Subsidiaries. Schedule 4.2 correctly sets forth the ownership interest of Holdings and each of its Subsidiaries in their respective Subsidiaries as of the Closing Date.

4.3 Due Authorization. Upon the entry of the DIP Order and the Canadian DIP Order by the Bankruptcy Court and the Canadian Court, respectively, the execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of each Credit Party that is a party thereto.

4.4 No Conflict. Subject to entry of the DIP Order and the Canadian DIP Order by the Bankruptcy Court and the Canadian Court, respectively, the execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties, the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate (i) any provision of any law or any governmental rule or regulation applicable to Holdings or any of its Subsidiaries, (ii) any of the Organizational Documents of Holdings or any of its Subsidiaries, or (iii) any order, judgment or decrec of any court or other agency of government binding on Holdings or any of its Subsidiaries; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Holdings or any of its Subsidiaries except to the extent such conflict, breach or default could not reasonably be expected to have a Material Adverse Effect; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of Holdings or any of its Subsidiaries (other than any Liens created under any of the Credit Documents in favor of Agent, on behalf of Secured Parties); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of Holdings or any of its Subsidiaries, except for (i) such approvals or consents which will be obtained on or before the Closing Date, and (ii) any such approvals or consents the failure of which to obtain could not reasonably be expected to have a Material Adverse Effect.

4.5 Governmental Consents. Upon the entry of the DIP Order and the Canadian DIP Order by the Bankruptcy Court and the Canadian Court, respectively, the execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority cxcept (i) as required by the DIP Order or the Canadian DIP Order, (ii) for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Agent for filing and/or recordation and (iii) any registration, consent, approval, notice or action to the extent that the failure to undertake or obtain such registration, consent, approval, notice or action could not reasonably be expected to have a Material Adverse Effect. No Credit Party's accounts or receivables are subject to any of the requirements or proceedings applicable to assignments of accounts under the Financial Administration Act (Canada) or any other similar law.

4.6 Binding Obligation. Each Credit Document has been duly executed and delivered by each Credit Party that is a party thereto and, subject to the entry of the DIP Order and the Canadian DIP Order by the Bankruptcy Court and the Canadian Court, respectively, is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.7 Historical Financial Statements. The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments and completion of financial statement footnotes.

4.8 Budget and Approved Cash Projections.

(a) Budget. On and as of the Closing Date (or with respect to any update of the Budget, the date of delivery of such update), the Budget is based on good faith estimates and assumptions made by the management of Holdings; provided, the Budget is not to be viewed as a fact and that actual results during the period or periods covered by the Budget may differ from the Budget and that the differences may be material; provided further, as of the Closing Date (or with respect to any update of the Budget, the date of delivery of such update), management of Holdings believed that the Budget (or the Budget as so updated) is reasonable.

(b) Approved Cash Projections. On and as of the Closing Date and as of the date of each delivery of updated Approved Cash Projections pursuant to Section 5.1(k), such Approved Cash Projections are based on good faith estimates and assumptions made by the management of Holdings; provided, the Approved Cash Projections are not to be viewed as facts and that actual results during the period or periods covered by the Approved Cash Projections may differ from the Approved Cash Projections and that the differences may be material; provided further, as of the Closing Date or the date of delivery of each updated Approved Cash Projections, as applicable, management of Holdings believed that the Approved Cash Projections are reasonable.

4.9 No Material Adverse Change. Since December 31, 2011, no event, circumstance or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, other than (x) the commencement of the Cases and the events typically resulting from the commencement of the Cases, and (y) such events, circumstances or changes that have been disclosed to Agent.

4.10 No Restricted Junior Payments. Since the Closing Date, neither Holdings nor any of its Subsidiaries has directly or indirectly declared, ordered, paid or made, or set apart any sum or property for, any Restricted Junior Payment or agreed to do so except Restricted Junior Payments as permitted pursuant to Section 6.4.

4.11 Adverse Proceedings, etc. Except for the Cases, there are no Adverse Proceedings, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect. Neither Holdings nor any of its Subsidiaries (a) is in violation of any applicable laws (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, orders, writs, injunctions, decrees, rules or regulations of any court or any federal, state, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate with respect to clause (a) or (b), could reasonably be expected to have a Material Adverse Effect.

4.12 Payment of Taxes. Except as otherwise permitted under Section 5.3, all federal income and all other material tax returns and reports of Holdings and its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all other material assessments, fees and other governmental charges upon Holdings and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable. Holdings knows of no proposed tax assessment against Holdings or any of its Subsidiaries which is not being actively contested by Holdings or such Subsidiary in good faith and by appropriate proceedings; provided, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.13 Properties.

(a) Title. Each of Holdings and its Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), (iii) valid licensed rights in (in the case of licensed interests in intellectual property) and (iv) good title to (in the case of all other personal property), all of their respective properties and assets reflected in their respective Historical Financial Statements referred to in Section 4.7 or, if more recent, in the most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of (x) during the Cases in accordance with applicable requirements of the Bankruptcy Code, (y) since the date of such financial statements in the ordinary course of business or as otherwise permitted under Section 6.7. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

(b) Real Estate. As of the Closing Date, Schedule 4.13 contains a true, accurate and complete list of all Real Estate Assets, describing for each (i) the applicable Credit Party, (ii) whether its interest in such property is a fee or leasehold interest and (iii) if leased, the name of the lessor, the lessor's address.

4.14 Environmental Matters. Neither Holdings nor any of its Subsidiaries nor any of their respective Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither Holdings nor any of its Subsidiaries has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or

any comparable law that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There are and, to each of Holdings' and its Subsidiaries' knowledge, have been, no conditions, occurrences, or Hazardous Materials Activities which could reasonably be expected to form the basis of an Environmental Claim against Holdings or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither Holdings nor any of its Subsidiaries nor, to any Credit Party's knowledge, any predecessor of Holdings or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility without delivering a copy of such notice to Agent, and none of Holdings' or any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of Hazardous Materials, including hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent except where such operations either are in compliance with Environmental Laws or where such non-compliance could not reasonably be expected to have a Material Adverse Effect. Compliance with all current or reasonably foreseeable future requirements pursuant to or under Environmental Laws could not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. No event or condition has occurred or is occurring with respect to Holdings or any of its Subsidiaries relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity which individually or in the aggregate has had, or could reasonably be expected to have, a Material Adverse Effect.

4.15 No Defaults. Neither Holdings nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations other than as a result of the filing of the Cases (and any payment default directly related to such filing) or with respect to which a stay of exercise of remedies is in effect as a result of the filing of the Cases, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

4.16 Material Contracts. Schedule 4.16 contains a true, correct and complete list of all the Material Contracts in effect on the Closing Date.

4.17 Governmental Regulation. Neither Holdings nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or a labor board of any other jurisdiction, statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. Neither Holdings nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.18 Margin Stock. Neither Holdings nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the DIP Loans made to such Credit Party will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors.

4.19 Employee Matters. Neither Holdings nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. Except as otherwise set forth on Schedule 4.19, there is (a) no unfair labor practice complaint pending against Holdings or any of its Subsidiaries, or to the knowledge of Holdings and Borrowers, threatened against any of them before the National Labor Relations Board or a labor board of any other jurisdiction and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against Holdings or any of its Subsidiaries or to the knowledge of Holdings and Borrowers, threatened against any of them, (b) as of the Closing Date, no strike or work stoppage in existence or threatened involving Holdings or any of its Subsidiaries, and (c) to the knowledge of Holdings and Borrowers, no union representation question existing with respect to the employees of Holdings or any of its Subsidiaries and, to the best knowledge of Holdings and Borrowers, no union organization activity that is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect. All payments due from any Canadian Credit Party for employee health and welfare insurance have been paid or accrued as a liability on the books of such Canadian Credit Party and such Canadian Credit Party has withheld and remitted all employee withholdings to be withheld or remitted by it and has made all employer contributions to be made by it, in each case, pursuant to applicable law on account of the Canada Pension Plan and Quebec Pension Plan maintained by the Government of Canada and the Province of Quebec, respectively, employment insurance and employee income taxes.

4.20 Employee Benefit Plans.

(a) To the knowledge of Holdings and Borrowers, Holdings, each of its Subsidiaries and each of their respective ERISA Affiliates are in compliance in all material respects with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan. Each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified or may rely upon an opinion from the Internal Revenue Service that the prototype plan upon which the Employee Benefit Plan is based is so qualified and, to the knowledge of Holdings and Borrowers, nothing has occurred subsequent to the issuance of such determination letter or opinion letter which would cause such Employee Benefit Plan to lose its qualified status. Except as identified on Schedule 4.20, to the knowledge of Holdings and Borrowers, no liability, other than for claims and funding obligations in the ordinary course, to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by Holdings, any of its Subsidiaries or any of their ERISA Affiliates. To the knowledge of Holdings and Borrowers, no ERISA Event has occurred and is continuing or is reasonably expected to occur that would constituted an Event of Default. Except as identified on Schedule 4.20 or to the extent required under Section 4980B of the Internal Revenue Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of Holdings or any of its Subsidiaries. As of the Closing Date, except as identified on Schedule 4.20 the present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by Holdings, any of its Subsidiaries or any of their ERISA Affiliates (determined as of the end of the

most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan by an amount in excess of $7,500,000. Except as identified on Schedule 4.20, as of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of Holdings, its Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA is zero. To the knowledge of Holdings and Borrowers, Holdings, each of its Subsidiaries and each of their ERISA Affiliates have complied in all material respects with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in material "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan.

(b) In respect of each Canadian Credit Party, to the knowledge of Holdings and Borrowers, the Pension Plans are duly registered under all applicable laws which require registration (including the Income Tax Act (Canada) in respect of registered Pension Plans) and no event has occurred which is reasonably likely to cause the loss of such registered status. To the knowledge of Holdings and Borrowers, all material obligations of each Canadian Credit Party (including fiduciary, contribution, funding, investment and administration obligations) required to be performed in connection with the Employee Benefit Plans, the Pension Plans and any funding agreements therefor under the terms thereof and applicable statutory and regulatory requirements, have been performed in all material respects in a timely and proper fashion. To the knowledge of Holdings and Borrowers, there have been no improper withdrawals or applications of the assets of the Pension Plans of any Canadian Credit Party or the Employee Benefit Plans of any Canadian Credit Party. There are no outstanding disputes concerning the assets or liabilities of the Pension Plans of any Canadian Credit Party or the Employee Benefit Plans of any Canadian Credit Party. There is no Pension Plan of any Canadian Credit Party in respect of which an event has occurred that could require immediate or accelerated funding in respect of unfunded liabilities or other deficit amounts. All contributions, in respect of a multiemployer pension plan required to be made by a Canadian Credit Party have been paid. There is no Pension Plan of any Canadian Credit Party that is a defined benefit plan for which the Canadian Credit Parties are or could be liable for the deficiency.

4.21 Certain Fees. No broker's or finder's fee or commission will be payable with respect to the transactions contemplated by the Credit Documents, except as payable to the Agent and the Lenders.

4.22 Compliance with Statutes, etc. Each of Holdings and its Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property (including compliance with all applicable Environmental Laws with respect to any Real Estate Asset or governing its business and the requirements of any permits issued under such Environmental Laws with respect to any such Real Estate Asset or the operations of Holdings or any of its Subsidiaries), except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

4.23 Disclosure. No representation or warranty of any Credit Party contained in any Credit Document or in any other documents, certificates or written statements furnished to any Agent or Lender by or on behalf of Holdings or any of its Subsidiaries for use in connection with the transactions contemplated hereby, when taken as a whole, contains any untrue statement of a material fact or omits to state a material fact (known to Holdings or Borrowers, in the case of any document not furnished by either of them) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made; provided that any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Holdings or Borrowers to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known to Holdings or Borrowers (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

4.24 Secured, Super-Priority Obligations. On and after the Closing Date:

(i) The provisions of the Credit Documents, the Interim DIP Order, the Final DIP Order, the Canadian Supplemental Order and the Canadian Comeback Order, in each case as applicable, are effective to create in favor of the Agent, for the benefit of the Secured Parties, legal, valid and perfected Liens on and security interests in all right, title and interest in the Collateral, having the priority provided for herein and in the Interim DIP Order, the Final DIP Order, the Canadian Supplemental Order and the Canadian Comeback Order and enforceable against the Credit Parties.

(ii) Pursuant to subclauses (2) and (3) of clause (c) of Section 364 of the Bankruptcy Code, the Interim DIP Order, the Final DIP Order, the Canadian Supplemental Order and the Canadian Comeback Order, in each case as applicable, all Secured Obligations are secured by a First Priority perfected Lien on the Collateral, subject only to (a) valid, perfected, nonavoidable and enforceable Existing Priority Liens existing as of the Petition Date and which are senior to the liens created by the Existing First Lien Facility as set forth on Schedule 4.24 hereto and (b) the Carve-Out.

(iii) Pursuant to clause (c)(1) of Section 364 of the Bankruptcy Code, the Interim DIP Order, the Final DIP Order, the Canadian Supplemental Order and the Canadian Comeback Order, in each ease as applicable, all Secured Obligations and all other obligations of the Credit Parties under the Credit Documents at all times shall constitute allowed super-priority administrative expense claims in the Cases having priority over all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code, subject only to the Carve-Out and Existing Priority Liens.

(iv) The Interim DIP Order, the Final DIP Order, the Canadian Supplemental Order and the Canadian Comeback Order, in each case as applicable, and the transactions contemplated hereby and thereby, are in full force and effect and have not

been vacated, reversed, modified, amended or stayed without the prior written consent of Requisite Lenders.

4.25 Patriot Act. To the extent applicable, each Credit Party is in compliance, in all material respects, with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the Unticd States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (ii) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001), (iii) Part II.1 of the Criminal Code (Canada), (iv) the United Nations Suppression of Terrorism Regulations (Canada) and (v) United Nations Al-Qaida and Taliban Regulations (Canada). No part of the proceeds of the DIP Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

SECTION 5. AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that, so long as any Commitment is in effect and until payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been made), each Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 5.

5.1 Financial Statements and Other Reports. Holdings will deliver to Agent~~, and Agent will deliver to Petitioning Creditors~~:

(a) Monthly Reports. As soon as available, and in any event within 30 days after the end of the first two months in each Fiscal Quarter, commencing with the month in which the Closing Date occurs, the consolidated balance sheet of Holdings and its Subsidiaries as at the end of such month and the related consolidated statements of income, stockholders' equity and cash flows of Holdings and its Subsidiaries for such month and for the period from the beginning of the then current Fiscal Ycar to the end of such month, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a Financial Officer Certification;

(b) Quarterly Financial Statements. As soon as available, and in any event within 60 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, commencing with the Fiscal Quarter in which the Closing Date occurs, the consolidated balance sheets of Holdings and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders' equity and cash flows of Holdings and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and, except for the cash flow statements, all in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto;

(c) Annual Financial Statements. With respect to such audited consolidated financial statements a report thereon of Grant Thornton LLP or other independent certified public accountants of recognized national standing selected by Holdings, and reasonably satisfactory to Agent (which report shall be unqualified as to scope of audit), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards);

(d) Compliance Certificate. Together with each delivery of financial statements of Holdings and its Subsidiaries pursuant to Sections 5.1(b) and 5.1(c) and quarterly financial statements for the Fiscal Quarter ended on March 31, 2012, a duly executed and completed Compliance Certificate;

(e) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of the most recent Historical Financial Statements delivered prior to the Closing Date, the consolidated financial statements of Holdings and its Subsidiaries delivered pursuant to Section 5.1(b) or 5.1(c) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made and such change would have an effect on the calculations required pursuant to the Compliance Certificate, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance reasonably satisfactory to Agent;

(f) Notice of Default. Promptly upon, but in any event within seven Business Days after, any Executive Officer of any Borrower obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to any Borrower with respect thereto; (ii) that any Person has given any notice to Holdings or any of its Subsidiaries or taken any other action with respect to any event or condition set forth in Section 8.1(b); or (iii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of its Authorized Officer specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action such Borrower has taken, is taking and proposes to take with respect thereto;

(g) Notice of Litigation. Promptly upon, but in any event within seven Business Days after, any Executive Officer of Holdings or any Borrower obtaining knowledge of (i) the institution of, or non-frivolous threat of, any Adverse Proceeding claiming damages in excess of (A) with respect to Adverse Proceedings involving automobile and workers compensation claims in the ordinary course of business, $1,500,000 and (B) with respect to all other Adverse Proceedings, $500,000, in each case not previously disclosed in writing by Borrowers to Lenders, or (ii) any material development in any Adverse Proceeding that, in the case of either clause (i) or (ii), if adversely determined could be reasonably expected to have a Material

Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to Holdings or Borrowers to enable Lenders and their counsel to evaluate such matters;

(h) ERISA and Canadian Pension Plans. (i) Promptly upon, but in any event within seven Business Days after, an Executive Officer of Holdings or any Borrower becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; (ii) with reasonable promptness, but in any event within seven Business Days, following the request of Agent, copies of (1) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each Pension Plan; (2) all notices received by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (3) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as Agent shall reasonably request; and (iii) in respect of any Canadian Credit Party, (1) copies of each annual and other return, report or valuation with respect to each registered Pension Plan as filed with any applicable Governmental Authority; (2) promptly, but in any event within seven Business Days after, receipt thereof, a copy of any direction, order, notice, ruling or opinion that any Canadian Credit Party may receive from any applicable Governmental Authority with respect to any registered Pension Plan; and (3) notification within 30 days of any increases having a cost to any Canadian Credit Party in excess of $100,000 per annum in the aggregate, in the benefits of any existing Pension Plan or Employee Benefit Plan, or the establishment of any new Pension Plan or Employee Benefit Plan, or the commencement of contributions to any such plan to which no Canadian Credit Party was previously contributing.

(i) Weekly Cash Report. Not later than Wednesday of each week, the Borrowers shall deliver to Agent a cash flow statement for the prior week, which will include the actual cash receipts, actual operating disbursements, actual payroll disbursements, actual non-operating disbursements and actual beginning and ending cash balances for such week, and show variances from Approved Cash Projections.

(j) Insurance Report. As soon as practicable and in any event by the last day of each Fiscal Year, if requested by Agent, a certificate from Holdings' insurance broker(s) in form and substance reasonably satisfactory to Agent outlining all material insurance coverage maintained as of the date of such certificate by Holdings and its Subsidiaries;

(k) New Cash Projections. Not later than the first Business Day of the last week of the then current Approved Cash Projections, Borrowers shall deliver proposed 13-week cash flow projections for the next subsequent 13-week period, and will cooperate with Requisite Lenders in providing any information requested by Requisite Lenders with respect to such projections;

(l) Notice Regarding Material Contracts. With reasonable promptness, written notice (i) after any Material Contract of Holdings or any of its Subsidiaries is terminated (except, with respect to any Material Contract, at the scheduled completion of the term of such Material Contract) or amended in a manner that is materially adverse to Holdings and its Subsidiaries, taken as a whole, or (ii) any new Material Contract (other than a renewal of a previous contract on similar terms and conditions) is entered into, a written statement describing such event, with copies of such material amendments or new contracts, delivered to Agent (to the extent such delivery is permitted by the terms of any such Material Contract; provided, no such prohibition on delivery shall be effective if it were bargained for by Holdings or its applicable Subsidiary with the intent of avoiding compliance with this Section 5.1(l)), and an explanation of any actions being taken with respect thereto;

(m) Information Regarding Collateral. (a) Holdings will furnish to Agent prompt written notice of any change (i) in any Credit Party's corporate name, (ii) in any Credit Party's identity or corporate structure, (iii) in any Credit Party's jurisdiction of organization, (iv) in any Credit Party's place of business, chief executive office or domicile, or (v) in any Credit Party's Federal Taxpayer Identification Number or state organizational identification number. Holdings agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code, Canadian PPSA or otherwise that are required in order for Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral as contemplated in the Collateral Documents. Holdings also agrees promptly to notify Agent if any material portion of the Collateral is damaged or destroyed;

(n) Cases. The Credit Parties shall immediately provide to each Lender copies of all material pleadings, notices, orders, agreements, and all other documents served, filed or entered, as the case may be, in connection with, or in relation to, the Cases;

(o) Other Information. (A) Promptly upon, but in any event within seven Business Days after, their becoming available, copies of (i) all financial statements (and, at any time after the common stock of Holdings or any of its Subsidiaries is listed on a national securities exchange or the NASDAQ National Market quotation system, reports, notices and proxy statements) sent or made available generally by Holdings to its security holders acting in such capacity or by any Subsidiary of Holdings to its security holders other than Holdings or another Subsidiary of Holdings, (ii) all regular and periodic reports and all registration statements and prospectuses, if any, filed by Holdings or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any governmental or private regulatory authority, (iii) all press releases and other statements made available generally by Holdings or any of its Subsidiaries to the public concerning material developments in the business of Holdings or any of its Subsidiaries and (B) such other information and data with respect to Holdings or any of its Subsidiaries as from time to time may be reasonably requested by Agent or any Lender;

(p) Quarterly Fleet Report. Together with each delivery of financial statements of Holdings and its Subsidiaries pursuant to Sections 5.1(b) and 5.1(c), a report certified by a Authorized Officer of Holdings reflecting, among other things, information regarding the fleet of rigs owned by Holdings and its Subsidiaries, including the aggregate amount of rigs added,

refurbished and disposed of by Holdings and its Subsidiaries during the period covered by such financial statements, in each case, to the best knowledge of Holdings at such time

5.2 Existence. Except as otherwise permitted under Section 6.7, each Credit Party will, and will cause each of its Subsidiaries (other than Inactive Subsidiaries) to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business; provided, no Credit Party (other than Borrowers with respect to existence) or any of its Subsidiaries shall be required to preserve any such existence, right or franchise, licenses and permits if an Executive Officer of such Credit Party shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to Lenders.

5.3 Payment of Taxes and Claims. Each Credit Party will, and will cause each of its Subsidiaries to, pay all federal and state and provincial income Taxes and all other material Taxes imposed upon it or any of its properties or assets or in respect of any of its businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is subject to the automatic stay in connection with the Cases or is otherwise being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim. No Credit Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Holdings or any of its Subsidiaries), except Holdings may be included in the consolidated tax return of another Person if (i) such inclusion is required as a matter of law and (ii) tax sharing arrangements have been entered into allocating the related consolidated tax benefits and liabilities among the relevant parties on an equitable basis, such that the tax benefits and liabilities allocated to Holdings shall be determined as if a separate consolidated return had been filed by Holdings on behalf of itself and the other members of the affiliate group of which Holdings would be the common parent corporation (without regard to the ownership of the capital stock of Holdings).

5.4 Maintenance of Properties. Each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of Holdings and its Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

5.5 Insurance. Holdings will maintain or cause to be maintaincd, with financially sound and reputable insurers, such public liability insurance, third party property damage insurance, business interruption insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Holdings and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to

self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, Holdings will maintain or cause to be maintained (a) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, and (b) replacement value casualty insurance (including self insurance) on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance shall (i) name Agent, on behalf of Secured Parties, as an additional insured thereunder as its interests may appear, (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, reasonably satisfactory in form and substance to Agent, that names Agent, on behalf of the Secured Parties, as the loss payee thereunder and provide for at least thirty days' prior written notice to Agent of any modification or cancellation of such policy.

5.6 Books and Records; Inspections. Each Credit Party will, and will cause each of its Subsidiaries to, keep proper books of record and accounts in which full, true and correct entries in conformity in all material respects with GAAP shall be made of all dealings and transactions in relation to its business and activities. Each Credit Party which keeps records relating to Collateral in the Province of Quebec shall at all times keep a duplicate copy thereof at a location outside of the Province of Quebec. Each Credit Party will, and will cause each of its Subsidiaries to, permit any authorized representatives designated by any Lender to visit and inspect any of the properties of any Credit Party and any of its respective Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested; provided that (i) such Credit Party shall be present during any discussions with the independent public accountants and (ii) so long as no Default or Event of Default shall have occurred in such Fiscal Year, the Credit Parties shall not be required to pay the expenses of more than one visit during any Fiscal Year.

5.7 Compliance with Laws. Each Credit Party will comply, and shall cause each of its Subsidiaries and all other Persons, if any, on or occupying any Facilities to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws), noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.8 Environmental.

(a) Environmental Disclosure. Holdings will deliver to Agent and Lenders:

(i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character (other than those protected by attorney client or work product privileges), whether prepared by personnel of Holdings or any of its Subsidiaries or by independent consultants, governmental authorities or any other Persons, with respect to any Environmental Claims,

which could reasonably be expected to result in Borrowers and their Subsidiaries incurring liabilities or losses under Environmental Laws in excess of $1,000,000 individually or in the aggregate in a Fiscal Year;

(ii) promptly upon, but in any event within seven Business Days after, an Executive Officer of any Borrower obtaining knowledge of the occurrence thereof, written notice describing in reasonable detail (1) any Release required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws, (2) any remedial action taken by Holdings or any other Person in response to (A) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect, or (B) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of resulting in a Material Adverse Effect, and (3) such Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

(iii) as soon as practicable, but in any event within seven Business Days, following the sending or receipt thereof by Holdings or any of its Subsidiaries, a copy of any and all written communications with respect to (1) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of giving rise to a Material Adverse Effect, (2) any Release required to be reported to any federal, state or local governmental or regulatory agency, and (3) any request for information from any governmental agency that suggests such agency is investigating whether Holdings or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity;

(iv) prompt written notice describing in reasonable detail (1) any proposed acquisition of stock, assets, or property by Holdings or any of its Subsidiaries that could reasonably be expected to (A) expose Holdings or any of its Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (B) affect the ability of Holdings or any of its Subsidiaries to maintain in full force and effect all material Governmental Authorizations required under any Environmental Laws for their respective operations and (2) any proposed action to be taken by Holdings or any of its Subsidiaries to modify current operations in a manner that could reasonably be expected to subject Holdings or any of its Subsidiaries to any additional material obligations or requirements under any Environmental Laws; and

(v) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by Agent in relation to any matters disclosed pursuant to this Section 5.8(a).

(b) Hazardous Materials Activities, Etc. Each Credit Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Credit Party or its Subsidiaries that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and

(ii) make an appropriate response to any Environmental Claim against such Credit Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.9 Subsidiaries. In the event that any Person becomes a Domestic Subsidiary or Canadian Subsidiary of Holdings or any Domestic Subsidiary or Canadian Subsidiary of Holdings no longer qualifies as an Inactive Subsidiary, Holdings shall (a) promptly, but in any event within seven Business Days, cause such Subsidiary to become a Guarantor hereunder and a Grantor hereunder by executing and delivering to Agent a Counterpart Agreement, and (b) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates as are similar to those described in Sections 3.1(c), 3.1(g) and 3.1(j). Except as provided in the preceding sentence, in the event that any Person becomes a Foreign Subsidiary of Holdings, and the ownership interests of such Foreign Subsidiary are owned by Holdings or by any Domestic Subsidiary thereof, Holdings shall, or shall cause such Domestic Subsidiary to, deliver, all such documents, instruments, agreements, and certificates as are similar to those described in Sections 3.1(d), and Holdings shall take, or shall cause such Domestic Subsidiary to take, all of the actions necessary to grant and to perfect a First Priority Lien in favor of Agent, for the benefit of Secured Parties, in 65% of such Equity Interests. With respect to each such Subsidiary, Holdings shall promptly send to Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of Holdings, and (ii) all of the data required to be set forth in Schedules 4.1 and 4.2 with respect to all Subsidiaries of Holdings; and such written notice shall be deemed to supplement Schedule 4.1 and 4.2 for all purposes hereof.

5.10 Further Assurances. At any time or from time to time upon the request of Agent, each Credit Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Agent may reasonably request in order to effect fully the provisions of the Credit Documents. In furtherance and not in limitation of the foregoing, each Credit Party shall take such actions as Agent may reasonably request from time to time to ensure that the Obligations are guarantied by the Guarantors and are secured by substantially all of the assets of Holdings, and its Subsidiaries and all of the outstanding Equity Interests of the Subsidiaries of Holdings (subject to limitations contained in the Credit Documents with respect to Foreign Subsidiaries).

5.11 Final DIP Order. Borrowers shall use their commercially reasonable efforts to ensure that the Final DIP Order is entered by the Bankruptcy Court no later than thirty (30) days after the Consent Date (with such extensions as are required by the Bankruptcy Court's calendar).

5.12 Canadian Comeback Order. Borrowers shall use commercially reasonable efforts to ensure that the Canadian Comeback Order is issued by the Canadian Court no later than seven (7) Business Days after the Final DIP Order is issued by the Bankruptcy Court.

5.13 Restructuring Advisers. Borrowers shall continue to retain Rothschild Inc. as restructuring advisers or retain such other advisor reasonably acceptable to Agent and on terms and conditions satisfactory to Agent.

5.14 Service Providers. Upon the request of Agent, Borrowers shall retain, at its sole cost and expense, a service provider acceptable to Agent for the tracking of all of UCC or Canadian PPSA financing statements (or equivalent filings) of Borrowers and the Guarantors and that will provide notification to Agent of, among other things, the upcoming lapse or expiration thereof.

SECTION 6. NEGATIVE COVENANTS

Each Credit Party covenants and agrees that, so long as any Commitment is in effect and until payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been made), such Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 6.

6.1 Indebtedness. Unless otherwise consented to by Requisite Lenders, no Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations;

(b) Indebtedness of any Guarantor Subsidiary to any Borrower or to any other Guarantor Subsidiary, or of any Borrower to any other Borrower or any Guarantor Subsidiary; provided, (i) all such Indebtedness shall be unsecured and subordinated in right of payment to the payment in full of the Obligations, and (ii) any payment by any such Guarantor Subsidiary under any guaranty of the Obligations shall result in a pro tanto reduction of the amount of any Indebtedness owed by such Subsidiary to Borrowers or to any of its Subsidiaries for whose benefit such payment is made;

(c) Indebtedness incurred by Holdings or any of its Subsidiaries arising from agreements providing for indemnification, adjustment of purchase price or similar obligations, or from guaranties or letters of credit, surety bonds or performance bonds securing the performance of Holdings or any such Subsidiary pursuant to such agreements, in connection with permitted dispositions of any business, assets or Subsidiary of Holdings or any of its Subsidiaries;

(d) Indebtedness which may be deemed to exist pursuant to any guaranties, performance, surety, statutory, appeal or similar obligations (including in connection with workers' compensation) incurred in the ordinary course of business;

(e) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts;

(f) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Holdings and its Subsidiaries in an aggregate amount not to exceed $1,000,000 at any time;

(g) guaranties by any Borrower of Indebtedness of a Guarantor Subsidiary or guaranties by a Guarantor Subsidiary of Indebtedness of any Borrower or another Guarantor Subsidiary with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant

to this Section 6.1; provided, that if the Indebtedness that is being guarantied is unsecured and/or subordinated to the Obligations, the guaranty shall also be unsecured and/or subordinated to the Obligations;

(h) Indebtedness described in Schedule 6.1, but not any extensions, renewals or replacements of such Indebtedness;

(i) Indebtedness with respect to Capital Leases and purchase money Indebtedness (including any such Indebtedness incurred to finance the acquisition, construction or improvement of any fixed or capital asset) in an aggregate amount not to exceed at any time $10,000,000; provided, any such Indebtedness (i) shall be secured only by the asset acquired, constructed or improved in connection with the incurrence of such Indebtedness, (ii) shall constitute not more than 100% of the aggregate consideration paid with respect to such asset and (iii) shall be approved by the Requisite Lenders;

(j) Indebtedness of any Foreign Subsidiary to any other wholly owned Foreign Subsidiary;

(k) Indebtedness representing insurance premiums owing in the ordinary course of business; or

(l) Other Indebtedness incurred in the ordinary course of business in an aggregate principal amount not to exceed $500,000 at any one time outstanding.

6.2 Liens. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Holdings or any of its Subsidiaries, whether now owned or hereafter acquired or licensed, or any income, profits or royalties therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income, profits or royalties under the UCC of any State, the Canadian PPSA or under any similar recording or notice statute or under the intellectual property laws, rules or procedures, except:

(a) Liens in favor of Agent for the benefit of Secured Parties granted pursuant to any Credit Document;

(b) Liens for Taxes not yet delinquent or are being contested as required pursuant to Section 5.3;

(c) Liens of landlords, banks (and rights of set-off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 436(f) or 430(k) of the Internal Revenue Code or by Section 303(j) of ERISA), in each case incurred in the ordinary course of business (i) for amounts not yet overdue or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of thirty days) are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of Holdings or any of its Subsidiaries;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder, and leases and subleases of real property by Holdings or any of its Subsidiaries in the ordinary course of business and not interfering in any respect with the ordinary conduct of or materially detracting from the value of the business of Holdings or such Subsidiary;

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

(h) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(i) any interest or title of a licensor under any lease of patents, copyrights, trademarks, or other intellectual property rights permitted hereunder, and licenses and sublicenses of patents, copyrights, trademarks and other intellectual property rights granted by Holdings or any of its Subsidiaries in the ordinary course of business and not interfering in any respect with the ordinary conduct of or materially detracting from the value of the business of Holdings or such Subsidiary;

(j) Liens existing on the Closing Date and securing the Existing Facilities (and replacement liens granted pursuant to the Interim DIP Order, the Final DIP Order, the Canadian Supplemental Order or Canadian Comeback Order, as applicable) or otherwise set forth on Schedule 6.2 or subject to the automatic stay;

(k) Liens securing Indebtedness permitted pursuant to Section 6.1(i); provided any such Lien shall encumber only the asset acquired, constructed or improved with the proceeds of such Indebtedness;

(l) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by any Subsidiary, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; provided that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(m) Liens arising out of judgmcnts or awards in connection with court proceedings which do not constitute an Event of Default;

(n) Liens securing Indebtedness permitted pursuant to Section 6.1(k); provided any such Lien shall encumber only the rights and interests under the insurance policy that secures such Indebtedness;

(o) Liens pursuant to the Administration Charge; and

(p) Other Liens granted in the ordinary course of business and securing amounts not to exceed $250,000 at any one time outstanding.

No reference herein to Liens permitted hereunder (including Permitted Liens), including any statement or provision as to the acceptability of any Liens (including Permitted Liens), shall in any way constitute or be construed as to provide for a subordination of any rights of the Agent or the Lenders hereunder or arising under any of the other Credit Documents in favor of such Liens.

6.3 No Further Negative Pledges. Except with respect to (a) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale, (b) restrictions by reason of customary provisions restricting assignmcnts, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be) and (c) the Existing Credit Facilities, no Credit Party nor any of its Subsidiaries shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, to secure the Obligations.

6.4 Restricted Junior Payments. No Credit Party shall, nor shall it permit any of its Subsidiaries through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment except that (a) any Subsidiary of Holdings may make Restricted Junior Payments to any Credit Party that is a Domestic Subsidiary of Holdings (and, in the case of a Restricted Payment by a non-wholly owned Subsidiary of Holdings, to each other owner of Equity Interests of such Subsidiary based on their relative ownership interests), (b) any Subsidiary of Holdings that is not a Subsidiary Guarantor may make Restricted Payments to any other Subsidiary of Holdings that is not a Subsidiary Guarantor, and (c) Holdings may pay dividends in the form of its common Equity Interests, or (to the extent also permitted by the Existing Credit Facilities) other Equity Interests (other than Disqualified Equity Interests).

6.5 Restrictions on Subsidiary Distributions. Except as provided herein, no Credit Party shall, nor shall it permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any conscnsual encumbrance or restriction of any kind on the ability of any Subsidiary of Holdings to (a) pay dividends or make any other distributions on any of such Subsidiary's Equity Interests owned by Holdings or any other Subsidiary of Holdings, (b) repay or prepay any Indebtedness owed by such Subsidiary to Holdings or any other Subsidiary of Holdings, (c) make loans or advances to Holdings or any other Subsidiary of Holdings, or (d)

transfer, lease or license any of its property or assets to Holdings or any other Subsidiary of Holdings other than restrictions (i) in agreements evidencing Indebtedness permitted by Section 6.1(i) that impose restrictions on the property so acquired, constructed or improved, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, (iii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Equity Interests not otherwise prohibited under this Agreement, (iv) in agreements or other arrangements relating to Indebtedness to the extent incurred pursuant to Section 6.1(j) of a Foreign Subsidiary of Holdings so long as such restrictions apply only to such Foreign Subsidiary and its Foreign Subsidiaries or (v) existing under the Existing Credit Facilities.

6.6 Investments. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including any Joint Venture, except:

(a) Investments in Cash and Cash Equivalents;

(b) equity Investments owned as of the Closing Date and set forth on Schedule 6.6 and Investments made after the Closing Date in Systems and any wholly-owned Guarantor Subsidiary of Holdings;

(c) Investments (i) in any Securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors and (ii) deposits, prepayments and other credits to suppliers made in the ordinary course of business consistent with the past practices of Holdings and its Subsidiaries;

(d) Consolidated Capital Expenditures with respect to Borrowers and the Guarantors permitted by Section 6.7(c);

(e) intercompany loans to the extent permitted under Section 6.1(b);

(f) (i) loans to its respective employees in the ordinary course of business consistent with past practices for travel and entertainment expenses, relocation costs and similar purposes in an aggregate principal amount not to exceed $1,500,000 at any time outstanding and (ii) leases of rigs to owner/operators and advances of operating expenses thereto in the ordinary course of business, provided that such advances for operating expenses shall not exceed an aggregate amount of $5,000,000 at any time outstanding;

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

(h) non-cash consideration issued by the purchaser of assets in connection with a sale of such assets to the extent permitted by Section 6.8; and

(i) additional investments made in the ordinary course of business so long as the aggregate amount invested, loaned or advanced pursuant to this clause (determined without

regard to any write downs or write offs of such investments, loans and advances) does not exceed $250,000 in the aggregate.

Notwithstanding the foregoing, in no event shall any Credit Party make any Investment which results in or facilitates in any manner any Restricted Junior payment not otherwise permitted under the terms of Section 6.4.

6.7 Financial Covenants.

(a) Consolidated Adjusted EBITDA. Holdings shall not permit Consolidated Adjusted EBITDA as of the end of any month, commencing August 31, 2012, calculated for the year to date period then ending, in the case of any month ending on or before December 31, 2012, and calculated for the twelve month period then ending, in the case of each month thereafter, to be less than the correlative amount indicated:

Month	Consolidated Adjusted EBITDA
August 2012	($4,200,000)
September 2012	($2,500,000)
October 2012	($1,000,000)
November 2012	($400,000)
December 2012	($2,500,000)
January 2013	$500,000
February 2013	$3,100,000
March 2013	$4,300,000
April 2013	$7,500,000
May 2013	$10,750,000

(b) Minimum Liquidity. Holdings shall not permit, during any month, the sum of (i) Cash and Cash Equivalents (excluding the Professional Fee Reserve) plus (ii) undrawn amounts under the Commitments, to be less than the correlative amount indicated:

Month	Liquidity
August 2012	$13,665,000
September 2012	$11,860,000
October 2012	$12,513,000
November 2012	$8,981,000
December 2012	$5,299,000
January 2013	$4,473,000
February 2013	$3,631,000
March 2013	$4,853,000
April 2013	$5,690,000
May 2013	$6,593,000

(c) Maximum Consolidated Capital Expenditures. Holdings shall not, and shall not permit its Subsidiaries to, make or incur Consolidated Capital Expenditures in excess

of (a) during the period from the Closing Date through August 31, 2012, $2,500,000, and (b) during any calendar month ended after August 31, 2012, an amount equal to $833,333 plus the aggregate amount, if any, by which the Capital Expenditures of Holdings and its Subsidiaries during the period referred to in clause (a) and any prior month referred to in this clause (b) were less than the amount permitted during such period by this Section 6.7(c); provided that the aggregate Consolidated Capital Expenditures made by Holdings and its Subsidiaries between the Closing Date and the Maturity Date shall not exceed $10,000,000.

6.8 Fundamental Changes; Disposition of Assets; Acquisitions. No Credit Party shall, nor shall it permit any of its Subsidiaries (other than Inactive Subsidiaries) to, enter into any transaction of merger, amalgamation or consolidation, reorganization or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or license, exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory, materials and equipment and Capital Expenditures in the ordinary course of business) the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

(a) any Subsidiary of Holdings may be merged or amalgamated with or into Holdings or any Subsidiary of Holdings, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Holdings or any Subsidiary; provided, in the case of such a merger or amalgamation, (i) if any Borrower is a party to such merger or amalgamation, such Borrower shall be the continuing or surviving Person and (ii) subject to the foregoing clause (i), if any Guarantor Subsidiary is a party to such merger or amalgamation, such Guarantor Subsidiary shall be the continuing or surviving Person;

(b) sales of other dispositions that do not constitute Asset Sales;

(c) Asset Sales, the proceeds of which (valued at the principal amount thereof in the case of non-Cash proceeds consisting of notes or other debt Securities and valued at fair market value in the case of other non-Cash proceeds) when aggregated with the proceeds of all other Asset Sales made within the same Fiscal Year, are no more than $7,500,000 and when aggregated with the proceeds of all other Asset Sales made since the Closing Date, are not more than $15,000,000; provided (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the board of directors of Holdings (or similar governing body) or an Executive Officer of Holdings authorized by such governing body), (2) no less than 75% thereof shall be paid in Cash, and (3) the Net Asset Sale Proceeds thereof shall be applied as required by Section 2.10;

(d) disposals of obsolete, worn out or surplus property;

(e) Investments made in accordance with Section 6.6; and

(f) any Foreign Subsidiary of Holdings may be merged with or into a wholly-owned Foreign Subsidiary of Holdings, or be liquidated, wound up or dissolve, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to a wholly owned Foreign Subsidiary of Holdings.

6.9 Canadian Pension Plans. No Canadian Credit Party will (i) acquire by purchase or otherwise the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person that has a defined benefit plan or (ii) organize any kind of entity that has a defined benefit plan or otherwise implement a defined benefit plan.

6.10 Disposal of Subsidiary Interests. Except for any sale of all of its interests in the Equity Interests of any of its Subsidiaries in compliance with the provisions of Section 6.7 and Liens permitted under Sections 6.2(a) no Credit Party shall, nor shall it permit any of its Subsidiaries to, (a) directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Equity Interests of any of its Subsidiaries, except to qualify directors if required by applicable law; or (b) permit any of its Subsidiaries directly or indirectly to sell, assign, pledge or otherwise encumber or dispose of any Equity Interests of any of its Subsidiaries, except to another Credit Party (subject to the restrictions on such disposition otherwise imposed hereunder), or to qualify directors if required by applicable law.

6.11 Sales and Lease-Backs. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Credit Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than Holdings or any of its Subsidiaries), or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Credit Party to any Person (other than Holdings or any of its Subsidiaries) in connection with such lease.

6.12 Transactions with Shareholders and Affiliates. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of Holdings on terms that are less favorable to Holdings or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such a holder or Affiliate; provided, the foregoing restriction shall not apply to (a) any transaction between or among the Credit Parties; (b) reasonable and customary fees paid to members of the board of directors (or similar governing body) of Holdings and its Subsidiaries; (c) compensation arrangements for officers and other employees of Holdings and its Subsidiaries entered into in the ordinary course of business; (d) the provision of officers' and directors indemnification and insurance in the ordinary course of business to the extent permitted by applicable law, and (e) customary cash management arrangements with Foreign Subsidiaries in the ordinary course of business.

6.13 Conduct of Business. From and after the Closing Date, no Credit Party shall, nor shall it permit any of its Subsidiaries to, engage in any business other than (i) the businesses

engaged in by such Credit Party on the Closing Date and similar or related businesses and (ii) such other lines of business as may be consented to by Requisite Lenders.

6.14 Amendments or Waivers of Organizational Documents and Certain Agreements. No Credit Party shall, nor shall it permit any of its Subsidiaries to, agree to any amendment, restatement, supplement or other modification to, or waiver of, any of its Organizational Documents which is materially adverse to the Lenders, without in each case obtaining the prior written consent of Requisite Lenders to such amendment, restatement, supplement or other modification or waiver.

6.15 Chapter 11 Claims; Adequate Protection. No Credit Party shall, nor shall it permit any of its Subsidiaries to, incur, create, assume, suffer to exist or permit (other than those existing, and disclosed to Agent, on the date hereof) any (i) administrative expense, unsecured claim, or other super-priority claim or Lien (except Existing Priority Liens) that is pari passu with or senior to the claims of the Secured Parties against the Credit Parties hereunder, or apply to the Bankruptcy Court or the Canadian Court for authority to do so, except for the Carve-Out or the Existing Priority Liens or (ii) obligation to make adequate protection payments, or otherwise provide adequate protection, other than as approved by the Requisite Lenders.

6.16 DIP Orders and Canadian Orders. No Credit Party shall make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to the Interim DIP Order, the Final DIP Order, the Canadian Supplemental Order or Canadian Comeback Order, other than as approved in writing by the Requisite Lenders.

6.17 Limitation on Prepayments of Prepetition Obligations. Except (i) as approved by the Bankruptcy Court pursuant to (1) the Motion of Debtors for Interim and Final Orders Authorizing Payment of Pre-Petition Wages. Payroll Taxes, Certain Employee Benefits and Related Expenses. and other compensation to Employees and Independent Contractors, (2) the Motion Of The Debtors For Order Pursuant To 11 U.S.C. §§ 105(A) And 363(8) Authorizing Payment Of Prepetition Customs Duties And Claims Of Common Carriers And Warehousemen And Authorizing The Debtors To Honor Certain Prepetition Cargo Claims And Authorizing Financial Institutions To Honor And Process Checks And Transfers Related To Such Claims and (3) Debtors' Motion For Entry Of Interim And Final Orders Authorizing. But Not Directing, The Debtors To Pay Certain Prepetition Claims Of Critical Vendors And Granting Certain Related Relief, in each case filed with the Bankruptcy Court on June 10. 2012 or (ii) as consented to by the Requisite Lenders in their sole discretion, no Credit Party shall (x) make any payment or prepayment on or redemption or acquisition for value (including, without limitation, by way of depositing with the trustee with respect thereto money or securities before due for the purpose of paying when due) of any Prepetition Indebtedness or other pre-Consent Date obligations of any Credit Party, (y) pay any interest on any pre-Consent Date Indebtedness of any Credit Party (whether in cash, in kind securities or otherwise), or (z) make any payment or create or permit any Lien pursuant to Section 361 of the Bankruptcy Code (or pursuant to any other provision of the Bankruptcy Code authorizing adequate protection), or apply to the Bankruptcy Court or the Canadian Court for the authority to do any of the foregoing; provided, that Borrowers may make payments for administrative expenses that are allowed and payable under Sections 328, 330 and 331 of the Bankruptcy Code. In addition, no Credit Party shall permit any of its Subsidiaries to

make any payment, redemption or acquisition which such Credit Party is prohibited from making under the provisions of this Section 6.17.

6.18 Fiscal Year. No Credit Party shall, nor shall it permit any of its Subsidiaries to change its Fiscal Year-end from December 31.

6.19 Repayment of Indebtedness. Unless consented to by the Requisite Lenders, no Credit Party shall make any payment or transfer with respect to any Lien or Indebtedness incurred or arising prior to the filing of the Cases that is subject to the automatic stay provisions of the Bankruptcy Code or the Canadian Stay Order whether by way of "adequate protection" under the Bankruptcy Code or otherwise except pursuant to an order of the Bankruptcy Court or the Canadian Court after notice and hearing.

6.20 Reclamation Claims. Unless (i) payments totaling not more than $1,100,000 in the aggregate under Section 6.17 and this Section 6.20 are permitted by the Bankruptcy Court or the Canadian Court, as applicable, or (ii) consented to by the Requisite Lenders in their sole discretion, no Credit Party shall hereafter enter into any agreement to return any of its inventory to any of its creditors for application against any Prepetition Indebtedness, trade payables incurred prior to the Consent Date or other prepetition claims under Section 546(g) of the Bankruptcy Code or otherwise or allow any creditor to take any setoff or recoupment against such Prepetition Indebtedness, trade payables incurred prior to the Consent Date or other prepetition claims based upon any such return pursuant to Section 553(b)(1) of the Bankruptcy Code or otherwise, unless Requisite Lenders approve such agreement, setoff or recoupment in their sole discretion. ~~Subject to the foregoing limitation, Borrowers shall be permitted to make payments in respect of trade payables incurred prior to the Consent Date and wages, commissions and benefits owed to employees and independent contractors that are in the ordinary course of business so long as such payments are consistent with orders entered by the Bankruptcy Court.~~

6.21 Cash Projections.

(a) For the first six weeks of the Initial Approved Cash Projections, as of the last day of each week commencing on the last day of the second week of the Initial Approved Cash Projections, aggregate cash receipts actually received, calculated on a cumulative basis for the applicable period, shall not be less than the following percentages of cumulative cash receipts projected to be received on or before such date in the Initial Approved Cash Projections: (a) 75% in the case of the second and third weeks of the Initial Approved Cash Projections and (b) 85% in the case of the fourth and fifth weeks of the Initial Approved Cash Projections. Commencing on the last day of the sixth week of the Initial Approved Cash Projections and continuing thereafter, as of the last day of each week, aggregate cash receipts actually received during the six week period ending on such date shall not be less than 90% of the aggregate cash receipts projected to be received on or before such date in the Approved Cash Projections.

(b) For the first six weeks of the Initial Approved Cash Projections, as of the last day of each week commencing on the last day of the second week of the Initial Approved Cash Projections, aggregate cash outlays (excluding cash outlays for professional fees and deposits into the Professional Fee Reserve) actually made, calculated on a cumulative basis for the applicable period, shall not be more than the following percentages of cumulative cash outlays (excluding

cash outlays for professional fees and deposits into the Professional Fee Reserve) projected to be made on or before such date in the Initial Approved Cash Projections: (a) 125% in the case of the second and third weeks of the Initial Approved Cash Projections and (b) 115% in the case of the fourth and fifth weeks of the Initial Approved Cash Projections. Commencing on the last day of the sixth week of the Initial Approved Cash Projections and continuing thereafter, as of the last day of each week, aggregate cash outlays (excluding cash outlays for professional fees and deposits into the Professional Fee Reserve) actually made during the six week period ending on such date shall not be more than 110% of the aggregate cash outlays (excluding cash outlays for professional fees and deposits into the Professional Fee Reserve) projected to be made on or before such date in the Approved Cash Projections.

SECTION 7. GUARANTY

7.1 Guaranty of the Obligations. Subject to the provisions of Section 7.2, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to Agent for the ratable benefit of the Beneficiaries the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a) or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect) (collectively, the "**Guaranteed Obligations**").

7.2 Contribution by Guarantors. All Guarantors desire to allocate among themselves (collectively, the "**Contributing Guarantors**"), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a "**Funding Guarantor**") under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "**Fair Share**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the obligations Guaranteed. "**Fair Share Contribution Amount**" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; provided, solely for purposes of calculating the "**Fair Share Contribution Amount**" with respect to any Contributing Guarantor for purposes of this Section 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "**Aggregate Payments**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including

in respect of this Section 7.2), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

7.3 **Payment by Guarantors**. Subject to Section 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of Borrowers to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a) or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect), Guarantors will upon demand pay, or cause to be paid, in Cash, to Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for Borrowers' becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Borrowers for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

7.4 **Liability of Guarantors Absolute**. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between Borrowers and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of Borrowers and the obligations of any other guarantor (including any other Guarantor) of the obligations of Borrowers, and a separate action or actions may be brought and prosecuted against such Guarantor whether any or not any action is brought against Borrowers or any of such other guarantors and whether or not any Borrower is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any

portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith or any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against Borrowers or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Credit Documents; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Credit Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Credit Documents or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Credit Document or any agreement relating to such other guaranty or security; (iii) the Guaranteed

Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Credit Documents or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of Holdings or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims which Borrowers may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

7.5 Waivers by Guarantors. Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against Borrowers, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from Borrowers, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any Beneficiary in favor of Borrowers or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Borrowers or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Borrowers or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to willful misconduct, gross negligence or bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Borrowers and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

7.6 Guarantors' Rights of Subrogation, Contribution, etc. Until the Guaranteed Obligations (other than contingent indemnification obligations for which no claim has been made) shall have been indefeasibly paid in full and the Commitments shall have terminated, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against Borrowers or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against Borrowers with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against Borrowers, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations (other than contingent indemnification obligations for which no claim has been made) shall have been indefeasibly paid in full and the Commitments shall have terminated, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against Borrowers or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against Borrowers, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations (other than contingent indemnification obligations for which no claim has been made) shall not have been finally and indefeasibly paid in full, such amount shall be held in trust for Agent on behalf of Beneficiaries and shall forthwith be paid over to Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

7.7 Subordination of Other Obligations. Any Indebtedness of Borrowers or any Guarantor now or hereafter held by Borrowers or any Guarantor (the "**Obligee Credit Party**") is hereby subordinated in right of payment to the Obligations, and any such Indebtedness collected or received by the Obligee Credit Party after an Event of Default has occurred and is continuing shall be held in trust for Agent on behalf of Beneficiaries and shall forthwith be paid over to Agent for the benefit of Beneficiaries to be credited and applied against the Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Credit Party under any other provision hereof.

7.8 Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been paid in full and the Commitments shall have terminated. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

7.9 Authority of Guarantors or Borrowers. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or any Borrower or the officers, directors or any agents acting or purporting to act on behalf of any of them.

7.10 Financial Condition of Borrowers. Any Credit Extension may be made to any Borrower or continued from time to time, without notice to or authorization from any Guarantor regardless of the financial or other condition of Borrowers at the time of any such grant or continuation. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of Borrowers. Each Guarantor has adequate means to obtain information from Borrowers on a continuing basis concerning the financial condition of any Borrower and their ability to perform its obligations under the Credit Documents, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of Borrowers and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Borrowers now known or hereafter known by any Beneficiary.

7.11 Bankruptcy, etc.

(a) So long as any Guaranteed Obligations (other than contingent indemnification obligations for which no claim has been made) remain outstanding, no Guarantor shall, without the prior written consent of Agent acting pursuant to the instructions of Requisite Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against Borrowers or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Borrowers or any other Guarantor or by any defense which Borrowers or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve Borrowers of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay Agent, or allow the claim of Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by Borrowers, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent

transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

7.12 Interest Act. Each interest rate which is calculated under this Agreement on any basis other than the actual number of days in a calendar year (the "deemed interest period") is, for the purposes of the *Interest Act* (Canada), equivalent to a yearly rate calculated by dividing such interest rate by the number of days in the deemed interest period, then multiplying such result by the actual number of days in the calendar year (365 or 366).

7.13 Criminal Rate of Interest. In no event shall the aggregate "interest" (as defined in Section 347 (the "Criminal Code Section") of the *Criminal Code* (Canada)), payable to the Agent or the Lenders under this Agreement or any other Credit Document exceed the effective annual rate of interest lawfully permitted under the Criminal Code Section on the "credit advanced" (as defined in sueh section) under this Agreement or any other Credit Document. Further, if any payment, collection or demand pursuant to this Agreement or any other Credit Document in respect of such "interest" is determined to be contrary to the provisions of the Criminal Code Section, such payment, collection, or demand shall be deemed to have been made by mutual mistake of the Agent or the Lenders and the Borrowers and such "interest" shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by the Criminal Code Section so result in a receipt by the Agent or the Lenders of interest at a rate not in contravention of the Criminal Code Section, such adjustment to be effected, to the extent necessary, as follows:

(a) firstly, by reducing the amounts or rates of interest required to be paid to the Agent or the Lenders; and

(b) then, by reducing any fees, charges, expenses and other amounts required to be paid to the Agent or the Lenders which would constitute "interest".

Notwithstanding the above, and after giving effeet to all such adjustments, if the Agent or the Lenders shall have received an amount in excess of the maximum permitted by the Criminal Code Section, then the Borrowers shall be entitled, by notice in writing to the Agent and the Lenders, to obtain reimbursement from the Agent or the Lenders in an amount equal to such excess.

SECTION 8. EVENTS OF DEFAULT; CARVE-OUT EVENT

8.1 Events of Default. If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by Borrowers to pay (i) when due any principal of any DIP Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise or (ii) any interest on any DIP Loan or any fee or any other amount due hereunder within three Business Days after the date due; or

(b) Default in Other Agreements. (i) Failure of any Credit Party or any of their respective Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness incurred prior to the commencement of the Cases) with an aggregate principal amount of $7,500,000 or more, in

each case beyond the grace period, if any, provided therefor; or (ii) breach or default by any Credit Party with respect to one or more items of Indebtedness in the aggregate principal amount referred to in clause (i) above, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(c) Breach of Certain Covenants. Failure of any Credit Party to perform or comply with any term or condition contained in Sections 2.3, 5, and 6; or

(d) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by any Credit Party in any Credit Document or in any statement or certificate at any time given by any Credit Party or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made; or

(e) Other Defaults Under Credit Documents. Any Credit Party shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents, other than any such term referred to in any other Section of this Section 8.1, and such default shall not have been remedied or waived within thirty days after the earlier of (i) an Authorized Officer of such Credit Party becoming aware of such default or (ii) receipt by any Borrower of notice from Agent or any Lender of such default; or

(f) Failure of this Agreement. This Agreement or any related Document ceases to be in full force and effect; or

(g) Foreclosure Action Under Existing Credit Facilities. Any agent or lender under the Existing Credit Facilities shall **bring a motion or** take any **other** action without further order of the Bankruptcy Court or the Canadian Court to foreclose or otherwise seek to enforce or exercise remedies with respect to any Collateral that is subject to the Liens described in this Agreement **and the Debtors shall not file and diligently pursue an objection against such motion or bring and diligently pursue an action for violation of the automatic stay related to such other action, as applicable, within five (5) Business Days of the bringing of such motion or taking of such other action, as applicable by the agent or lenders under the Existing Credit Facilities**; or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving in the aggregate at any time an amount in excess of $1,000,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Holdings or any of its Subsidiaries or any of their respective assets (other than the allowance of claims in the Cases) and shall remain unsatisfied, undischarged, unvacated, unbonded or unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder); or

provided, however, that the failure of any Credit Party to perform or comply with any term or condition in Sections 5.1(a), (i) or (k) shall be subject to a 3-business days cure period, (ii) Section 5.1(b) and (d) shall be subject to a 5-day cure period, and (iii) Section 5.1(c) and (j) shall be subject to a 10-day business day cure period.

(i) Dissolution. Any order, judgment or decree shall be entered against any Credit Party decreeing the winding up, dissolution or split up of such Credit Party and such order shall remain undischarged or unstayed for a period in excess of thirty days; or

(j) Employee Benefit Plans. (i) There shall occur one or more ERISA Events which individually or in the aggregate results in or might reasonably be expected to result in liability of Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of $7,500,000 during the term hereof; or (ii) there exists any fact or circumstance that reasonably could be expected to result in the imposition of a Lien or security interest under Section 430(k) of the Internal Revenue Code or under Section 303(j) of ERISA, which individually or in the aggregate results in or might reasonably be expected to result in liability of Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of $2,000,000 during the term hereof; or

(k) Change of Control. A Change of Control shall occur **other than as a result of the Sponsor selling its Equity Interests in Holdings**; or

(l) Guaranties, Collateral Documents and other Credit Doeuments. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Agent shall not have or shall eease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, in each case for any reason other than the failure of Agent or any Secured Party to take any action within its control, or (iii) any Credit Party shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Credit Document to which it is a party or shall contest the validity or perfection of any Lien in any Collateral purported to be covered by the Collateral Documents; or

(m) Dismissal or Conversion. Any Case shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code, or any Credit Party shall file any pleading requesting dismissal or there shall be filed a motion or other pleading seeking the termination of any of the proceedings pursuant to Part IV of the CCAA in respect of any of the Canadian Credit Parties; or a motion, any plan of reorganization or disclosure statement shall be filed by any Credit Party or any other action shall be taken by any Credit Party in any of the Cases, for the approval of (i) additional financing under Section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement or (ii) the granting of any Lien (other than Existing Priority Liens or Liens expressly permitted in the Interim DIP Order, the Final DIP Order, the Canadian Supplemental Order or the Canadian Comeback Order) upon or affecting any Collateral which are pari passu or senior to the Liens on the Collateral in favor of the Agent, for the benefit of Agent and Lenders, or (iii) any other action or actions adverse to Agent's or Lenders' interests under any Credit Document or their rights and remedies hereunder or their interest in the Collateral; or

(n) Filing of Plan or Disclosure Statement. Any Credit Party files a plan of reorganization (or disclosure statement describing such plan of reorganization) unless such plan of reorganization (i) requires payment in full in Cash of all Obligations to the Lenders and the Agent hereunder or (ii) is consented to by the Requisite Lenders in their sole discretion; or

(o) Filing of Claims. The Bankruptcy Court shall issue or enter an order in any of the Cases granting (i) any other claim having priority senior to or pari passu with the claims of the Lenders under the Credit Documents or any other claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code (other than the Carve-Out or Existing Priority Liens) or (ii) any Lien on the Collateral having a priority senior to or pari passu with the Liens and security interests granted herein, except for (x) the Existing Priority Liens and (y) as expressly provided herein, in the Interim DIP Order, the Final DIP Order, the Canadian Supplemental Order or the Canadian Comeback Order; or

(p) Payment of Prepetition Claim. Any Credit Party shall pay any prepetition Claim without the consent of Agent unless otherwise permitted pursuant to Section 6.17 **or 6.20** of this Agreement; or

(q) Grant of Additional Financing; Liens; Use of Cash Collateral. Any party shall bring a motion, ~~take any action~~ or file any plan of reorganization or disclosure statement (i) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code, (ii) to grant any Lien upon or affecting any of the Collateral (other than Permitted Liens or Liens expressly permitted in the Interim DIP Order, the Final DIP Order, and expressly permitted and in the amounts as set out in the Canadian Supplemental Order or the Canadian Comeback Order), (iii) to use cash collateral; unless such additional financing, Lien on Collateral or use of cash collateral (x) requires payment in full in Cash of all Obligations to the Lenders and the Agent hereunder or (y) is consented to by the Requisite Lenders in their sole discretion; or

(r) Sale of Assets. The bringing of a motion ~~or taking of any action~~ by any party to approve any Asset Sale unless (x) such motion has been consented to by the Requisite Lenders in their sole discretion or (y) the proceeds of such sale, transfer or other disposition are required to be applied~~, and are actually applied,~~ to repay in full in cash all Obligations to the Agent or Lenders; or

(s) Action Against Existing First Lien Facility. The commencement of a suit or action against any agent or lender under the Existing First Lien Credit Facility or any of their respective affiliates that asserts or seeks, (a) any claim in excess of $100,000, (b) any legal or equitable remedy that would have the effect of subordinating any or all of the Obligations or Liens of any agent or lender under the Existing First Lien Credit Facility or any other loan documents related thereto to any other claim or interest, or (c) could have a material adverse effect on the rights and remedies of any agent or lender under the Existing First Lien Credit Facility or any related document or the collectability of all or any portion of the Obligations under the Existing First Lien Credit Facility **(the Agent and Lenders acknowledge that the Petitioning Creditor Action is not an Event of Default under this section (s))**; or

(t) Modification of Indebtedness Under Existing First Lien Credit Facility. The entry by any court with valid jurisdiction of an order or judgment in any of the Cases modifying, limiting, subordinating, recharacterizing or avoiding the priority or validity of any Indebtedness owed to the Lenders or to the lenders under the Existing First Lien Credit Facility or the perfection, priority or validity of the prepetition or post-petition liens of the Agent, the Lenders or the agents or lenders under the Existing First Lien Credit Facility on any Collateral or imposing, surcharging or assessing against the Lenders or the lenders under the Existing First Lien Credit Facility or their claims or any Collateral any costs or expenses, whether pursuant to section 506(c) of the Bankruptcy Code or otherwise**, and such Indebtedness, liens or costs and expenses having a book value in excess of $1,000,000 in the aggregate**; or

(u) Approval of Subsequent Debtor in Possession Financing. Except to the extent the Requisite Lenders support the motion or application in their sole and absolute discretion, any motion or application is filed by or on behalf of any Debtor in any of the Cases seeking the entry of an order, or an order is entered in any of the Cases, approving any subsequent debtor in possession facility for borrowed money or other extensions of credit unless such motion or applications and such order expressly provide for the indefeasible payment and complete satisfaction in full in Cash to the Agent and the Lenders of all Obligations under this Agreement prior to, or concurrently with, any initial borrowings or other extensions of credit under such subsequent facility; or

(v) Committee Seeks Subsequent Debtor in Possession Financing. Except to the extent the Requisite Lenders support the motion or application in their sole and absolute discretion, any motion or application is filed by or on behalf of any Committee in any of the Cases seeking the entry of an order, or an order is entered in any of the Cases, approving any subsequent debtor in possession facility for borrowed money or other extensions of credit unless such motion or applications and such order expressly provide for the indefeasible payment and complete satisfaction in full in cash to the Lenders of all obligations under the Facility prior to, or concurrently with, any initial borrowings or other extensions of credit under such subsequent facility and either (a) the Debtors do not immediately and diligently oppose such application or (b) an order is entered approving such subsequent debtor in possession facility for borrowed money or other extension of credit; or

(w) Relief from Stay. The Bankruptcy Court or Canadian Court shall issue or enter an order granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code or the Canadian Stay Order to any holder of any security interest to permit foreclosure on any assets having a book value in excess of $1,000,000 in the aggregate; or

(x) Failure to Comply with Orders. (i) Any Credit Party shall fail to comply with the terms of the Interim DIP Order, the Final DIP Order, the Canadian Supplemental Order or the Canadian Comeback Order in any material respect, (ii) the Interim DIP Order, the Final DIP Order, the Canadian Supplemental Order or the Canadian Comeback Order shall be amended, supplemented, stayed, reversed, vacated or otherwise modified in any respect adverse to the Lenders without the written consent of the Requisite Lenders, such consent to be granted or withheld in their sole discretion, or (iii) any Credit Party shall file a motion for reconsideration with respect to the Interim DIP Order, the Final DIP Order, the Canadian Supplemental Order or the Canadian Comebaek Order; or

(y) Appointment of Trustee. The Bankruptcy Court shall issue or enter an order appointing a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, or a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in subclauses (3) and (4) of clause (a) of Section 1106 of the Bankruptcy Code) under clause (b) of Section 1106 of the Bankruptcy Code in the Cases ; or, in Canada, the appointment of a receiver, receiver-manager, interim receiver or trustee in bankruptcy in respect of any Credit Party; or

(z) Challenge to Liens. The commencement of a suit or action to disallow any claim of any Lender, the Agent, or any lender or agent under the Existing First Lien Credit Facility in respect of the Obligations or the Obligations under the Existing First Lien Credit Facility or to challenge the validity or enforceability of the Liens in favor of the Agent, any Lender, or any lender or agent under the Existing First Lien Credit Facility, **and the opposed claims or Liens have a book value in excess of $1,000,000 in the aggregate; or**

(aa) Entry of Final Orders. The Final DIP Order is not entered by the Bankruptcy Court on or before the date thirty 30 days after the Consent Date, with such extensions as are required by the Bankruptcy Court's calendar, but in any event not later than forty-five (45) days after the Consent Date, and the Canadian Comeback Order is not issued and entered by the Canadian Court within seven (7) Business Days after entry of the Final DIP Order;

THEN, upon the occurrence of any other Event of Default, upon notice to any Borrower by Agent, in each case notwithstanding the provisions of Section 362 of the Bankruptcy Code or the Canadian Stay Order and without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court or the Canadian Court, (i) except as set forth in clause (ii) below, the Agent, at the direction of the Requisite Lenders, may (A) accelerate the Obligations hereunder; (B) terminate the Commitments; (C) upon five (5) Business Days' notice to the Credit Parties, foreclose upon the Collateral and/or (D) realize on the Collateral of the Guarantors or appoint a receiver or receiver and manager of the Guarantors and/or any or all of their collateral; (ii) upon the occurrence of Events of Default set forth in subclauses 8.1(i), (m) and (y), each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Credit Party: (X) the unpaid principal amount of and accrued interest on the DIP Loans and (Y) all other Obligations (other than contingent indemnification obligations for which no claim has been made); and (iii) subject to the satisfaction of the notice and other requirements set forth in the Interim DIP Order, Final DIP Order, the Canadian Supplemental Order or the Canadian Comeback Order, Agent may enforce any and all Liens and security interests created pursuant to Collateral Documents and the Canadian DIP Charge created under the Canadian Supplemental Order or the Canadian Comeback Order, including without limiting the generality of the foregoing, seeking the appointment of an interim receiver, receiver, receiver and manager or trustee in bankruptcy.

Each Credit Party acknowledges that certain of the Collateral may now or in the future consist of shares or other equity interests in the capital stock ("**ULC Shares**") of an issuer that is an unlimited company, unlimited liability company or unlimited liability corporation (a "**ULC**"), and that it is the intention of Agent and each Credit Party that neither Agent nor any of its successors and assigns (an "**ULC Beneficiary**" and collectively, the "**ULC Beneficiaries**") should under any circumstances prior to realization thereon be held to be a "member" or a "shareholder", as

applicable, of a ULC for the purposes of the *Companies Act* (Nova Scotia), the *Business Corporations Act* (Alberta), the *Business Corporations Act* (British Columbia) and any other present or future laws governing ULCs ("**ULC Laws**"). Therefore, notwithstanding any provisions to the contrary contained in this Agreement or any other Credit Document, where a Credit Party has granted a security interest hereunder in any ULC Shares, the Credit Party will remain the sole registered and beneficial owner of such ULC Shares until such time as such ULC Shares are effectively transferred into the name of Agent, any other ULC Beneficiary or any other Person on the books and records of the applicable ULC. Accordingly, the Credit Party shall be entitled to receive and retain for its own account any dividend on or other distribution, if any, in respect of such ULC Shares (except for any dividend or distribution comprised of pledged Collateral of the Credit Party, which is required to be delivered to Agent to hold as Collateral hereunder) and shall have the right to vote such ULC Shares and to control the direction, management and policies of the applicable ULC to the same extent as the Credit Party would if such ULC Shares were not pledged to Agent pursuant hereto. Nothing in this Agreement or any other Credit Document is intended to, and nothing in this Agreement or any other Credit Document shall, constitute Agent, any other ULC Beneficiary or any other Person other than the Credit Party, a member or shareholder of a ULC for the purposes of any ULC Laws (whether listed or unlisted, registered or beneficial), until such time as notice is given to the Credit Party and further steps are taken pursuant hereto or thereto so as to register Agent, any other ULC Beneficiary or such other Person, as specified in such notice, as the holder of the ULC Shares. To the extent any provision hereof would have the effect of constituting Agent, any other ULC Beneficiary or any other Person as a member or a shareholder, as applicable, of any ULC prior to such time, such provision shall be severed herefrom and shall be ineffective with respect to ULC Shares which are pledged Collateral of the Credit Party without otherwise invalidating or rendering unenforceable this Agreement or invalidating or rendering unenforceable such provision insofar as it relates to pledged Collateral of a Credit Party which is not ULC Shares. Except upon the exercise of rights of Agent to sell, transfer, otherwise dispose of or foreclose on the ULC Shares in accordance with this Agreement, a Credit Party shall not cause or permit, or enable an issuer of pledged Collateral that is a ULC to cause or permit, Agent, any other ULC Beneficiary or any other Person to: (a) be registered as a shareholder or member of such issuer; (b) have any notation entered in its favour in the share register of such issuer; (c) be held out as a shareholder or member of such issuer; (d) receive, directly or indirectly, any dividends, property or other distributions from such issuer by reason of Agent holding the security interests over the ULC Shares; or (e) act as a shareholder of such issuer, or exercise any rights of a shareholder including the right to attend a meeting of shareholders of such issuer or to vote the ULC Shares of such issuer.

8.2 Carve-Out Events. Upon the delivery of the Termination Notice to the Credit Parties, the right of the Credit Parties to pay professional fees outside the Carve-Out shall terminate (a "**Carve-Out Event**"), and, upon such occurrence, the Credit Parties, after receipt of the Termination Notice from Agent, shall provide immediate notice by facsimile to all professionals informing them that a Carve-Out Event has occurred and further advising them that the Credit Parties' ability to pay professionals is subject to and limited by the Carve-Out and the DIP Order. From and after the date of the Termination Notice, amounts withdrawn from the Professional Fee Reserve may only be applied to pay fees covered by the Carve-Out.

SECTION 9. AGENTS

9.1 Appointment of Agents. (a) Yucaipa American Alliance Fund II, LLC is hereby appointed Agent hereunder and under the other Credit Documents and each Lender hereby authorizes Yucaipa American Alliance Fund II, LLC to act as Agent in accordance with the terms hereof and the other Credit Documents. Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Credit Documents, as applicable. Except as expressly provided in Section 9.7, the provisions of this Section 9 are solely for the benefit of Agent and Lenders and no Credit Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Holdings or any of its Subsidiaries.

(b) For the purpose of holding any security granted by any Credit Party pursuant to the laws of the Province of Quebec to secure payment of any debenture issued by any Credit Party, Agent is hereby appointed to act as the person holding the power of attorney (fondé de pouvoir) pursuant to article 2692 of the Civil Code of Quebec to act on behalf of each of the debentureholders, initially Yucaipa American Alliance Fund II, LLC in its capacity as Agent for the Secured Parties. Each Person who is or becomes a Lender and each assignee holder of any debenture issued by any Credit Party shall be deemed to ratify the power of attorney (fondé de pouvoir) granted to Agent hereunder by its execution of an Assignment Agreement or Joinder Agreement. Agent agrees to act in such capacity. Each party hereto agrees that, notwithstanding Section 32 of An Act respecting the special powers of legal persons (Quebec), Agent, as fondé de pouvoir, shall also be entitled to act as a debentureholder and to acquire and/or be the pledgee of any debentures or other titles of indebtedness to be issued under any deed of hypothec executed by or on behalf of any Credit Party.

9.2 Powers and Duties. Each Lender irrevocably authorizes Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit Documents. Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. Agent shall not have, by reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender; and nothing herein or any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon Agent any obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein.

9.3 General Immunity.

(a) No Responsibility for Certain Matters. Agent shall not be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Credit Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by Agent to Lenders or by or on behalf of any Credit Party or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Credit Party or any other Person liable for the payment of any Obligations, nor shall Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Credit Documents or as to the use of the proceeds of the DIP Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Agent shall not have any liability arising from confirmations of the amount of outstanding DIP Loans or the component amounts thereof.

(b) Exculpatory Provisions. Agent, nor any of its officers, partners, directors, employees or agents, shall not be liable to Lenders for any action taken or omitted by Agent under or in connection with any of the Credit Documents except to the extent caused by Agent's gross negligence or willful misconduct. Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Requisite Lenders (or such other Lenders, as the case may be), Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Holdings and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5).

(c) Delegation of Duties. Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Credit Document by or through any one or more sub-agents appointed by Agent. 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 Affiliates. The exculpatory, indemnification and other provisions of this Section 9.3 and of Section 9.6 shall apply to any the Affiliates of Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification

provisions) of this Section 9.3 and of Section 9.6 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Credit Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to Agent and not to any Credit Party, Lender or any other Person and no Credit Party, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent.

9.4 Agents Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, Agent in its individual capacity as a Lender hereunder. With respect to its participation in the DIP Loans, Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include Agent in its individual capacity. Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Holdings or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Borrowers for services in connection herewith and otherwise without having to account for the same to Lenders.

9.5 Lenders' Representations, Warranties and Acknowledgment.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Holdings and its Subsidiaries in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Holdings and its Subsidiaries. Agent shall have no duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the DIP Loans or at any time or times thereafter, and Agent shall not have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement or an Assignment Agreement and funding its DIP Loan on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by Agent, Requisite Lenders or Lenders, as applicable on the Closing Date.

9.6 Right to Indemnity. Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify Agent, to the extent that Agent shall not have been reimbursed by any Credit

Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against Agent in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as Agent in any way relating to or arising out of this Agreement or the other Credit Documents; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from Agent's gross negligence or willful misconduct. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

9.7 Successor Agent. Agent may resign at any time by giving thirty days' prior written notice thereof to Lenders and Borrowers. Upon any such notice of resignation, Requisite Lenders shall have the right, with the consent of Borrowers (such consent (x) not to be unreasonably withheld or delayed and (y) not required if an Event of Default has occurred and is continuing), to appoint a successor Agent. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, that successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall promptly (i) transfer to such successor Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Agent under the Credit Documents, and (ii) execute and deliver to such successor Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Agent of the security interests created under the Collateral Documents, whereupon such retiring Agent shall be discharged from its duties and obligations hereunder. If the Requisite Lenders have not appointed a successor Agent, Agent shall have the right to appoint a financial institution to act as Agent hereunder and in any case, Agent's resignation shall become effective on the thirtieth day after such notice of resignation. If neither the Requisite Lenders nor Agent have appointed a successor Agent, the Requisite Lenders shall be deemed to succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent; provided that, until a successor Agent is so appointed by the Requisite Lenders or Agent, Agent, by notice to Borrowers and the Requisite Lenders, may retain its role as Agent under any Collateral Document. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 9 and Section 10.3 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent hereunder. Any successor Agent appointed pursuant to this Section shall, upon its acceptance of such appointment, become the successor Agent and Agent for all purposes hereunder. Notwithstanding anything herein to the contrary, in the event of any resignation by Yucaipa American Alliance Fund II, LLC or its successor as Agent (each, a "**Resigning Agent**"), such resignation shall become effective as set forth above.

9.8 Collateral Documents aud Guaranty.

(a) Agents under Collateral Documents and Guaranty. Each Secured Party hereby further authorizes Agent, on behalf of and for the benefit of Secured Parties, to be the agent for and representative of the Secured Parties with respect to the Guaranty, the Collateral and the Collateral Documents. Subject to Section 10.5, without further written consent or authorization from any Secured Party, Agent may execute any documents or instruments necessary to in connection with a sale or disposition of assets permitted by this Agreement, release any Lien encumbering any item of Collateral that is the subject of such sale or other disposition of assets or to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Credit Documents to the contrary notwithstanding, Borrowers, Agent, and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Agent, on behalf of the Secured Parties in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Agent, and (ii) in the event of a foreclosure by Agent on any of the Collateral pursuant to a public or private sale or other disposition, Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Requisite Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Agent at such sale or other disposition.

SECTION 10. MISCELLANEOUS

10.1 Notices.

(a) Notices Generally. Any notice or other communication herein required or permitted to be given to a Credit Party or Agent shall be sent to such Person's address as set forth on Appendix B or in the other relevant Credit Document, and in the case of any Lender, the address as indicated on Appendix B or otherwise indicated to Agent in writing. Except as otherwise set forth in paragraph (b) below, each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail (certified, return receipt) or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or telex, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided, no notice to Agent shall be effective until received by Agent; provided further, any such notice or other communication shall at the request of Agent be provided to any sub-agent appointed pursuant to Section 9.3(c) hereto as designated by Agent from time to time.

(b) Electronic Communications.

(i) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites, including the Platform) pursuant to procedures approved by Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2 if such Lender has notified Agent that it is incapable of receiving notices under such Section by electronic communication. Agent or any Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(ii) Each of the Credit Parties understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of Agent.

(iii) The Platform and any Approved Electronic Communications are provided "as is" and "as available". Neither Agent nor any of its respective officers, directors, employees, agents, advisors or representatives (the "**Agent Affiliates**") warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. 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 the Agent Affiliates in connection with the Platform or the Approved Electronic Communications.

(iv) Each of the Credit Parties, the Lenders and the Agent agree that Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with Agent's customary document retention procedures and policies.

10.2 Expenses. Whether or not the transactions contemplated hereby shall be consummated, each Borrower agrees to pay promptly (a) all the actual and reasonable costs and expenses of Agent for the preparation, negotiation, execution and administration of the Credit Documents and the transactions contemplated thereby and any consents, amendments, waivers or other modifications thereto; (b) all the costs of furnishing all opinions by counsel for Borrowers

and the other Credit Parties; (c) the reasonable fees, expenses and disbursements of counsel to Agent (in each case including reasonable allocated costs of internal counsel) in connection with the negotiation, preparation, execution and administration of the Credit Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Borrowers; (d) all the actual costs and reasonable expenses of creating, perfecting and recording Liens in favor of Agent, for the benefit of the Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel to Agent and of counsel providing any opinions that Agent or Requisite Lenders may reasonably request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (e) all the actual costs and reasonable fees, expenses and disbursements of any auditors, accountants, consultants or appraisers; (f) all the actual costs and reasonable expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (g) all other actual and reasonable costs and expenses incurred by Agent in connection with the syndication of the DIP Loans and Commitments and the negotiation, preparation and execution of the Credit Documents and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby; and (h) after the occurrence of a Default or an Event of Default, all reasonable costs and expenses, including reasonable attorneys' fees (including reasonable allocated costs of internal counsel) and reasonable costs of settlement, incurred by Agent and Lenders in enforcing any Obligations of or in collecting any payments due from any Credit Party hereunder or under the other Credit Documents by reason of such Default or Event of Default (including in connection with the sale, lease or license of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings.

10.3 Indemnity.

(a) In addition to the payment of expenses pursuant to Section 10.2, whether or not the transactions contemplated hereby shall be consummated, each Credit Party agrees to defend (subject to Indemnitees' selection of counsel (which shall be reasonably acceptable to Borrowers)), indemnify, pay and hold harmless, Agent and Lender and the officers, partners, members, directors, trustees, advisors, employees, agents, sub-agents and Affiliates of Agent and each Lender (each, an "**Indemnitee**"), from and against any and all Indemnified Liabilities; provided, no Credit Party shall have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct of that Indemnitee. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Credit Party shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(b) To the extent permitted by applicable law, no Credit Party shall assert, and each Credit Party hereby waives, any claim against each Lender, Agent and their respective Affiliates, directors, employees, attorneys, agents or sub-agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages)

(whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, arising out of, as a result of, or in any way related to, this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any DIP Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Credit Party hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

10.4 Set-Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender is hereby authorized, in each case notwithstanding the provisions of Section 362 of the Bankruptcy Code, and without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court, by each Credit Party at any time or from time to time subject to the consent of Agent (such consent not to be unreasonably withheld or delayed), without notice to any Credit Party or to any other Person (other than Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Credit Party against and on account of the obligations and liabilities of any Credit Party to such Lender hereunder, irrespective of whether or not (a) such Lender shall have made any demand hereunder or (b) the principal of or the interest on the DIP Loans or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured.

10.5 Amendments and Waivers.

(a) Requisite Lenders' Consent. Subject to the additional requirements of Sections 10.5(b) and 10.5(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall in any event be effective without the written concurrence of the Requisite Lenders; provided that Agent may, with the consent of each Borrower only, amend, modify or supplement this Agreement to cure any ambiguity, omission, defect or inconsistency, so long as such amendment, modification or supplement does not adversely affect the rights of any Lender.

(b) Affected Lenders' Consent. Without the written consent of each Lender (other than a Defaulting Lender) that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of any DIP Loan or Note;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayment);

(iii) reduce the rate of interest on any DIP Loan (other than any waiver of any increase in the interest rate applicable to any DIP Loan pursuant to Section 2.7) or any fee or any premium payable hereunder;

(iv) extend the time for payment of any such interest or fees;

(v) reduce the principal amount of any DIP Loan;

(vi) amend, modify, terminate or waive any provision of Section 2.10, this Section 10.5(b), Section 10.5(c) or any other provision of this Agreement that expressly provides that the consent of all Lenders is required;

(vii) amend the definition of "**Requisite Lenders**" or "**Pro Rata Share**";

(viii) release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guaranty except as expressly provided in the Credit Documents; or

(ix) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under any Credit Document.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall:

(i) increase any Commitment of any Lender over the amount thereof then in effect without the consent of such Lender; provided, no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default shall constitute an increase in any Commitment of any Lender;

(ii) amend, modify, terminate or waive any provision of Section 9 as the same applies to Agent, or any other provision hereof as the same applies to the rights or obligations of Agent, in each case without the consent of Agent; or

(iii) amend, modify, terminate or waive any provision of Section 2.21, 4.24, 6.15, or 6.21, without the written consent of each Lender.

(d) Execution of Amendments, etc. Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party. In addition, Agent may, with the consent of Borrowers, amend, modify, supplement or execute a restatement of this Agreement (i) to cure any typographical error, defect or inconsistency or (ii) to reflect the terms of this Agreement; provided that any such amendment, modification or supplement shall not adversely affect any Lender in any material respect.

10.6 Successors and Assigns; Participations.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders. No Credit Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Credit Party without the prior written consent of all Lenders. 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 and, to the extent expressly contemplated hereby, Affiliates of the Agent and Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. The Borrowers, Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and DIP Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or DIP Loan shall be effective, in each case, unless and until recorded in the Register following receipt of an Assignment Agreement effecting the assignment or transfer thereof, in each case, as provided in Section 10.6(d); provided, however, any Assignment Agreement that is not recorded in the Register within the time period required by the following sentence shall be deemed effective and recorded in the Register and the assignee thereof shall be deemed a Lender for all purposes under this Agreement in each case at the end of such time period. Each assignment shall be recorded in the Register on the Business Day the Assignment Agreement is received by Agent, if received by 12:00 noon New York City time, and on the following Business Day if received after such time, prompt notice thereof shall be provided to the Borrowers and a copy of such Assignment Agreement shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the "Assignment Effective Date." Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or DIP Loans.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment or DIP Loans owing to it or other Obligations (provided, however, that pro rata assignments shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable DIP Loan and any related Commitments):

(i) to any Person meeting the criteria of clause (i) of the definition of the term of "Eligible Assignee" upon the giving of notice to Borrowers and Agent; and

(ii) to any Person meeting the criteria of clause (ii) of the definition of the term of "Eligible Assignee" upon giving of notice to Borrowers and Agent; provided, further each such assignment pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than $1,000,000 (or such lesser amount as may be agreed to by Borrowers and Agent or as shall constitute the aggregate amount of the DIP Loans of the assigning Lender) with respect to the assignment of DIP Loans. Assignments by Related Funds shall be aggregated for purposes of determining compliance with such minimum assignment amounts.

(d) Mechanics. Assignments and assumptions of DIP Loans and Commitments shall only be effected by manual execution and delivery to Agent of an Assignment Agreement. Assignments shall be effective as of the Assignment Effective Date. In connection with all assignments there shall be delivered to Agent such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver pursuant to Section 2.17(c).

(e) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments and DIP Loans, as the case may be, represents and warrants as of the Closing Date or as of the Assignment Effective Date that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or DIP Loans, as the case may be; and (iii) it will make or invest in, as the case may be, its Commitments or DIP Loans for its own account in the ordinary course and without a view to distribution of such Commitments or DIP Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Commitments or DIP Loans or any interests therein shall at all times remain within its exclusive control).

(f) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the Assignment Effective Date with respect to any Assignment Agreement (i) the assignee thereunder shall have the rights and obligations of a "Lender" hereunder to the extent of its interest in the DIP Loans and Commitments as reflected in the Register and shall thereafter be a party hereto and a "Lender" for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender shall cease to be a party hereto on such Assignment Effective Date; provided, anything contained in any of the Credit Documents to the contrary notwithstanding, such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments shall be modified to reflect any Commitment of such assignee and any Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Agent for cancellation, and thereupon each Borrower shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new outstanding DIP Loans of the assignee and/or the assigning Lender.

(g) Participations.

(i) Each Lender shall have the right at any time to sell one or more participations to any Person (other than Holdings or any of its Subsidiaries) in all or any part of its Commitments, DIP Loans or in any other Obligation.

(ii) The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (A) extend the final scheduled maturity of any DIP Loan or Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or DIP Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (B) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement or (C) release all or substantially all of the Collateral under the Collateral Documents (except as expressly provided in the Credit Documents) supporting the DIP Loans hereunder in which such participant is participating.

(iii) Each Borrower agrees that each participant shall be entitled to the benefits of Sections 2.16 and 2.17 and subject to the provisions of Section 2.20 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (e) of this Section; provided, (x) a participant shall not be entitled to receive any greater payment under Section 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, unless the sale of the participation to such participant is made with such Borrower's prior written consent and (y) a participant that would be a Non-US Lender if it were a Lender shall not be entitled to the benefits of Section 2.17 unless each Borrower is notified of the participation sold to such participant and such participant agrees, for the benefit of each Borrower, to comply with Section 2.17 as though it were a Lender; provided further that, except as specifically set forth in clauses (x) and (y) of this sentence, nothing herein shall require any notice to any Borrower or any other Person in connection with the sale of any participation. The Lender who has assigned to any participant that, by virtue of application of the provisions of this Section 10.6(h)(iii), is subject to replacement under Section 2.20 agrees that such Lender can also be replaced pursuant to the provisions of Section 2.20. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.4 as though it were a Lender, provided such Participant agrees to be subject to Section 2.14 as though it were a Lender.

(h) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 10.6:

(i) any Lender may assign and/or pledge all or any portion of its DIP Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender including any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank; and

(ii) notwithstanding anything to the contrary in this Section 10.6, any Lender may sell participations (or otherwise transfer its rights) in or to all or a portion of its rights and obligations under the Credit Documents (including all its rights and obligations with respect to the DIP Loans) to one or more lenders or other Persons that provide financing to such Lender;

provided, that no Lender, as between Borrowers and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment, pledge, participation or other transfer and provided further, that in no event shall the applicable Federal Reserve Bank, pledge, trustee, lender or other financing source described in the preceding clauses (i) or (ii) be considered to be a "Lender" or be entitled to require the assigning, selling or transferring Lender to take or omit to take any action hereunder.

10.7 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

10.8 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in Sections 2.16, 2.17, 10.2, 10.3 and 10.4 and the agreements of Lenders set forth in Sections 2.14, 9.3(b) and 9.6 shall survive the payment of the DIP Loans, and the termination hereof.

10.9 No Waiver; Remedies Cumulative. No failure or delay on the part of Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

10.10 Marshalling; Payments Set Aside. Neither Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to Agent or Lenders (or to Agent, on behalf of Lenders), or Agent or Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be

satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.11 Severability. In case any provision in or obligation hereunder or under any other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

10.12 Obligations Several; Independent Nature of Lenders' Rights. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

10.13 Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

10.14 APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

10.15 CONSENT TO JURISDICTION. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY CREDIT PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENT, OR ANY OF THE OBLIGATIONS, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH CREDIT PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (A) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (B) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (C) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE CREDIT PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1; (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE CREDIT PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY

RESPECT; AND (E) AGREES THAT AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN THE COURTS OF ANY OTHER JURISDICTION. THE PARTIES HERETO SUBMIT TO THE JURISDICTION OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE.

10.16 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE DIP LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.17 Confidentiality. Agent and each Lender shall hold all non-public information regarding Holdings and its Subsidiaries and their businesses obtained by such Lender pursuant to the requirements hereof in accordance with such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by Holdings that, in any event, Agent and each Lender may make (i) disclosures of such information to Affiliates of such Lender or Agent and to their respective agents and advisors (and to other Persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17) so long as, in the case of any such Affiliates, such Persons have been advised of the confidential nature of such information and instructed to maintain the confidentiality of such information and, in the case of any such agents and advisors, such Persons have (A) a duty to keep such information confidential or (B) have

agreed to keep such information confidential, (ii) disclosures of such information reasonably required by any bona fide or potential assignee, pledgee, transferee or participant in connection with the contemplated assignment, pledge, transfer or participation of any DIP Loans or any participations therein, (iii) disclosure to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to the Credit Parties received by it from any of the Agents or any Lender, and (iv) disclosures required or requested by any governmental agency or representative thereof or by the NAIC or pursuant to legal or judicial process; provided, unless specifically prohibited by applicable law or court order, each Lender and each Agent shall make reasonable efforts to notify Borrowers of any request by any governmental agency or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such governmental agency) for disclosure of any such non-public information prior to disclosure of such information. In addition, each Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement and the other Credit Documents.

10.18 Usury Savings Clause.

(a) Notwithstanding any other provision herein with respect to each Credit Party other than a Canadian Credit Party, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the DIP Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the DIP Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Borrowers shall pay to Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Borrowers to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the DIP Loans made hereunder or be refunded to Borrowers.

(b) If any provision of this Agreement or of any of the other Credit Documents would obligate any Canadian Credit Party to make any payment of interest or other amount payable to any Agent or any Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by such Agent or such Lender of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)) then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the

maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by such Agent or such Lender of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows: (1) firstly, by reducing the amount or rate of interest required to be paid to such Agent or such Lender under Section 2.5, and (2) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to such Agent or such Lender which would constitute "interest" for purposes of Section 347 of the *Criminal Code* (Canada). Notwithstanding the foregoing, and after giving effect to all adjustments contemplated thereby, if an Agent or Lender shall have received an amount in excess of the maximum permitted by that section of the *Criminal Code* (Canada), such Canadian Credit Party shall be entitled, by notice in writing to such Agent or such Lender, to obtain reimbursement from such Agent or such Lender in an amount equal to such excess and, pending such reimbursement, such amount shall be deemed to be an amount payable by such Agent or such Lender such Canadian Credit Party. Any amount or rate of interest referred to in this Section 10.18 shall be determined in accordance with GAAP as an effective annual rate of interest over the term that the applicable DIP Loan remains outstanding on the assumption that any charges, fees or expenses that fall within the meaning of "interest" (as defined in the *Criminal Code* (Canada)) shall, if they relate to a specific period of time, be pro-rated over that period of time and otherwise be pro-rated over the period from the Closing Date to the Maturity Date and, in the event of a dispute, a certificate of a actuary appointed by Agent shall be conclusive for the purposes of such determination.

10.19 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

10.20 Effectiveness. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Holdings and Agent of written or telephonic notification of such execution and authorization of delivery thereof.

10.21 Patriot Act. Each Lender and Agent (for itself and not on behalf of any Lender) hereby notifies each Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies such Borrower, which information includes the name and address of such Borrower and other information that will allow such Lender or Agent, as applicable, to identify such Borrower in accordance with the Act.

10.22 Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment Agreement 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.

10.23 Post-Closing Actions. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, the parties hereto acknowledge and agree that Holdings and its Subsidiaries shall be required to take the actions specified in Schedule 10.23 as promptly as practicable, and in any event within the time periods set forth in Schedule 10.23 or such other time

periods as Agent may agree. The provisions of Schedule 10.23 shall be deemed incorporated by reference herein as fully as if set forth herein in their entirety. All provisions of this Agreement and the other Credit Documents (including, without limitation, all conditions precedent, representations, warranties, certificates, borrowing notices, covenants, events of default and other agreements herein and therein) shall be deemed modified to the extent necessary to effect the foregoing (and to permit the taking of the actions described above within the time periods required above, rather than as otherwise provided in the Credit Documents); provided that (a) to the extent any representation and warranty would not be true because the foregoing actions were not taken on the Closing Date, the respective representation and warranty shall be required to be true and correct in all material respects at the time the respective action is taken (or was required to be taken) in accordance with the foregoing provisions of this Section 10.23 and (b) all representations and warranties relating to the Collateral Documents shall be required to be true immediately after the actions required to be taken by this Section 10.23 have been taken (or were required to be taken). The parties hereto acknowledge and agree that the failure to take any of the actions required above within the relevant time periods required above shall give rise to an immediate Event of Default pursuant to this Agreement.

10.24 Joint and Several Liability. Notwithstanding any other provision contained herein or in any other Credit Document, if a "secured creditor" (as that term is defined under the Bankruptcy and Insolvency Act (Canada)) is determined by a court of competent jurisdiction not to include a Person to whom obligations are owed on a joint or joint and several basis, then any Canadian Credit Party's Obligations (and the Obligations of each other Credit Party with respect thereto), to the extent such Obligations are secured, only shall be several obligations and not joint or joint and several obligations.

10.25 Limitations Act, 2002. Each of the parties hereto agree that any and all limitation periods provided for in the Limitations Act, *2002* (Ontario), as amended from time to time, shall be excluded from application to the Obligations and any undertaking, covenant, indemnity or other agreement of any Credit Party provided for in any Credit Document to which it is a party in respect thereof, in each case to fullest extent permitted by such Act.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

ALLIED SYSTEMS HOLDINGS, INC.

By: _____
Scott Macaulay
Senior Vice President, Chief Financial Officer and Treasurer

ALLIED SYSTEMS, LTD. (L.P.)

By: Allied Automotive Group, Inc.,
its Managing General Partner

By: _____
Scott Macaulay
Vice President and Treasurer

ALLIED AUTOMOTIVE GROUP, INC.
ALLIED FREIGHT BROKER LLC
ALLIED SYSTEMS (CANADA) COMPANY
AXIS CANADA COMPANY
AXIS GROUP, INC.
COMMERCIAL CARRIERS, INC.
CORDIN TRANSPORT LLC
C T SERVICES, INC.
F.J. BOUTELL DRIVEAWAY LLC
GACS INCORPORATED
QAT, INC.
RMX LLC
TERMINAL SERVICES LLC
TRANSPORT SUPPORT LLC

By: _____
Scott Macaulay
Vice President and Treasurer

AXIS ARETA, LLC
LOGISTIC SYSTEMS, LLC
LOGISTIC TECHNOLOGY, LLC

By: AX International Limited,
its Sole Member and Manager

By: _____
Scott Macaulay
Vice President and Treasurer

YUCAIPA AMERICAN ALLIANCE FUND II, LLC,
as Agent

By: _____
Name:
Title:

YUCAIPA LEVERAGED FINANCE, LLC,
as a Lender

By: _____
Name:
Title:

CB INVESTMENTS, LLC,
as a Lender

By: _____
Name:
Title:

APPENDIX A
TO CREDIT AND GUARANTY AGREEMENT

DIP Commitments

Lender	[illegible]	[illegible]
Yucaipa Leveraged Finance, LLC	**$15,000,000**	**75%**
CB Investments, LLC	**$5,000,000**	**25%**
Total	**$20,000,000.00**	**100%**

APPENDIX B
TO CREDIT AND GUARANTY AGREEMENT

Notice Addresses

- ▸ ▸ **ALLIED SYSTEMS HOLDINGS, INC.**
- ▸ ▸ **ALLIED SYSTEMS, LTD. (L.P.)**
- ▸ ▸ **ALLIED AUTOMOTIVE GROUP, INC.**
- ▸ ▸ **ALLIED FREIGHT BROKER LLC**
- ▸ ▸ **ALLIED SYSTEMS (CANADA) COMPANY**
- ▸ ▸ **AXIS ARETA, LLC**
- ▸ ▸ **AXIS CANADA COMPANY**
- ▸ ▸ **AXIS GROUP, INC.**
- ▸ ▸ **COMMERCIAL CARRIERS, INC.**
- ▸ ▸ **CORDIN TRANSPORT LLC**
- ▸ ▸ **C T SERVICES, INC.**
- ▸ ▸ **F.J. BOUTELL DRIVEAWAY LLC**
- ▸ ▸ **GACS INCORPORATED**
- ▸ ▸ **LOGISTIC SYSTEMS LLC**
- ▸ ▸ **LOGISTIC TECHNOLOGY, LLC**
- ▸ ▸ **QAT, INC.**
- ▸ ▸ **RMX LLC**
- ▸ ▸ **TERMINAL SERVICES LLC**
- ▸ ▸ **TRANSPORT SUPPORT LLC**

2302 Parklake Drive
Building 15
Suite 600
Atlanta GA 30345
Attention: Chief Financial Officer/Assistant Treasurer
Facsimile: 404-370-4206

in each case, with a copy to:

Troutman Sanders LLP
600 Peachtree Street, N.E.
Suite 5200
Atlanta, GA 30308
Attention: Hazen H. Dempster, Esq.
Facsimile: 404-962-6544

YUCAIPA AMERICAN ALLIANCE FUND II, LLC,
as Agent,

YUCAIPA LEVERAGED FINANCE, LLC,
as a Lender:

and

CB INVESTMENTS, LLC,
as a Lender:

9130 West Sunset Boulevard
Los Angeles, CA 90069
Attention: Derex Walker and Bob Bermingham
Facsimile: 310-228-2870
310-789-1791

with a copy to:

Latham & Watkins LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560
Attn: Robert A. Klyman, Esq.
Facsimile: 213-891-8763

This is Exhibit "C" referred to in the affidavit of Christopher Eustace sworn before me, this 12th day of June 20 12

A COMMISSIONER FOR TAKING AFFIDAVITS

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	**Chapter 11**
ALLIED SYSTEMS HOLDINGS, INC., *et al.*,[1]	**Case No. 12-11564 (CSS)**
	(Jointly Administered)
Debtors.	**Re: Docket No. 78**

INTERIM ORDER AUTHORIZING PAYMENT OF PRE-PETITION WAGES, PAYROLL TAXES, CERTAIN EMPLOYEE BENEFITS AND RELATED EXPENSES, AND OTHER COMPENSATION TO EMPLOYEES AND INDEPENDENT CONTRACTORS

Allied Systems Holdings, Inc. and its U.S. and Canadian subsidiaries (collectively, the "**Debtors**") seek authority to pay prepetition wages, payroll taxes, certain employee benefits and related expenses (the "**Motion**").

The Court[2] has considered the Motion, the Declaration of Scott D. Macaulay in Support of Chapter 11 Petitions and First Day Motions, and the matters reflected in the record of the hearing held on the Motion. It appears that the Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334; that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); that the Debtors have provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances and that no further notice is necessary; and

[1] The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: Allied Systems Holdings, Inc. (58-0360550); Allied Automotive Group, Inc. (58-2201081); Allied Freight Broker LLC (59-2876864); Allied Systems (Canada) Company (90-0169283); Allied Systems, Ltd. (L.P.) (58-1710028); Axis Areta, LLC (45-5215545); Axis Canada Company (87568828); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2918187); Cordin Transport LLC (38-1985795); F.J. Boutell Driveaway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors' corporate headquarters and the Debtors' address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345.

[2] Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Motion.

Date filed: 06/12/12
Docket No. 110

that the relief sought in the Motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby **ORDERED** as follows:

1. The Motion is **GRANTED** as set forth herein on an interim basis.

2. The Final Hearing Date shall be July 12, 2012 at 11:00 a.m. prevailing Eastern Time. Any objections or responses to entry of the final order shall be filed on or before ~~seven~~ six ~~business~~ days prior to the Final Hearing Date and served on parties in interest as required by the Local Rules.

3. The Debtors are authorized, but not directed, to pay the Employee Obligations (as defined in the Motion) that have accrued by virtue of the services rendered by their employees prior to the Petition Date, ~~subject to that certain budget (the "**Approved Budget**") as may be amended from time to time with the consent of the Agent under the Debtors' debtor-in-possession delayed draw term loan facility (the "**DIP Facility**").~~

4. The Employee Obligations that the Debtors are authorized, but not directed, to pay include, without limitation: (i) wages, salaries and compensation; (ii) payroll taxes; (iii) vacation, sick and holiday pay; (iv) qualified 401(k) plan obligations; (v) health and welfare benefits; (vi) severance amounts; (vii) flexible spending account programs; (viii) qualified pension plans; (ix) life insurance plans; (x) miscellaneous payroll deductions; and (xi) other benefits in an aggregate amount not to exceed $10,500,000.00 during the interim period from the date of this Order until the date that a Final Order is entered in this matter, ~~subject to the Approved Budget under the DIP Facility.~~

5. The Debtors are authorized, but not directed, to continue to honor, pay and maintain, in their sole discretion, all of their employee benefits to the extent such benefits were in effect as of the Petition Date, ~~subject to the Approved Budget under the DIP Facility.~~

6. The banks and other financial institutions that process, honor and pay any and all checks on account of Employee Obligations may rely on the representation of the Debtors as to which checks are issued and authorized to be paid in accordance with this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. Neither this Order, nor the Debtors' payment of any amounts authorized by this Order, shall (i) result in any assumption of any executory contract by the Debtors; (ii) result in a commitment to continue any plan, program, or policy of the Debtors; (iii) be deemed an admission as to the validity of the underlying obligations or a waiver of any rights the Debtors may have to subsequently dispute such obligations; or (iv) impose any administrative, prepetition, or postpetition liabilities upon the Debtors.

8. Notwithstanding any other provision of this Order, no payment by the Debtors to any individual employee shall exceed the amounts set forth in 11 U.S.C. §§ 507(a)(4) and (a)(5), except upon further order of this Court.

9. Notwithstanding any other provision of this Order, no payments which implicate 11 U.S.C. § 503(c) shall be made by the Debtors, except upon further order of this Court.

~~10.~~ 11. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the Motion or otherwise deemed waived.

~~11.~~ 12. Notice of the Motion as provided therein shall be deemed good and sufficient and the requirements of Local Rule 6004(a) and the Local Rules are satisfied by such notice.

10. Nothing herein shall be deemed to alter, modify or waive the Debtors' obligations under applicable Canadian law.

~~12.~~ 13. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

~~13.~~ 14. This Court shall retain jurisdiction to interpret and enforce this Order.

Dated: June 12, 2012
Wilmington, Delaware

THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

This is Exhibit "D" referred to in the affidavit of Christopher Pusateri sworn before me, this 12th day of June 20 12

A COMMISSIONER FOR TAKING AFFIDAVITS

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	**Chapter 11**
ALLIED SYSTEMS HOLDINGS, INC., *et al.*,[1]	**Case No. 12-11564 (CSS)**
Debtors.	**(Jointly Administered)**
	Re: Docket No. 73

INTERIM ORDER GRANTING MOTION OF DEBTORS FOR ORDER AUTHORIZING DEBTORS TO CONTINUE THEIR INSURANCE PROGRAMS

This matter is before the Court[2] on the motion of Allied Systems Holdings, Inc. and certain of its direct and indirect wholly-owned subsidiaries, the debtors and debtors in possession herein (collectively, the "**Debtors**"), for authority to continue their Insurance Programs (the "**Motion**").

The Court has considered the Motion, the Declaration of Scott D. Macaulay in Support of Chapter 11 Petitions and First Day Motions, and the matters reflected in the record of the hearing held on the Motion. It appears that the Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334; that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); that the Debtors have provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances and that no further notice is necessary; and that the relief

[1] The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: Allied Systems Holdings, Inc. (58-0360550); Allied Automotive Group, Inc. (58-2201081); Allied Freight Broker LLC (59-2876864); Allied Systems (Canada) Company (90-0169283); Allied Systems, Ltd. (L.P.) (58-1710028); Axis Areta, LLC (45-5215545); Axis Canada Company (87568828); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2918187); Cordin Transport LLC (38-1985795); F.J. Boutell Driveaway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors' corporate headquarters and the Debtors' address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Date filed: 06/12/12
Docket No. 105

sought in the motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby **ORDERED** as follows:

1. The Motion is **GRANTED** as set forth herein on an interim basis.

2. In addition, a Final Hearing with respect to the Motion shall be held on July 12, **2012 at** 1:00 ~~a.m.~~ **p.m. prevailing Eastern Time.** Any objections or responses to the Motion shall be filed on or before July 6, 2012, and served on parties in interest as required by the Local Rules.

3. The Debtors are hereby: (a) authorized to maintain their Insurance Programs in accordance with their prepetition practice, (b) authorized, but not required, to pay the following obligations due before the commencement of the Chapter 11 Cases: (i) insurance premiums, (ii) deductible reimbursement due to insurance carriers for insured commercial auto liability claims, and (iii) amounts due third party administrator for benefits paid or to be paid under workers' compensation programs with certain states for which the Debtors have self-insured retention, and (c) authorized, but not required, to pay in the ordinary course of business, as they become due during these Chapter 11 Cases: (i) insurance premiums and premium finance installments on insurance policies and premium finance agreements entered before or after the Petition Date, (ii) deductible reimbursement on commercial auto liability claims arising before or after the Petition Date and (iii) amounts due to third party administrators for administrative services and for benefits due on claims arising before or after the Petition Date under workers' compensation programs with certain states for which the Debtors have self-insured retention.

4. Payment of any prepetition amounts described in the foregoing paragraph 3 of this Order is capped at $1,000,000 pending the Final Hearing. ~~Further, all payments made pursuant~~

to this Order are subject at all times to that certain budget as may be amended from time to time with the consent of the Agent under the Debtors' debtor-in-possession delayed draw term loan facility.

5. Any payments made by the Debtors pursuant to this Order are not, and shall not be deemed, an admission as to the validity of the underlying obligations, a waiver of any rights the Debtors may have to subsequently dispute such obligations, or an assumption of any agreements, contracts or leases under Section 365 of the Bankruptcy Code.

6. Nothing in this Order is intended or shall be construed to constitute relief from the automatic stay under Section 362 of the Bankruptcy Code.

7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the Motion or otherwise deemed waived.

8. To the extent the fourteen-day stay of Bankruptcy Rule 6004(h) may be construed to apply to the subject matter of this Order, such stay is hereby waived.

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

10. This Court shall retain jurisdiction to interpret and enforce this Order.

Dated: June 12, 2012
Wilmington, Delaware

THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

This is Exhibit "E" referred to in the affidavit of Christopher Bustace sworn before me, this 12th day of June 20 12

COMMISSIONER FOR TAKING AFFIDAVITS

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	**Chapter 11**
ALLIED SYSTEMS HOLDINGS, INC., *et al.*,[1]	**Case No. 12-11564 (CSS)**
Debtors.	**(Jointly Administered)**
	Re: Docket No. 75

INTERIM ORDER AUTHORIZING DEBTORS TO PAY PREPETITION CUSTOMS DUTIES AND CLAIMS OF COMMON CARRIERS AND WAREHOUSEMEN AND AUTHORIZING THE DEBTORS TO HONOR CERTAIN PREPETITION CARGO CLAIMS AND AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH CLAIMS

This matter is before the Court[2] on the motion of Allied Systems Holdings, Inc. and its U.S. and Canadian subsidiaries (collectively, the "**Debtors**"), for authority to pay prepetition customs duties claims of common carriers and warehousemen, to honor certain prepetition cargo claims, and to authorize financial institutions to honor and process checks and transfers related to such claims (the "**Motion**").

The Court has considered the Motion, the Declaration of Scott D. Macaulay in Support of Chapter 11 Petitions and First Day Motions, and the matters reflected in the record of the hearing held on the Motion. It appears that the Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334; that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); that the

[1] The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: Allied Systems Holdings, Inc. (58-0360550); Allied Automotive Group, Inc. (58-2201081); Allied Freight Broker LLC (59-2876864); Allied Systems (Canada) Company (90-0169283); Allied Systems, Ltd. (L.P.) (58-1710028); Axis Areta, LLC (45-5215545); Axis Canada Company (87568828); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2918187); Cordin Transport LLC (38-1985795); F.J. Boutell Driveaway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors' corporate headquarters and the Debtors' address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Date filed: 06/12/12
Docket No. 107

Debtors have provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances and that no further notice is necessary; and that the relief sought in the motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby **ORDERED** as follows:

1. The Motion is **GRANTED** as set forth herein on an interim basis.

2. In addition, a Final Hearing with respect to the Motion shall be held on July 12, **2012 at 11:00 a.m./p.m. prevailing Eastern Time.** Any objections or responses to the Motion shall be filed on or before July 6, 2012, and served on parties in interest as required by the Local Rules.

3. The Debtors are authorized, but not required, to honor or pay those prepetition obligations arising from Customs Duties, Common Carriers, Warehousemen, and Cargo Claims in an amount not to exceed $2,000,000.00 pending the Final Hearing, ~~and subject at all times to that certain budget as may be amended from time-to-time with the consent of the Agent under the Debtors' debtor-in-possession delayed draw term loan facility~~. The Debtors' banks are authorized to process, honor and pay any and all checks issued to honor transfers in connection with Customs Duties, claims of Common Carriers, Warehousemen and Cargo Claims.

4. The banks and other financial institutions that process, honor and pay any and all checks on account of prepetition Customs Duties, Common Carriers, Warehousemen, and Cargo Claims (as such terms are defined in the Motion) may rely on the representation of the Debtors as to which checks are issued and authorized to be paid in accordance with this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

5. Payment of an obligation arising from Customs Duties, Common Carriers, Warehousemen, and Cargo Claims shall not preclude the Debtors from contesting the validity or

amount due to those creditors. Authorization of the payment of the Customs Duties, Common Carriers, Warehousemen, and Cargo Claims shall not be deemed to constitute the postpetition assumption of any executory contract pursuant to Section 365 of the Bankruptcy Code.

6. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the Motion or otherwise deemed waived.

7. Notice of the Motion as provided therein shall be deemed good and sufficient and the requirements of Local Rule 6004(a) and the Local Rules are satisfied by such notice.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

10. This Court shall retain jurisdiction to interpret and enforce this Order.

Dated: June 12, 2012
Wilmington, Delaware

THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

This is Exhibit "E" referred to in the affidavit of Christopher Eustace sworn before me, this 12th day of June 20 12

A COMMISSIONER FOR TAKING AFFIDAVITS

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	**Chapter 11**
ALLIED SYSTEMS HOLDINGS, INC., *et al.*,[1]	**Case No. 12-11564 (CSS)**
Debtors.	**(Jointly Administered)**
	Re: Docket No. 76

ORDER GRANTING MOTION OF THE DEBTORS FOR ORDER AUTHORIZING THE DEBTORS TO PAY PREPETITION SALES, USE, AND OTHER TAXES AND RELATED OBLIGATIONS

This matter is before the Court on the motion of Allied Systems Holdings, Inc. and certain and its U.S. and Canadian subsidiaries (collectively, the "**Debtors**") for an order, pursuant to 11 U.S.C. §§ 105(a) and 541 (a) authorizing them to pay certain prepetition sales and use tax obligations and (b) authorizing the Debtors' banks and financial institutions to honor and process checks and transfers related to such relief (the "**Motion**").[2]

The Court has considered the Motion, the Declaration of Scott D. Macaulay in Support of Chapter 11 Petitions and First Day Motions, and the matters reflected in the record of the hearing held on the Motion. It appears that the Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334; that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); that the Debtors have provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances and that no further notice is necessary; and that the relief

[1] The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: Allied Systems Holdings, Inc. (58-0360550); Allied Automotive Group, Inc. (58-2201081); Allied Freight Broker LLC (59-2876864); Allied Systems (Canada) Company (90-0169283); Allied Systems, Ltd. (L.P.) (58-1710028); Axis Areta, LLC (45-5215545); Axis Canada Company (87568828); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2918187); Cordin Transport LLC (38-1985795); F.J. Boutell Driveaway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors' corporate headquarters and the Debtors' address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Date filed: 06/12/12
Docket No. 108

sought in the motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby **ORDERED** as follows:

1. The Motion is **GRANTED** as set forth herein.

2. The Debtors are authorized, but not directed, to honor or pay the prepetition Sales and Use Taxes, as those taxes are defined and more particularly described in the Motion, not to exceed $180,000.00, ~~subject at all times to the Approved Budget, as may be amended from time to time with the consent of the Agent under the DIP Facility~~.

3. The Debtors' banks are authorized to process, honor and pay any and all checks issued to pay Sales and Use Taxes, without duty of inquiry or liability for following the Debtors' instructions in relation to payments authorized by this Order.

4. The payment of any Sales and Use Taxes shall not preclude the Debtors from contesting the validity or amount due to those creditors.

5. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the Motion or otherwise deemed waived.

6. Notice of the Motion as provided therein shall be deemed good and sufficient and the requirements of Local Rule 6004(a) and the Local Rules are satisfied by such notice.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. This Court shall retain jurisdiction to interpret and enforce this Order.

Dated: June 12, 2012
Wilmington, Delaware

THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

This is Exhibit "G" referred to in the affidavit of Christopher Eustace sworn before me, this 12th day of June 2012

A COMMISSIONER FOR TAKING AFFIDAVITS

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	**Chapter 11**
ALLIED SYSTEMS HOLDINGS, INC., *et al.*,[1]	**Case No. 12-11564 (CSS)**
Debtors.	**(Jointly Administered)**
	Re: Docket No. 74

INTERIM ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS AND GRANTING CERTAIN OTHER RELIEF

This matter is before the Court on the motion of Allied Systems Holdings, Inc. and certain ("**Allied Holdings**") and its U.S. and Canadian subsidiaries (collectively, the "**Debtors**") for an order, pursuant to 11 U.S.C. §§ 105(a) and 363 authorizing them to pay certain prepetition claims of Critical Vendors[2] and granting certain other relief (the "**Motion**").

The Court has considered the Motion, the Declaration of Scott D. Macaulay in Support of Chapter 11 Petitions and First Day Motions, and the matters reflected in the record of the hearing held on the Motion. It appears that the Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334; that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); that the Debtors have provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances and that no further notice is necessary; and that the relief

[1] The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: Allied Systems Holdings, Inc. (58-0360550); Allied Automotive Group, Inc. (58-2201081); Allied Freight Broker LLC (59-2876864); Allied Systems (Canada) Company (90-0169283); Allied Systems, Ltd. (L.P.) (58-1710028); Axis Areta, LLC (45-5215545); Axis Canada Company (87568828); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2918187); Cordin Transport LLC (38-1985795); F.J. Boutell Driveaway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors' corporate headquarters and the Debtors' address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345.

[2] Capitalized terms used herein but not otherwise defines shall have the meanings ascribed to them in the Motion.

Date filed: 06/12/12
Docket No. 106

sought in the motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby **ORDERED** as follows:

1. The Motion is **GRANTED** as set forth herein on an interim basis.

2. In addition, a Final Hearing with respect to the Motion shall be held on July 12, **2012 at 11:00 a.m./p.m. prevailing Eastern Time**. Any objections or responses to the Motion shall be filed on or before July 6, 2012, and served on parties in interest as required by the Local Rules.

3. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay all or part of, on a case-by-case basis, the Critical Vendor Claims in an aggregate amount not to exceed $500,000 during the interim period from the date of this Order until the date that a Final Order is entered in this matter, ~~subject to Approved Budget as may be amended from time to time with the consent of the Agent under the DIP Facility~~.

4. Nothing herein shall impair the Debtors' ability to contest, without prejudice, in their sole discretion, the validity and amounts of any claim obligations owed to the Critical Vendors.

5. In accordance with this Order and any other order of this Court, each of the financial institutions at which the Debtors maintain their accounts relating to the prepetition or postpetition obligations are authorized to honor checks presented for payment and all fund transfer requests made by the Debtors related to such obligations to the extent that sufficient funds are on deposit in such accounts.

6. The Debtors are authorized to issue postpetition checks or to make additional electronic payment requests with respect to payment of a Critical Vendor Claim in the event prepetition checks or electronic payment requests are dishonored or rejected.

7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

8. The requirements set forth in Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by the contents of the Motion.

9. Notwithstanding Bankruptcy Rule 6004(h) the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

11. This Court shall retain jurisdiction to interpret and enforce this Order.

Dated: June 12, 2012
Wilmington, Delaware

THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

This is Exhibit "H" referred to in the affidavit of Christopher Eustace sworn before me, this 12th day of June 20 12

A COMMISSIONER FOR TAKING AFFIDAVITS

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	**Chapter 11**
ALLIED SYSTEMS HOLDINGS, INC., *et al.*,[1]	**Case No. 12-11564 (CSS)**
	(Jointly Administered)
Debtors.	**Re: Docket No. 72**

INTERIM ORDER DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES

Upon the motion (the "**Motion**")[2] of Allied Systems Holdings, Inc. and its U.S. and Canadian subsidiaries (collectively, the "**Debtors**"), for entry of an interim order (this "**Order**") (a) deeming utilities adequately assured of payment, (b) prohibiting utilities from altering, refusing, or discontinuing services, (c) establishing procedures for resolving requests for additional assurance and (d) scheduling a final hearing (the "**Final Hearing**") to consider entry of the Final Order; and upon the Declaration of Scott D. Macaulay in Support of Chapter 11 Petitions and First Day Motions, filed on the Petition Date; and the Court having found that: (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iv) the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest;

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[1] The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: Allied Systems Holdings, Inc. (58-0360550); Allied Automotive Group, Inc. (58-2201081); Allied Freight Broker LLC (59-2876864); Allied Systems (Canada) Company (90-0169283); Allied Systems, Ltd. (L.P.) (58-1710028); Axis Areta, LLC (45-5215545); Axis Canada Company (87568828); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2918187); Cordin Transport LLC (38-1985795); F.J. Boutell Driveaway LLC (38-0365100); GACS Incorporated (58-I944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors' corporate headquarters and the Debtors' address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Date filed: 06/12/12
Docket No. 104

and (v) the Debtors provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the "**Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY **ORDERED** THAT:

1. The Motion is **GRANTED** as set forth herein on an interim basis.

2. In addition, a Final Hearing with respect to the Motion shall be held on July 12, **2012 at** 11:~~00~~ **a.m./p.m. prevailing Eastern Time.** Any objections or responses to the Motion (including any objections to the proposed Adequate Assurance Proceedings) shall be filed ~~within fifteen (15) days of the entry of this Order.~~ by July 6, 2012 at 4:00 p.m. (ET)

3. The Debtors shall deposit the Adequate Assurance Deposit into the Adequate Assurance Deposit Account as provided in the Motion within twenty (20) business days following entry of this Order.

4. Absent compliance with the procedures set forth in the Motion and this Order, the Debtors' utility providers (the "**Utility Companies**") are prohibited from altering, refusing or discontinuing service on account of any unpaid prepetition charges and are deemed to have received adequate assurance of payment in compliance with Section 366 of the Bankruptcy Code, pending entry of the Final Order.

5. The Adequate Assurance Deposit in conjunction with the Debtors' cash flow from operations, cash on hand and proceeds from the proposed debtor-in-possession facility

demonstrate the Debtors' ability to pay for future utility services in the ordinary course of business (together, the "**Proposed Adequate Assurance**") and constitute sufficient adequate assurance to the Utility Companies. The Proposed Adequate Assurance is, therefore, hereby approved and is deemed adequate assurance of payment as the term is used in Section 366 of the Bankruptcy Code, except as otherwise determined pursuant to this Order, pending entry of the Final Order.

6. The following Adequate Assurance Procedures are approved:

   i. In the event that a Utility Company maintains that the Adequate Assurance Deposit is not satisfactory assurance of future payment, the Utility Company must serve a request (an "**Additional Adequate Assurance Request**") for additional adequate assurance upon the proposed counsel for the Debtors—Troutman Sanders LLP, Suite 5200, 600 Peachtree Street, N.E., Atlanta, Georgia 30308, c/o Jeffrey W. Kelley; and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, c/o Mark D. Collins, and counsel to the Debtors' proposed agent under the DIP Facility, Latham & Watkins LLP, 355 South Grand Avenue, Los Angeles, CA 90071-1560, c/o Robert Klyman and Young Conaway Stargatt & Taylor, LLP, 1000 N. King Street., Wilmington, DE 19801, c/o Michael Nestor.

   ii. Any Additional Adequate Assurance Request must: (i) be made in writing; (ii) set forth the location(s) for which Utility Services are provided, including corresponding account number(s); (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any deposit, letter(s) of credit, or other security securing the Debtors' obligation(s); (iv) set forth what the Utility Company would accept as satisfactory adequate assurance of future payment; and (v) provide a fax and electronic mail address to which the Debtors may respond to the Additional Adequate Assurance Request.

   iii. The Debtors shall promptly (the "**Resolution Period**") to negotiate with the Utility Companies that serve an Additional Adequate Assurance Request.

   iv. Without further order of the Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Company serving a timely Additional Adequate Assurance Request if the Debtors, in their discretion, determine that the

Additional Adequate Assurance Request is reasonable or if the parties negotiate alternate consensual provisions, ~~subject to the Approved Budget as may be amended from time to time with the consent of the agent under the DIP Facility.~~

v. If the Debtors determine that an Additional Adequate Assurance Request is unreasonable and are not able to reach a prompt alternative resolution with the Utility Company during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before the Court at the next regularly scheduled omnibus hearing date to determine the adequacy of assurance of payment with respect to a particularly Utility Company, pursuant to Section 366 of the Bankruptcy Code (the "**Determination Hearing**").

vi. Pending resolution of any such Determination Hearing, the Utility Company shall be prohibited from altering, refusing, or discontinuing services to the Debtors.

7. This Order applies to any subsequently identified Utility Company, regardless of when each Utility Company was added to the Utility Service List.

8. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the Motion or otherwise deemed waived.

9. To the extent the fourteen-day stay of Bankruptcy Rule 6004(h) may be construed to apply to the subject matter of this Order, such stay is hereby waived.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

11. This Court shall retain jurisdiction to interpret and enforce this Order.

Dated: June 12, 2012
Wilmington, Delaware

THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

Court File No.: 12-CV-9757-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS (CANADA) COMPANY, AXIS CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO

APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

	ONTARIO **SUPERIOR COURT OF JUSTICE** **Proceeding commenced at Toronto, Ontario, Canada**
	FOURTH SUPPLEMENTAL AFFIDAVIT OF CHRISTOPHER J. EUSTACE
	GOWLINGS LAFLEUR HENDERSON LLP Barristers and Solicitors One First Canadian Place 100 King Street West, Suite 1600 TORONTO, Ontario M5X 1G5 Jennifer Stam (LSUC#46735J) Telephone: (416) 862-5697 Facsimile: (416) 862-7661 Lawyers for the Applicant