



**Third Report of  
KSV Restructuring Inc.  
as Receiver of  
JD Norman Canada, ULC**

**November 9, 2021**

<b>Contents</b>		<b>Page</b>
1.0	Introduction.....	1
1.1	Purposes of this Report.....	1
1.2	Currency .....	2
1.3	Restrictions .....	2
2.0	Background .....	2
2.1	The Union .....	3
2.2	Funding of these Proceedings.....	3
3.0	Liquidation of the M&E Assets .....	4
4.0	Proposed Interim Distribution.....	4
5.0	The Windsor Property and Further Distributions .....	5
6.0	Conclusion and Recommendation .....	6
1.0	Introduction.....	1

## **Appendices**

<b>Appendix</b>	<b>Tab</b>
Receivership Order dated February 12, 2021 .....	A
Interim Statement of Receipts and Disbursements .....	B
Intercreditor Agreement.....	C



COURT FILE NO: CV-21-00656820-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

CALLIDUS CAPITAL CORPORATION

APPLICANT

- AND -

JD NORMAN CANADA, ULC

RESPONDENT

THIRD REPORT OF  
KSV RESTRUCTURING INC.  
AS RECEIVER

NOVEMBER 9, 2021

## 1.0 Introduction

1. This report ("Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as receiver (the "Receiver") of the property, assets and undertakings of JD Norman Canada, ULC (the "Company").
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on February 12, 2021 (the "Receivership Order"), KSV was appointed Receiver. A copy of the Receivership Order is attached as Appendix "A".
3. The principal purposes of these receivership proceedings are to conduct a Court-supervised wind-down of the Company's business and a liquidation of its assets that maximizes value for the Company's stakeholders, including Callidus Capital Corporation ("Callidus") and Bank of America, N.A. ("BofA"), the Company's principal secured creditors.

### 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide background information about the Company and these proceedings, including the Court-approved transaction with Corporate Assets Inc. (the "Liquidator") for the liquidation of the Company's machinery and equipment (the "M&E Assets");
  - b) set out the basis for the Receiver's proposed interim distribution to Callidus of \$300,000 (the "Proposed Interim Distribution"), being a portion of the net proceeds generated from the liquidation of the M&E Assets;

- c) provide an update on the sale process for the Company's owned manufacturing facility in Windsor, Ontario (the "Windsor Property"); and
- d) recommend that this Honourable Court make an order, among other things:
  - i. authorizing the Receiver to make the Proposed Interim Distribution to Callidus;
  - ii. authorizing the Receiver to make further distributions to Callidus without further Court order up to the amount of the Company's secured indebtedness owing to Callidus; and
  - iii. approving this Report and the Receiver's activities described herein.

## **1.2 Currency**

1. All currency references in this Report are to Canadian dollars, unless otherwise noted.

## **1.3 Restrictions**

1. In preparing this Report, the Receiver has relied upon financial and other information in the materials served in support of the Receivership Order.
2. The Receiver has not performed an audit or other verification of such information. The Receiver expresses no opinion or other form of assurance with respect to the Company's financial or other information presented in this Report.

## **2.0 Background**

1. The Company's parent company is JD Norman Industries, Inc. ("JDN"), a US based automotive parts manufacturer.
2. Until early February 2021, the Company carried on business from the Windsor Property as a manufacturer of highly engineered metal components for the automotive industry. The Company's entire business was dedicated to the supply of components for General Motors Holdings LLC and its affiliates ("GM").
3. As a result of GM's resourcing of its supply to an alternative vendor, the Company discontinued its operations in early February 2021. On or around February 5, 2021, the Company terminated its entire workforce, including 72 members of Unifor Local 195 (the "Union").
4. Callidus and BofA are JDN's principal secured creditors and the Company is an obligor on both the Callidus and BofA loan facilities. At the commencement of these proceedings, BofA was owed approximately US\$16.3 million (plus interest and costs which continue to accrue), secured by JDN's and the Company's accounts receivable and inventory. Callidus was owed approximately US\$146.4 million (plus interest and costs which continue to accrue), secured by JDN's and the Company's property, plant and equipment, including the M&E Assets and the Windsor Property.

5. Additional information about the Company and the issues leading to the Receiver's appointment are set out in the affidavit (the "Affidavit") of John Ho, Chief Financial Officer of Callidus, the Applicant in these proceedings, sworn February 8, 2021. Accordingly, that information is not repeated in this Report. Copies of Court materials filed in these proceedings, including the Affidavit, are available on the Receiver's website at <https://www.ksvadvisory.com/insolvency-cases/case/jd-norman-canada>.

## 2.1 The Union

1. As set out in the Affidavit, in the days prior to the granting of the Receivership Order, representatives of the Union barricaded the entrance to the Windsor Property which prevented the delivery of the final scheduled inventory shipments from that facility.
2. On February 17, 2021, the Receiver, the Union and BofA agreed to a consensual resolution of the dispute, resulting in the Union's removal of the barricade and allowing the Receiver to facilitate the final inventory shipments.
3. The Receiver has since collected the proceeds of those inventory shipments and remitted to the Union its agreed upon share of the realizations generated therefrom.
4. The Receiver has carried out its obligations under the *Wage Earner Protection Program Act* ("WEPPA"), including for the eligible members of the Union. As at the date of this Report, the Receiver understands that 62 eligible former employees have been paid their respective WEPPA proceeds by Service Canada. In August 2021, Service Canada confirmed that there are no priority amounts owing to any eligible former employee of the Company.

## 2.2 Funding of these Proceedings

1. Callidus and BofA previously advanced \$37,500<sup>1</sup> and \$20,000, respectively, to contribute to the funding of these proceedings. The Receiver has since repaid Callidus' advances from the M&E liquidation proceeds. At the beginning of the proceedings, BofA agreed to fund \$20,000 toward the cost of the receivership and, accordingly, there is no intention to repay that advance.
2. At the outset of these proceedings, BofA also funded \$166,000 to the Receiver as required under Paragraph 25 of the Receivership Order. These funds were held to satisfy priority employee claims under WEPPA or otherwise. At the conclusion of its WEPPA administration, Service Canada confirmed that there are no such priority employee claims. Accordingly, the advance of \$166,000 was repaid to BofA on August 3, 2021 in accordance with the Receivership Order.

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<sup>1</sup> Includes US\$10,000 translated to Canadian currency at a rate of \$1.25 : \$1.00.

### 3.0 Liquidation of the M&E Assets

1. Pursuant to a Court order made on May 4, 2021, the Court, among other things, approved a Liquidation Services Agreement dated April 20, 2021 (the “LSA”) between the Receiver and the Liquidator. The terms of the LSA were detailed in the Second Report of the Receiver dated April 27, 2021 (the “Second Report”) and, accordingly, are not repeated in this Report.
2. As required under the LSA, the Liquidator remitted payment of the net minimum guarantee to the Receiver in the amount of \$450,000.
3. On June 9, 2021, the Liquidator conducted an auction of the M&E Assets from the Windsor Property. The Liquidator removed all of the M&E Assets from the Windsor Property by the end of August 2021. At that time, all of the Receiver’s and the Liquidator’s obligations under the LSA were completed.

### 4.0 Proposed Interim Distribution

1. As at the date of this Report, the cash on deposit in the receivership account is approximately \$390,000. Attached as Appendix “B” is the Receiver’s interim statement of receipts and disbursements reflecting the activity in the receivership account since the commencement of these proceedings.
2. Subject to Court approval, the Receiver intends to make the Proposed Interim Distribution to Callidus. The Receiver believes making the Proposed Interim Distribution to Callidus is appropriate at this time for the following reasons:
  - a) the Receiver’s legal counsel, Osler, Hoskin & Harcourt LLP (“Osler”), provided a security opinion<sup>2</sup> (the “Security Opinion”) that concludes, among other things, subject to the standard assumptions and qualifications contained therein, that the security granted in favour of Callidus, under the Ontario *Personal Property Security Act* and the British Columbia *Personal Property Security Act*, creates a valid and perfected security interest in favour of Callidus over the Company’s M&E Assets;
  - b) Pursuant to an Intercreditor Agreement dated July 10, 2018 among Callidus, BofA, and JDN, the security in favour of Callidus ranks in priority to the security of BofA over equipment and fixtures, and BofA’s security ranks in priority over inventory and accounts receivable. A copy of the Intercreditor Agreement dated July 10, 2018 among Callidus, BofA, and JDN is attached as Appendix “C”;
  - c) the Proposed Interim Distribution represents a portion of the proceeds generated from the liquidation of Callidus’ collateral, being the M&E Assets;

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<sup>2</sup> A copy of Osler’s security opinion can be provided should the Court wish to review it.

- d) the WEPPA claims process administration did not identify any priority employee claims and, accordingly, the Receiver is not aware of any secured creditor(s) or any claim that ranks or may rank in priority to Callidus over the proceeds generated from the liquidation of the M&E Assets, other than any amounts secured by the Court-ordered charges, being the Receiver's Charge and the Receiver's Borrowings Charge (each as defined in the Receivership Order), for which there should be sufficient funds remaining in the receivership account following payment of the Proposed Interim Distribution; and
  - e) to the Receiver's knowledge, all post-filing obligations, including professional fees, are current. Following payment of the Proposed Interim Distribution, approximately \$90,000 will remain in the receivership account to fund carrying and other costs until the Windsor Property is sold. To the extent additional funding is required, Callidus will make advances to the Receiver under the Receiver's Borrowings Charge in accordance with the Receivership Order.
3. Based on the foregoing, the Receiver recommends that this Honourable Court issue an order authorizing and directing the Receiver to make the Proposed Interim Distribution to Callidus.
  4. The Receiver does not anticipate making any further distributions in these proceedings until the Windsor Property is sold.

## **5.0 The Windsor Property and Further Distributions**

1. As set out in the Second Report, the Receiver entered into a listing agreement for the Windsor Property on April 19, 2021 (the "Listing Agreement") with Colliers International London Ontario, Brokerage ("Colliers").
2. The Listing Agreement with Colliers expired on October 31, 2021. After consulting with Callidus, on November 1, 2021, the Receiver engaged CBRE Limited – 273 ("CBRE") to list the Windsor Property for sale.
3. As at the date of this Report, CBRE's marketing process is in its preliminary stages.
4. CBRE's marketing materials indicate that any transaction for the Windsor Property will be subject to Court approval.
5. Subject to Court approval, following the Proposed Interim Distribution and the approval by the Court of any transaction for the Windsor Property, the Receiver intends to make further distributions to Callidus without further Court order up to the amount of the Company's secured indebtedness owing to Callidus. The Charge/Mortgage in favour of Callidus is the only encumbrance registered on title to the Windsor Property, and the Security Opinion concludes, subject to the standard assumptions and qualifications contained therein, that the Charge/Mortgage granted in favour of Callidus, was validly registered on title to the Windsor Property.
6. Based on the foregoing, the Receiver recommends that this Honourable Court issue an order authorizing further distributions to Callidus from the proceeds generated from the sale of the Windsor Property, without further Court order, up to the amount of the Company's secured indebtedness owing to Callidus.

## 6.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Court make an order granting the relief detailed in Section 1.1 (1)(d) of this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.,  
SOLELY IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF  
JD NORMAN CANADA, ULC  
AND NOT IN ITS PERSONAL CAPACITY**



## **Appendix “A”**

CV-21-00656820

CALLIGUS CAPITAL

v.

JO NORMAN CANADA

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① Order appointing  
Receiver to wind up the  
Terms of the attached.

Hainey J

February 12, 2021

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
 )  
JUSTICE HAINEY ) FRIDAY, THE 12<sup>TH</sup> DAY  
 )  
 ) OF FEBRUARY, 2021

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

B E T W E E N:

**CALLIDUS CAPITAL CORPORATION**

Applicant

- and -

**JD NORMAN CANADA, ULC**

Respondent

**ORDER  
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing KSV Restructuring Inc. as receiver (the “**Receiver**”) without security, of all of the assets, undertakings and properties of the Respondent, JD Norman Canada, ULC (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day, via zoom videoconference due to the Covid-19 pandemic.

ON READING the Affidavit of John Ho sworn February 10, 2021 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, the Respondent, Bank of America, N.A., as agent (“**BofA**”), Unifor local 195, and KSV Restructuring Inc., no one else on the service list appearing, although served as appears from the Affidavit of Service of Jennifer Samuels sworn February 10, 2021 and on reading the consent of KSV Restructuring Inc. to act as the Receiver,

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, and all proceeds thereof (the “**Property**”).

### **RECEIVER’S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to wind up the business of the Debtor, including the powers to enter into any agreements, incur any obligations, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, supplies, or other assets to facilitate the wind up of the Debtor's business or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor other than any indebtedness that is the Revolving Loan Priority Collateral (as defined in the Intercreditor Agreement dated as of July 10, 2018 between the Debtor, the Applicant and BofA), which may only be settled, extended or compromised with the consent of BofA;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, and in each such case, notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required;
- (l) without approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business in respect of any transaction not exceeding \$125,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; and
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
- (t) and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due

to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.



### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver or the Receiver’s employees, officers, directors, agents and representatives acting in such capacity, except with the written consent of the Receiver or with leave of this Court.

### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

## **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

## **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that, subject to paragraph 25 below, all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

14. THIS COURT ORDERS that all current employees of the Debtor actively providing services on the date hereof shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The employment of all other employees of the Debtor is hereby deemed terminated for all purposes

effective on the date hereof. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations

thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER’S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER’S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that, subject to paragraph 25, the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall, subject to paragraph 25, be at liberty from time to time to apply reasonable amounts, out of the

monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

**B of A RECEIVABLES**

25. **THIS COURT ORDERS** that the bank accounts held in the name of the Debtor (including without limitation those accounts that are the subject of any Deposit Account Control Agreement between the Debtor and BofA) into which the proceeds of any Revolving Loan Priority Collateral are paid or to be paid shall continue to operate, and be applied to obligations owing to BofA, in accordance with the terms of the Second Amended and Restated Loan and Security Agreement, dated as of July 10, 2018 between, among others, the Debtor and BofA (the “**BofA Loan Agreement**”) and in accordance with the terms of the Loan Documents (as defined in the BofA Loan Agreement); provided, however, that \$166,000.00 or such other amount as the Receiver deems advisable of the current assets of the Debtor shall be segregated and held separate and apart in a trust account by the Receiver pending the determination of the amount of the BIA section 81.4 claims of the Debtor’s employees, on consent of the Receiver and BofA or as otherwise ordered by the Court. In the event that any proceeds from the Revolving Loan Priority Collateral are delivered to an account of the Receiver or an account of the Debtor other than an account of the Debtor at Bank of America, such proceeds shall be delivered to a bank account of the Debtor at Bank of America to be applied in accordance with this paragraph 25 or otherwise as directed by BofA. Those certain existing deposit agreements between the Debtor and BofA (including any deposit account control agreements) shall continue to govern the cash management relationship between the Receiver and BofA, and all of the provisions of such agreements shall remain in full force and effect.

26. **THIS COURT ORDERS** that, except as set out in Paragraph 25 above, BofA shall not be required to process, honor, debit or pay any cheques, drafts, ACH transfers or other withdrawals in connection with the Debtor’s accounts, whether made, drawn or issued prior to or after the date of this Order other than as identified by the Receiver to BofA in writing. BofA may rely on this Order and the representations of the Receiver regarding the foregoing, and BofA shall not have any liability to any party for relying on such representations by the Receiver or terms of this Order.

## **SERVICE AND NOTICE**

27. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [www.ksvadvisory.com/insolvency-cases/case/jd-norman-canada](http://www.ksvadvisory.com/insolvency-cases/case/jd-norman-canada) .

28. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor’s creditors or other interested parties at their respective addresses as last shown on the records of the Debtor’s and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## **GENERAL**

29. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor’s.

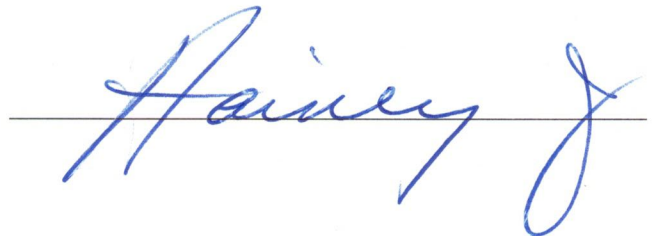
31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this

Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

32. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

34. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in blue ink, appearing to read "Ainey J", is written over a horizontal line. The signature is cursive and extends to the right of the line.





**SCHEDULE "B"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of JD Norman, ULC (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 12<sup>th</sup> day of February , 2021 (the "**Order**") made in an application having Court file number \_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the \_\_\_\_\_ day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2021

KSV Restructuring Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

**CALLIDUS CAPITAL CORPORATION**

**-and-**

**JD NORMAN CANADA, ULC**

Applicant

Respondent

Court File No. CV-21-00656820-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**PROCEEDING COMMENCED AT  
TORONTO**

**ORDER**

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, Ontario, M5L 1G4

**JOHN D. LESLIE (29956P)**

Email: [jleslie@dickinsonwright.com](mailto:jleslie@dickinsonwright.com)  
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**LISA S. CORNE (27974M)**

Email: [lcorne@dickinsonwright.com](mailto:lcorne@dickinsonwright.com)  
Tel: (416) 646-4608

Lawyers for the Applicant

## **Appendix “B”**

JD Norman Canada, ULC

**Statement of Receipts and Disbursements**

For the Period February 12, 2021 to November 8, 2021

(CAD\$; unaudited)

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**Receipts**

Fixed asset liquidation proceeds	450,000
HST refunds	252,002
Bank of America funded reserve for priority claims	166,000
Miscellaneous refunds	147,163
Inventory realizations	121,097
Receivership funding - Callidus Capital Corporation	37,480
Bank of America cost contribution	20,000
	<hr/>
	1,193,742
	<hr/>

**Disbursements**

Reimbursement of Bank of America reserve	166,000
Operating expenses (utilities, security, storage, etc.)	124,333
Union Settlement re inventory sales	121,097
HST paid on disbursements	50,073
Repayment of receivership funding - Callidus Capital Corporation	37,500
Payroll costs	34,983
Environmental assessment fees	17,650
Insurance	6,180
Professional fees	
Receiver	127,479
Receiver's legal counsel	119,120
	<hr/>
	804,414
	<hr/>
Estate Bank Balance	<b>389,779</b>
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## **Appendix “C”**

**EXECUTION VERSION****INTERCREDITOR AGREEMENT**

This INTERCREDITOR AGREEMENT, dated as of July 10, 2018, is entered into by and between Bank of America, N.A., in its capacity as the Revolving Loan Agent (as hereinafter defined), and Callidus Capital Corporation, in its capacity as the Term Loan Agent (as hereinafter defined).

**WITNESSETH:**

WHEREAS, JD Norman Industries, Inc., JD Norman Metal Technologies, Inc., JD Norman Ohio Holdings, Inc., JD Norman Electric Holdings, Inc., JD Norman Leslie Building 1, LLC, JD Norman Leslie Building 2, LLC, JD Norman Canada, ULC, JD Norman Canada GP, JD Norman Industries, LLC, JD Norman Romania Holdings, LLC, JD Norman Germany Holdings, LLC, JD Norman Canada Holdings, LP, JD Norman Lydney Limited, a company incorporated in England and Wales with company number 08548240, JD Norman UK Limited, a company incorporated in England and Wales with company 08548195, JD Norman de San Luis Potosi, S. de R.L. de C.V., JD Norman de SLP Bodega, S. de R.L. de C.V., JD Norman de Mexico, S. de R.L. de C.V., JD Norman Indiana Holdings, LLC, JD Norman Muncie, LLC, JD Norman Winchester, LLC, JD Norman Muncie Building, LLC, JD Norman Winchester Building, LLC, JD Norman Troy Tech Center, LLC, JD Norman Mexico Holdings, LLC, JD Norman Mexico 2 Holdings, LLC, and JD Norman GmbH (collectively, the "Borrowers" and each a "Borrower"), have entered into a senior secured revolving credit facility with the Revolving Loan Agent, the lenders and the other parties for whom the Revolving Agent is acting as agent, as set forth in the Revolving Loan Agreement (as hereinafter defined) pursuant to which such lenders have made and from time to time may make loans and provide other financial accommodations to the Companies (as hereinafter defined) which are guaranteed by the Guarantors (as hereinafter defined) and secured by substantially all of the assets of the Companies and Guarantors;

WHEREAS, the Companies and Guarantors have entered into a senior secured term loan facility with the Term Loan Agent, the lenders and any other parties for whom the Term Loan Agent is acting as collateral agent, as set forth in the Term Loan Agreement (as hereinafter defined) and each other Term Loan Document (as hereinafter defined) pursuant to which such lenders have made term loans to the Companies which are guaranteed by the Guarantors and secured by substantially all of the assets of the Companies and Guarantors; and

WHEREAS, the Revolving Loan Agent, for itself and on behalf of the other Revolving Loan Secured Parties, and the Term Loan Agent, for itself and on behalf of the other Term Loan Secured Parties, desire to enter into this Intercreditor Agreement to (i) govern and confirm the relative priority of the security interests of the Revolving Loan Agent and the Term Loan Agent in the assets and properties of Grantors (as hereinafter defined), (ii) provide for the orderly allocation among the Revolving Loan Secured Parties and the Term Loan Secured Parties, in accordance with such priorities, of proceeds of such assets



and properties upon any foreclosure thereon or other disposition thereof and (iii) address certain related matters;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Definitions; Interpretation.

1.1 Definitions. As used in this Agreement, including in the preamble and recitals hereto, the following terms have the meanings specified below:

"Agents" shall mean, collectively, the Revolving Loan Agent and the Term Loan Agent, and "Agent" shall mean each of them.

"Aggregate Availability" has the meaning assigned to such term in the Revolving Loan Agreement as in effect on the date hereof or any substantially similar term at any time used therein or in any amendment, modification, supplement, replacement or refinancing thereof.

"Agreement" shall mean this Intercreditor Agreement, as the same now exists or may hereafter be amended, amended and restated, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms hereof.

"Bank Product Obligations" shall mean Cash Management Obligations and Hedging Obligations.

"Bankruptcy Code" shall mean the United States Bankruptcy Code, being Title 11 of the United States Code, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented.

"Bankruptcy Law" shall mean the Bankruptcy Code, Canadian Insolvency Laws, the Insolvency Act (1986), German Insolvency Code (Insolvenzordnung), the Enterprise Act (2002) and any similar Federal, state, provincial or foreign law for liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, arrangement (including under any relevant incorporating statute), rearrangement, receivership, insolvency, reorganization, judicial management, winding up, administration or the relief of debtors.

"Business Day" shall mean any day other than a Saturday, a Sunday or a day that is a legal holiday under the laws of the State of Illinois or New York or on which banking institutions in the State of Illinois or New York are required or authorized by law or other governmental action to close.

"Canadian Insolvency Law" shall mean any of the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), and the Winding-up and Restructuring Act (Canada), each as now and hereafter in effect, and any successors to such statutes and any proceeding under applicable federal or provincial corporate law seeking an arrangement or compromise of some or all of the debts of a Person or a stay of proceedings to enforce some or all claims of creditors against a Person.

"Cash Equivalents" has the meaning set forth in the Revolving Loan Agreement as in effect on the date hereof or any substantially similar term at any time used therein or in any amendment, modification, supplement, replacement or refinancing thereof.

"Cash Management Obligations" shall mean with respect to any Person, the obligations of such Person arising out of (a) services relating to operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services, (b) the acceptance for deposit or the honoring for payment of any check, draft or other item with respect to any such deposit accounts, (c) commercial credit card and merchant card services and (d) any leases or other deposit, disbursement, treasury, banking or cash management services afforded to such Person by any Revolving Loan Secured Party.

"Common Collateral" shall mean all of the property and interests in property, real or personal, tangible or intangible, now owned or hereafter acquired by any Grantor in or upon which any Revolving Loan Secured Party or Term Loan Secured Party at any time has a Lien, and including, without limitation, all Proceeds of such property and interests in property, provided that Common Collateral shall not include the Exclusive Term Loan Collateral.

"Collateral Documents" shall mean the Revolving Loan Documents or the Term Loan Documents, as the context requires.

"Companies" shall mean, collectively, (a) the Borrowers, (b) any other person that at any time on or after the date hereof becomes a party to the Revolving Loan Agreement or the Term Loan Agreement as a borrower thereunder, and (c) their respective successors and assigns, and "Company" shall mean each of them.

"Discharge of Priority Revolving Loan Debt" shall mean, subject to Sections 6.9 and 11.3 hereof:

(a) the payment in full in cash of the principal and interest (including any interest which would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case) constituting Revolving Loan Debt (other than Excess Revolving Loan Debt);

(b) the payment in full in cash of all other Revolving Loan Debt (other than Excess Revolving Loan Debt) that is due and payable or otherwise accrued and owing at or

prior to the time such principal and interest are paid (including any such amounts which would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case), other than indemnification obligations for which no claim or demand for payment, whether oral or written, has been made at such time;

(c) the delivery to the Revolving Loan Agent of cash collateral, or at the Revolving Loan Agent's option, the delivery to the Revolving Loan Agent of a letter of credit payable to the Revolving Loan Agent issued by a bank acceptable to the Revolving Loan Agent and in form and substance satisfactory to the Revolving Loan Agent, in either case in respect of letters of credit, banker's acceptances or similar instruments issued under the Revolving Loan Documents (in an amount equal to one hundred five (105%) percent of the amount of such letters of credit, banker's acceptance or similar instruments), Bank Product Obligations (or, at the option of the Revolving Loan Secured Party with respect to such Bank Product Obligations, the termination of the applicable Hedging Obligations or cash management arrangements and the payment in full in cash of Revolving Loan Debt due and payable in connection with such termination), continuing obligations of the Revolving Loan Agent and the Revolving Loan Lenders under control agreements and other contingent Revolving Loan Debt for which a claim or demand for payment has been made at such time or in respect of matters or circumstances known to a Revolving Loan Secured Party at the time which are reasonably expected to result in any loss, cost, damage or expense (including attorneys' fees and legal expenses) to any Revolving Loan Secured Party for which such Revolving Loan Secured Party is entitled to indemnification by any Grantor; and

(d) the termination of the commitments of the Revolving Loan Lenders and the financing arrangements provided by the Revolving Loan Agent and the Revolving Loan Lenders to Grantors under the Revolving Loan Documents.

"Discharge of Priority Term Loan Debt" shall mean, subject to Sections 6.9 and 11.3 hereof:

(a) the payment in full in cash of the principal and interest (including any interest which would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case) constituting Term Loan Debt (other than Excess Term Loan Debt);

(b) the payment in full in cash of all other Term Loan Debt (other than Excess Term Loan Debt) that is due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (including any such amounts which would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case), other than indemnification obligations for which no claim or demand for payment, whether oral or written, has been made at such time;

(c) the delivery to the Term Loan Agent of cash collateral in respect of contingent Term Loan Debt for which a claim or demand for payment has been made at such time or in respect of matters or circumstances known to a Term Loan Secured Party at the time which are reasonably expected to result in any loss, cost, damage or expense (including attorneys' fees and legal expenses) to any Term Loan Secured Party for which such Term Loan Secured Party is entitled to indemnification by any Grantor; and

(d) the termination of the commitments of the Term Loan Lenders and the financing arrangements provided by Term Loan Lenders to Grantors under the Term Loan Documents.

"Discharge of Revolving Loan Debt" shall mean, subject to Sections 6.9 and 11.3 hereof:

(a) the payment in full in cash of the principal and interest (including any interest which would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case) constituting Revolving Loan Debt;

(b) the payment in full in cash of all other Revolving Loan Debt that is due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (including any such amounts which would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case), other than indemnification obligations for which no claim or demand for payment, whether oral or written, has been made at such time;

(c) the delivery to the Revolving Loan Agent of cash collateral, or at the Revolving Loan Agent's option, the delivery to the Revolving Loan Agent of a letter of credit payable to the Revolving Loan Agent issued by a bank acceptable to the Revolving Loan Agent and in form and substance satisfactory to the Revolving Loan Agent, in either case in respect of letters of credit, banker's acceptances or similar instruments issued under the Revolving Loan Documents (in an amount equal to one hundred five (105%) percent of the amount of such letters of credit, banker's acceptance or similar instruments), Bank Product Obligations (or, at the option of the Revolving Loan Secured Party with respect to such Bank Product Obligations, the termination of the applicable Hedging Obligations or cash management arrangements and the payment in full in cash of Revolving Loan Debt due and payable in connection with such termination), continuing obligations of the Revolving Loan Agent and Revolving Loan Lenders under control agreements and other contingent Revolving Loan Debt for which a claim or demand for payment has been made at such time or in respect of matters or circumstances known to a Revolving Loan Secured Party at the time which are reasonably expected to result in any loss, cost, damage or expense (including attorneys' fees and legal expenses) to any Revolving Loan Secured Party for which such Revolving Loan Secured Party is entitled to indemnification by any Grantor; and

(d) the termination of the commitments of the Revolving Loan Lenders and the financing arrangements provided by the Revolving Loan Agent and the Revolving Loan Lenders to Grantors under the Revolving Loan Documents.

"Discharge of Term Loan Debt" shall mean, subject to Sections 6.9 and 11.3 hereof:

(a) the payment in full in cash of the principal and interest (including any interest which would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case) constituting Term Loan Debt;

(b) the payment in full in cash of all other Term Loan Debt that is due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (including any such amounts which would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case), other than indemnification obligations for which no claim or demand for payment, whether oral or written, has been made at such time;

(c) the delivery to the Term Loan Agent of cash collateral in respect of contingent Term Loan Debt for which a claim or demand for payment has been made at such time or in respect of matters or circumstances known to a Term Loan Secured Party at the time which are reasonably expected to result in any loss, cost, damage or expense (including attorneys' fees and legal expenses) to any Term Loan Secured Party for which such Term Loan Secured Party is entitled to indemnification by any Grantor; and

(d) the termination of the commitments of the Term Loan Lenders and the financing arrangements provided by the Term Loan Lenders to Grantors under the Term Loan Documents.

"Disposition" shall mean any sale, lease, license, assignment, exchange, transfer or other disposition and including any casualty or condemnation.

"ECF Prepayment Conditions" shall mean, (i) after giving effect to the making of any applicable payment, average Aggregate Availability determined over the ninety (90) day period prior to the date of any such payment and on the date of any such payment after giving pro forma effect to the making of such payment, in each case, is not less than \$6,000,000, (ii) after giving effect to the making of any applicable payment, actual Aggregate Availability on the date of any such payment is not less than \$6,000,000 and (iii) prior to making such payment, Borrowers shall deliver a to Revolving Loan Agent (1) projections prepared in good faith based on reasonable assumptions in light of the circumstances at such time and in form and substance reasonably acceptable to Revolving Loan Agent demonstrating that based on the most recently available financial statements of the Borrowers, that average Aggregate Availability projected for the sixty (60) day period beginning on the date of such payment (giving effect to the pro forma effect to the making of

such payment) will be not less than \$6,000,000 and (2) a certificate certifying that such projections were prepared in good faith based on reasonable assumptions in light of the circumstances at such time.

"Excess Cash Flow" has the meaning assigned to such term in the Term Loan Agreement as in effect on the date hereof or any substantially similar term at any time used therein or in any amendment, modification, supplement, replacement or refinancing thereof.

"Excess Cash Flow Payment" shall mean any payment or prepayment in respect of the Term Loan Debt required to be made based on Excess Cash Flow, including such payment required under Section 5.3.3 of the Term Loan Agreement as in effect on the date hereof or as such term may be amended, restated, supplemented or otherwise modified (including in any replacement or refinancing thereof) as not otherwise prohibited under Section 10.5 of this Agreement.

"Excess Revolving Loan Debt" means the sum of (a) the portion of the principal amount of the loans outstanding under the Revolving Loan Documents in excess of the Revolving Loan Cap plus (b) the portion of interest and fees that accrues or is charged with respect to that portion of the principal amount of the loans described in clause (a) of this definition.

"Excess Term Loan Debt" means the sum of (a) the portion of the principal amount of the loans outstanding under the Term Loan Documents in excess of the Term Loan Cap plus (b) the portion of interest and fees that accrues or is charged with respect to that portion of the principal amount of the loans described in clause (a) of this definition.

"Exigent Circumstance" shall mean an event or circumstance that materially and imminently threatens the ability of the Revolving Loan Agent to realize upon all or a material portion of the Revolving Loan Priority Collateral or the ability of the Term Loan Agent to realize upon all or a material portion of the Term Loan Priority Collateral, as the case may be, such as, without limitation, fraudulent removal, concealment, destruction (other than to the extent covered by insurance), material waste or abscondment thereof.

"Exclusive Term Loan Collateral" shall mean all of the property and interests in property, real or personal, tangible or intangible, now owned or hereafter acquired by the German Grantor in or upon which any Term Loan Secured Party at any time has a Lien, including, without limitation, the shares of Rege Automotive Brasov S.R.L., a Romanian limited liability company, owned by the German Grantor, including all identifiable Proceeds of such property and interests in property.

"German Grantor" means JD Norman Germany GmbH, a German limited liability company.

"Grantors" shall mean, collectively, the Companies, Guarantors and each Subsidiary of any Company or any Guarantor that shall have granted a Lien on any of its assets to secure any Revolving Loan Debt or Term Loan Debt (other than Exclusive Term

Loan Collateral), together with their respective successors and assigns; sometimes being referred to herein individually as a "Grantor".

"Guarantors" shall mean, collectively, JD Norman de Mexico, S. de R.L. de C.V., JD Norman de San Luis Potosí, S. de R.L. de C.V., JD Norman de SLP Bodega, S. de R.L. de C.V., JD Norman UK Limited, JD Norman Lydney Limited and any persons (other than the Companies) that at any time is party to a guarantee in favor of the Revolving Loan Agent or the Revolving Credit Secured Parties in respect of any of the Revolving Loan Debt or in favor of the Term Loan Agent or the Term Loan Secured Parties in respect of any of the Term Loan Debt, and in each case, their respective successors and assigns, and "Guarantor" shall mean each of them.

"Hedging Obligations" shall mean, with respect to any Person, the obligations of such Person under any agreements with respect of any interest rate, foreign currency and/or commodity exchanges, swaps, caps, collars, floors, forwards, options, or other similar arrangements as such Person may from time to time enter into (including without limitation any "swap agreement" as defined in Section 101(53B)(A) of the Bankruptcy Code) with any one or more of the Revolving Lenders or their affiliates.

"Insolvency Proceeding" shall mean (a) any voluntary or involuntary case or proceeding under any Bankruptcy Law with respect to any Grantor, (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, power of sale, reorganization, administration or other similar case or proceeding with respect to any Grantor or with respect to any of their respective assets, (c) any proceeding seeking the appointment of any trustee, Receiver, liquidator, custodian, administrator or other insolvency official with similar powers with respect to such Person or any or all of its assets or properties, (d) any liquidation, dissolution, reorganization, administration or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (e) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of any Grantor.

"Junior 507(b) Claims" shall have the meaning set forth in Section 6.4(c) hereof.

"Junior Agent" shall have the meaning set forth in Section 3.2(a) hereof.

"Junior Secured Parties" means, with respect to the Revolving Loan Priority Collateral, the Term Loan Secured Parties, and with respect to the Term Loan Priority Collateral, the Revolving Loan Secured Parties.

"Lien" shall mean any mortgage, deed of trust, pledge, hypothecation, assignment, land charge, deposit arrangement, security interest, encumbrance (including, but not limited to, easements, rights of way and the like), lien (statutory or other), security agreement or transfer intended as security, including without limitation, any conditional sale

or other title retention agreement, the interest of a lessor under a capital lease or any financing lease having substantially the same economic effect as any of the foregoing.

"Mexico/US Intercompany Indebtedness" shall mean any intercompany indebtedness, liabilities or obligations including indebtedness for borrowed money and including the owning at any time from any Mexican Loan Party(ies) to any US Loan Party and owing at any time from any US Loan Party(ies) to any Mexican Loan Party(ies) and including any such indebtedness that is part of a combined intercompany loan agreement among the Loan Parties and any of their Subsidiaries.

"Person" or "person" shall mean any individual, sole proprietorship, partnership, corporation (including, without limitation, any corporation which elects subchapter S status under the Internal Revenue Code of 1986, as amended), limited liability company, limited liability partnership, business trust, unincorporated association, joint stock company, trust, joint venture, or other entity or any government or any agency or instrumentality or political subdivision thereof.

"Pledged Collateral" shall have the meaning set forth in Section 5.1 hereof.

"PPSA" means the Personal Property Security Act (Ontario) and the regulations thereunder, as from time to time in effect, provided, however, if attachment, perfection or priority of an Agent's security interests in any Priority Collateral is governed by the personal property security laws of any jurisdiction other than Ontario, "PPSA" shall mean those personal property security laws in such other jurisdiction (including the Civil Code of Quebec) for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

"Priority Collateral" shall mean, with respect to the Revolving Loan Debt, all Revolving Loan Priority Collateral, and with respect to the Term Loan Debt, all Term Loan Priority Collateral.

"Priority Debt" shall mean, with respect to the Revolving Loan Priority Collateral, the Revolving Loan Debt, and with respect to the Term Loan Priority Collateral, the Term Loan Debt.

"Proceeds" or "proceeds" shall mean all "proceeds" as defined in Article 9 of the UCC, and in any event, shall include, without limitation whatever is receivable or received when Common Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary.

"Purchasing Revolving Loan Secured Parties" shall have the meaning set forth in Section 8.1 hereof.

"Purchasing Term Loan Secured Parties" shall have the meaning set forth in Section 7.1 hereof.



"Receiver" means a receiver, interim receiver, receiver and manager, liquidator, trustee in bankruptcy or similar Person.

"Recovery" shall have the meaning set forth in Section 6.9 hereof.

"Refinance" or "refinance" shall mean, in respect of any of indebtedness, to refinance, replace, refund or repay, or to issue other indebtedness or enter into alternative financing arrangements, in exchange or replacement for, such indebtedness in whole or in part, including by adding or replacing lenders, creditors, agents, borrowers and/or guarantors, and including in each case, but not limited to, after the original instrument giving rise to such indebtedness has been terminated. "Refinanced", "refinanced", "Refinancing" and "refinancing" shall have correlative meanings.

"Revolving Loan Agent" shall mean Bank of America, N.A., and its successors and assigns in its capacity as agent pursuant to the Revolving Loan Documents acting for and on behalf of the other Revolving Loan Secured Parties and any successor or replacement agent.

"Revolving Loan Agreement" shall mean the Second Amended and Restated Credit Agreement, dated as of even date herewith, by and among Borrowers, Revolving Loan Agent and Revolving Loan Lenders, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Revolving Loan Cap" shall mean: (a) the sum of (which amount shall be increased by the amount of all interest, fees, costs, expenses, indemnities, and other amounts accrued or charged with respect to any of the Revolving Loan Debt (other than Excess Revolving Loan Debt) as and when the same accrues or becomes due and payable, irrespective of whether the same is added to the principal amount of the Revolving Loan Debt and including the same as would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable, in whole or in part, in any such Insolvency Proceeding): (i) \$44,000,000 plus (iii) the amount of (x) all Bank Product Obligations described in clause (c) of the definition of Cash Management Obligations in an aggregate amount not to exceed \$4,000,000 and (y) all other Bank Product Obligations not described in the preceding clause (x), plus (iv) during an Insolvency Proceeding, incremental principal amount equal to 20% of the of the aggregate commitments under the Revolving Loan Documents as in effect immediately before the commencement of such Insolvency Proceeding (or, if earlier, immediately prior to the suspension or termination of such commitments in accordance with the terms of the Revolving Loan Agreement), minus (v) the amount of all payments of revolving loan obligations under the Revolving Loan Agreement that result in a permanent reduction of the revolving credit commitments under the Revolving Loan Agreement (other than (A) payments of such loan obligations in connection with a Refinancing thereof and (B) any commitment reduction occurring as a result of a Revolving Loan Event of Default).

"Revolving Loan Cash Collateral" shall have the meaning set forth in Section 6.2 hereof.

"Revolving Loan Debt" shall mean all "Obligations" as such term is defined in the Revolving Loan Agreement, including, without limitation, obligations, liabilities and indebtedness of every kind, nature and description owing by any Grantor to any Revolving Loan Secured Party, including principal, interest, Bank Product Obligations, charges, fees, premiums, indemnities and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under any of the Revolving Loan Documents, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of the Revolving Loan Documents or after the commencement of any case with respect to any Grantor under the Bankruptcy Code or any other Bankruptcy Law or any other Insolvency Proceeding (and including, without limitation, any principal, interest, fees, costs, expenses and other amounts which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case or similar proceeding), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured.

"Revolving Loan Debt Purchase Event" shall mean:

- (a) the acceleration of any Revolving Loan Debt;
- (b) Revolving Loan Agent's taking of any secured creditor remedies with respect to all or a material portion of the Revolving Loan Priority Collateral;
- (c) Revolving Loan Agent's taking of any secured creditor remedies with respect to any Term Loan Priority Collateral;
- (d) the occurrence of a Revolving Loan Event of Default as a result of a failure to make payment of any Revolving Loan Debt that remains unwaived for a period of at least ten (10) days after the occurrence of such Revolving Loan Event of Default; or
- (e) the refusal of the Revolving Loan Lenders to make revolving loans requested by the Borrowers that would otherwise have been available to the Borrowers under the Revolving Loan Documents (or the use of cash collateral in lieu thereof) had there been no Revolving Loan Event of Default in existence so long as such refusal continues for a period of more than fifteen (15) consecutive days (provided this clause (f) will only be a Revolving Loan Debt Purchase Event during the five (5) Business Day period after the expiration of such fifteen (15) consecutive day period);
- (f) the making of any Overadvance Loans (as defined in the Revolving Loan Agreement as of the date hereof) under the Revolving Loan Agreement;

(g) the termination of all or substantially all of the revolving loan commitments under the Revolving Loan Documents as a result of a Revolving Loan Event of Default; or

(h) the commencement of an Insolvency Proceeding by or against any Grantor.

"Revolving Loan DIP Financing" shall have the meaning set forth in Section 6.2 hereof.

"Revolving Loan Documents" shall mean, collectively, the Revolving Loan Agreement and all agreements, documents and instruments at any time executed and/or delivered by any Grantor or any other person to, with or in favor of any Revolving Loan Secured Party in connection therewith or related thereto, as all of the foregoing now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated, refinanced, replaced or restructured (in whole or in part and including any agreements with, to or in favor of any other lender or group of lenders that at any time refinances, replaces or succeeds to all or any portion of the Revolving Loan Debt), in each case, in accordance with the terms of this Agreement.

"Revolving Loan Event of Default" shall mean any "Event of Default" as defined in the Revolving Loan Agreement, as in effect on the date hereof or as such term may be amended, restated, supplemented or otherwise modified (including in any replacement or refinancing thereof).

"Revolving Loan Lenders" shall mean, collectively, any person party to the Revolving Loan Documents as lender (and including any other lender or group of lenders that at any time refinances, replaces or succeeds to all or any portion of the Revolving Loan Debt or is otherwise party to the Revolving Loan Documents as a lender), and "Revolving Loan Lender" shall mean each of them.

"Revolving Loan Priority Collateral" shall mean all Common Collateral described on Annex A annexed hereto.

"Revolving Loan Secured Parties" shall mean, collectively, (a) Revolving Loan Agent, (b) the Revolving Loan Lenders, (c) the issuing bank or banks of letters of credit or similar instruments under the Revolving Loan Agreement, (d) each other person to whom any of the Revolving Loan Debt (including Revolving Loan Debt constituting Bank Product Obligations) is owed and (e) the successors, replacements and assigns of each of the foregoing, and "Revolving Loan Secured Party" shall mean each of them.

"Revolving Loan Standstill Period" shall have the meaning set forth in Section 3.1(a) hereof.

"Secured Parties" shall mean, collectively, the Revolving Loan Secured Parties and the Term Loan Secured Parties, and "Secured Party" shall mean each of them.

"Senior 507(b) Claims" shall have the meaning set forth in Section 6.4(c) hereof.

"Senior Agent" shall have the meaning set forth in Section 3.2(a) hereof.

"Subsidiary" shall mean, with respect to any Person, any corporation, partnership, limited 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.

"Term Loan Agent" shall mean Callidus Capital Corporation and its successors and assigns in its capacity as collateral agent and administrative pursuant to the Term Loan Documents acting for and on behalf of the other Term Loan Secured Parties and any successor or replacement agent in such capacities.

"Term Loan Agreement" shall mean the Credit Agreement, dated as of even date herewith, among the Companies, the Guarantors, the Term Loan Agent and the Term Loan Lenders, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Term Loan Cap" shall mean: (a) the sum of (which amount shall be increased by the amount of all interest, fees (including any interest paid-in-kind and capitalized on the principal amount set forth in clause (i) of this definition), costs, expenses, indemnities, and other amounts accrued or charged with respect to any of the Term Loan Debt (other than Excess Term Loan Debt) as and when the same accrues or becomes due and payable, irrespective of whether the same is added to the principal amount of the Term Loan Debt and including the same as would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable, in whole or in part, in any such Insolvency Proceeding): (i) \$105,000,000, plus (ii) during an Insolvency Proceeding, incremental principal amount equal to 20% of the aggregate principal of Term Loan Debt outstanding immediately before the commencement of such Insolvency Proceeding, minus (iii) the amount of all payments of principal of Term Loan Debt (other than (A) payments of such loan obligations in connection with a Refinancing thereof, (B) any commitment reduction occurring as a result of a Revolving Loan Event of Default and (C) any payment of such loan obligations constituting the payment of interest previously paid-in-kind).

"Term Loan Cash Collateral" shall have the meaning set forth in Section 6.2 hereof.

"Term Loan Debt" shall mean all "Obligations" as such term is defined in the Term Loan Agreement, including, without limitation, obligations, liabilities and indebtedness of every kind, nature and description owing by any Grantor to any Term Loan Secured Party, including principal, interest, charges, fees, premiums, indemnities and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under any of the Term Loan Documents, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of the Term Loan Documents or after the commencement of any case with respect to any Grantor under the Bankruptcy Code or any other Bankruptcy Law or any other Insolvency Proceeding (and including, without limitation, any principal, interest, fees, costs, expenses and other amounts, which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case or similar proceeding), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured.

"Term Loan Debt Purchase Event " shall mean:

- (a) the acceleration of any Term Loan Debt;
- (b) Term Loan Agent's taking of any secured creditor remedies with respect to all or a material portion of the Term Loan Priority Collateral;
- (c) Term Loan Agent's taking of any secured creditor remedies with respect to any Revolving Loan Priority Collateral;
- (d) the occurrence of a Term Loan Event of Default as a result of a failure to make payment of any Term Loan Debt that remains unwaived for a period of at least ten (10) days after the occurrence of such Term Loan Event of Default; or
- (e) the commencement of an Insolvency Proceeding by or against any Grantor.

"Term Loan DIP Financing" shall have the meaning set forth in Section 6.2 hereof.

"Term Loan Documents" shall mean, collectively, the Term Loan Agreement and all agreements, documents and instruments at any time executed and/or delivered by any Grantor or any other person to, with or in favor of any Term Loan Secured Party in connection therewith or related thereto, as all of the foregoing now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated, refinanced, replaced or restructured (in whole or in part and including any agreements with, to or in favor of any other lender or group of lenders that at any time refinances, replaces or succeeds to all or any

portion of the Term Loan Debt), in each case, in accordance with the terms of this Agreement.

"Term Loan Event of Default" shall mean any "Event of Default" as defined in the Term Loan Agreement, as in effect on the date hereof or as such term may be amended, restated, supplemented or otherwise modified (including in any replacement or refinancing thereof).

"Term Loan Lenders" shall mean, collectively, any person party to the Term Loan Documents as lender (and including any other lender or group of lenders that at any time refinances, replaces or succeeds to all or any portion of the Term Loan Debt or is otherwise party to the Term Loan Documents as a lender), and "Term Loan Lender" shall mean each of them.

"Term Loan Priority Collateral" shall mean (a) (i) 100% of the equity interests of existing and future Grantors in which a security interest is required to be granted under the Term Loan Documents; (ii) all fee-owned real property of any Grantor; (iii) all "equipment" (as defined in Article 9 of the UCC) of any Grantor; (iv) all intellectual property of Grantors and any other general intangibles and documents pertaining to the items of property included within the clauses of this paragraph; (v) all "fixtures" (as defined in Article 9 of the UCC) of the Grantors; (vi) "records" (as defined in Article 9 of the UCC), "supporting obligations" (as defined in Article 9 of the UCC) and related "letters of credit" (as defined in Article 5 of the UCC), commercial tort claims or other claims and causes of action, in each case, to the extent related to any of the other items of property included within the other clauses of this paragraph; (vii) all intercompany notes and intercompany indebtedness of Grantors other than Mexico/US Intercompany Indebtedness; (viii) cash, Cash Equivalents, "uncertificated securities," "securities entitlements" (each as defined in Article 8 of the UCC), "payment intangibles," and "instruments" (each as defined in Article 9 of the UCC) that are identifiable proceeds of Term Loan Priority Collateral held in a Term Loan Proceeds Account; (ix) proceeds with respect to tax refunds; and (x) all Common Collateral other than the Revolving Loan Priority Collateral, (b) all Exclusive Term Loan Collateral and (c) all substitutions, replacements, accessions, products and proceeds (including, without limitation, insurance proceeds, licenses, royalties, income, payments, claims, damages and proceeds of suit) of any or all of the foregoing described in clauses (a) and (b).

"Term Loan Proceeds Account" shall mean one or more Deposit Accounts or Securities Accounts established by the Term Loan Agent into which there may be deposited Proceeds of sales or dispositions of Term Priority Collateral as required by the terms of the Term Loan Documents (to the extent such Proceeds constitute Term Priority Collateral).

"Term Loan Purchase Event" shall mean:

- (a) the acceleration of any Revolving Loan Debt;

(b) Revolving Loan Agent's taking of any secured creditor remedies with respect to all or a material portion of the Revolving Loan Priority Collateral;

(c) Revolving Loan Agent's taking of any secured creditor remedies with respect to any Term Loan Priority Collateral;

(d) the occurrence of a Term Loan Event of Default as a result of a failure to make payment of any Term Loan Debt in excess of \$75,000 when due under the terms of the Term Loan Documents;

(e) the commencement of an Insolvency Proceeding by or against any Grantor;

(f) the refusal of the Revolving Loan Lenders to make revolving loans requested by the Borrowers that would otherwise have been available to the Borrowers under the Revolving Loan Documents (or the use of cash collateral in lieu thereof) had there been no Revolving Loan Event of Default in existence so long as such refusal continues for a period of more than fifteen (15) consecutive days (provided this clause (f) will only be a Term Loan Purchase Event during the five (5) Business Day period after the expiration of such fifteen (15) consecutive day period); or

(g) the termination of all or substantially all of the revolving loan commitments under the Revolving Loan Documents as a result of a Revolving Loan Event of Default.

"Term Loan Secured Parties" shall mean, collectively, (a) Term Loan Agent, (b) the Term Loan Lenders, (c) each other person to whom any of the Term Loan Debt is owed and (d) the successors, replacements and assigns of each of the foregoing, and "Term Loan Secured Party" shall mean each of them.

"Term Loan Standstill Period" shall have the meaning set forth in Section 3.1(b)(i) hereof.

"Third Party Purchaser" shall have the meaning set forth in Section 9.1 hereof.

"UK Grantor" shall mean any Grantor incorporated in England and Wales.

"Uniform Commercial Code" or "UCC" shall mean the Uniform Commercial Code as from time to time in effect in the State of New York, provided, however, if attachment, perfection or priority of any party's security interests in any Priority Collateral are governed by the personal property security laws of any jurisdiction other than the State of Illinois, UCC shall mean those personal property security laws in such other jurisdiction, including the PPSA, for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

## 1.2 Terms Generally.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified, (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, and as to any Company, any Guarantor or any other Grantor shall be deemed to include a Receiver, trustee or debtor-in-possession on behalf of any of such person or on behalf of any such successor or assign, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections shall be construed to refer to Sections of this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

## Section 2. Lien Priorities

### 2.1 Acknowledgment of Liens.

(a) Revolving Loan Agent, on behalf of itself and each Revolving Credit Secured Party, hereby acknowledges that Term Loan Agent, acting for and on behalf of itself and the Term Loan Secured Parties, has been granted Liens upon all of the Common Collateral pursuant to the Term Loan Agreements to secure the Term Loan Debt.

(b) Term Loan Agent, on behalf of itself and each Term Loan Secured Party, hereby acknowledges that Revolving Loan Agent, acting for and on behalf of itself and the Revolving Loan Secured Parties, has been granted Liens upon all of the Common Collateral pursuant to the Revolving Loan Documents to secure the Revolving Loan Debt.

### 2.2 Relative Priorities.

(a) Notwithstanding the date, manner or order of grant, attachment or perfection of any Liens granted to the Revolving Loan Agent or the Revolving Loan Secured Parties or Term Loan Agent or the Term Loan Secured Parties and notwithstanding any provision of the UCC, or any applicable law or any provisions of the Revolving Loan Documents or the Term Loan Documents or any defect or deficiencies in, or failure to perfect, any Liens or any other circumstance whatsoever, the Term Loan Agent, on behalf of itself and the Term Secured Parties, and the Revolving Loan Agent, on behalf of itself and the Revolving Secured Parties, hereby agree that:



(i) any Lien on the Revolving Loan Priority Collateral securing the Revolving Loan Debt (other than the Excess Revolving Loan Debt) now or hereafter held by or for the benefit or on behalf of any Revolving Loan Secured Party or any agent or trustee therefor shall be senior in right, priority, operation, effect and in all other respects to any Lien on the Revolving Loan Priority Collateral securing the Term Loan Debt now or hereafter held by or for the benefit or on behalf of any Term Loan Secured Party or any agent or trustee therefor and any Lien on the Revolving Loan Priority Collateral securing any of the Term Loan Debt now or hereafter held by or for the benefit or on behalf of any Term Loan Secured Party or any agent or trustee therefor regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Revolving Loan Priority Collateral securing any Revolving Loan Debt (other than Excess Revolving Loan Debt);

(ii) any Lien on the Term Loan Priority Collateral securing the Term Loan Debt (other than Excess Term Loan Debt) now or hereafter held by or for the benefit or on behalf of any Term Loan Secured Party or any agent or trustee therefor shall be senior in right, priority, operation, effect and in all other respects to any Lien on the Term Loan Priority Collateral securing the Revolving Loan Debt now or hereafter held by or for the benefit or on behalf of any Revolving Loan Secured Party or any agent or trustee therefor and any Lien on the Term Loan Priority Collateral securing any of the Revolving Loan Debt now or hereafter held by or for the benefit or on behalf of any Revolving Loan Secured Party or any agent or trustee therefor regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Term Loan Priority Collateral securing any Term Loan Debt (other than Excess Term Loan Debt); and

(iii) any Lien on the Revolving Loan Priority Collateral securing Excess Revolving Loan Debt now or hereafter held by or for the benefit or on behalf of any Revolving Loan Secured Party or any agent or trustee therefor shall be junior in right, priority, operation, effect and in all other respects to any Lien on the Revolving Loan Priority Collateral securing the Term Loan Debt (other than then Excess Term Loan Debt) and senior in right, priority, operation, effect and in all other respects to any Lien on the Revolving Loan Priority Collateral securing the then Excess Term Loan Debt now or hereafter held by or for the benefit or on behalf of any Term Loan Secured Party or any agent or trustee therefor; and

(iv) any Lien on the Term Loan Priority Collateral securing Excess Term Loan Debt now or hereafter held by or for the benefit or on behalf of any Term Loan Secured Party or any agent or trustee therefor shall be junior in right, priority, operation, effect and in all other respects to any Lien on the

Term Loan Priority Collateral securing the Revolving Loan Debt (other than then Excess Revolving Loan Debt) and senior in right, priority, operation, effect and in all other respects to any Lien on the Term Loan Priority Collateral securing the then Excess Revolving Loan Debt now or hereafter held by or for the benefit or on behalf of any Revolving Loan Secured Party or any agent or trustee therefor.

(b) As between Revolving Loan Secured Parties and Term Loan Secured Parties, the terms of this Agreement, including the priorities set forth above, shall govern even if part or all of the Revolving Loan Debt or Term Loan Debt or the Liens securing payment and performance thereof are not perfected or are subordinated, avoided, disallowed, set aside or otherwise invalidated in any judicial proceeding or otherwise.

### 2.3 Prohibition on Contesting Liens and Claims.

(a) Each of the Revolving Loan Agent, for itself and on behalf of the other Revolving Loan Secured Parties, and Term Loan Agent, for itself and on behalf of the other Term Loan Secured Parties, agrees that it shall not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency Proceeding), the perfection, priority, extent, validity or enforceability of a Lien held, or purported to be held, by or for the benefit or on behalf of any Revolving Loan Secured Party in any Common Collateral or by or on behalf of any Term Loan Secured Party in any Common Collateral or Exclusive Term Loan Collateral, as the case may be; provided, that, nothing in this Agreement shall be construed to prevent or impair the rights of any Revolving Loan Secured Party or Term Loan Secured Party to enforce this Agreement, and provided, further, that nothing in this Agreement shall be construed to prevent any Revolving Loan Secured Party or Term Loan Secured Party from challenging the characterization of any item of Common Collateral as Term Loan Priority Collateral or Revolving Loan Priority Collateral or the value of items of Term Loan Priority Collateral or Revolving Loan Priority Collateral, respectively.

(b) Each of the Revolving Loan Agent, for itself and on behalf of the other Revolving Loan Secured Parties, and Term Loan Agent, for itself and on behalf of the other Term Loan Secured Parties, agrees that it shall not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency Proceeding), any claim, or any purported claim, of or for the benefit or on behalf of any Revolving Loan Secured Party or Term Loan Secured Party, as the case may be; provided, that, nothing in this Agreement shall be construed to prevent or impair the rights of any Revolving Loan Secured Party or Term Loan Secured Party to enforce this Agreement.

2.4 Similar Liens and Agreements. The parties hereto agree that it is their intention that the Common Collateral securing the Term Loan Debt and the Revolving Loan Debt be identical; provided that, for the avoidance of doubt, only the Term Loan Debt shall be secured by any Exclusive Term Loan Collateral. In furtherance of the foregoing and of Section 11.8, the parties hereto agree, subject to the other provisions of this Agreement, upon

request by the Revolving Loan Agent or the Term Loan Agent, to cooperate in good faith from time to time in order to determine the specific items included in the Revolving Loan Priority Collateral and the Term Loan Priority Collateral (excluding the Exclusive Term Loan Collateral) and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the Term Loan Documents and the Revolving Loan Documents.

2.5 New Liens. So long as no Insolvency Proceeding has been commenced by or against any Grantor, the parties hereto agree that no Grantor shall: (a) grant or permit any additional Liens on any asset to secure any Term Loan Debt unless such grantor gives Revolving Loan Agent at least five (5) Business Days prior written notice thereof and unless such notice also offers to grant a Lien on such asset to secure the Revolving Loan Debt concurrently with the grant of a Lien thereon in favor of the Term Loan Agent, provided that the German Grantor shall not be required to grant a Lien in favor of Revolving Loan Agent and no Lien in favor of Revolving Loan Agent shall be granted or purported to be granted on any Exclusive Term Loan Collateral; or (b) grant or permit any additional Liens on any asset to secure any Revolving Loan Debt unless such Grantor gives Term Loan Agent at least five (5) Business Days prior written notice thereof and unless such notice also offers to grant a Lien on such asset to secure the Term Loan Debt concurrently with the grant of a Lien thereon in favor of the Revolving Loan Agent. To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to the Secured Parties, Term Loan Agent and Revolving Credit Agent agree that any amounts received by or distributed to any of the Secured Parties pursuant to or as a result of Liens granted in contravention of this Section 2.5 shall be subject to Section 4.2.

### Section 3. Enforcement

#### 3.1 Exercise of Rights and Remedies.

(a) So long as the Discharge of Revolving Loan Debt has not occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, Term Loan Agent, for itself and on behalf of the other Term Loan Secured Parties:

(i) will not enforce or exercise, or seek to enforce or exercise, any rights or remedies (including any right of setoff or notification of account debtors) with respect to any Revolving Loan Priority Collateral (including the enforcement of any right under any lockbox agreement, account control agreement, landlord waiver or bailee's letter or any similar agreement or arrangement to which the Term Loan Agent or any other Term Loan Secured Party is a party) or commence or join with any Person (other than Revolving Loan Agent with its consent) in commencing, or filing a petition for, any action or proceeding with respect to such rights or remedies (including any foreclosure action), except, that, subject at all times to the provisions of Section 4 of this Agreement and to Section 3.1(a)(ii) of this Agreement, Term Loan Agent may enforce or exercise any or all such rights and remedies as to

any Revolving Loan Priority Collateral commencing one hundred fifty (150) days after the date of the receipt by the Revolving Loan Agent of written notice from the Term Loan Agent of the declaration by Term Loan Secured Parties of a Term Loan Event of Default in accordance with the terms of the Term Loan Documents that is continuing and the written demand by Term Loan Secured Parties of the immediate payment in full of all of the Term Loan Debt under the Term Loan Documents so long such Term Loan Event of Default has not been cured or waived (such period being referred to herein as the "Term Loan Standstill Period"); provided, that,

(A) in the event that at any time after the Term Loan Agent has sent a notice to the Revolving Loan Agent to commence the Term Loan Standstill Period, the event of default that was the basis for such notice is waived and no other Term Loan Events of Default have occurred and are then continuing, then the notice shall automatically and without further action of the parties be deemed rescinded and no Term Loan Standstill Period shall be deemed to have been commenced;

(B) the Term Loan Standstill Period shall be tolled for any period during which Revolving Loan Agent is stayed from exercising rights or remedies pursuant to any Insolvency Proceeding or court order, so long as the Revolving Loan Agent has used its commercially reasonable efforts to have such stay lifted;

(C) prior to taking any action to enforce or exercise any or all such rights and remedies, or commence or petition for any such action or proceeding, after the end of the Term Loan Standstill Period, Term Loan Agent shall give Revolving Loan Agent not more than ten (10) Business Days' and not less than five (5) Business Days' prior written notice of the intention of the Term Loan Agent or any other Term Loan Secured Party to exercise its rights and remedies, including specifying the rights and remedies that it intends to exercise, which notice may be sent prior to the end of the Term Loan Standstill Period and in the event that Term Loan Agent shall not take any action to enforce or exercise any or all of such rights within one hundred fifty (150) days after the end of the Term Loan Standstill Period, then the notice to commence such Term Loan Standstill Period shall automatically and without further action of the parties be deemed rescinded and no Term Loan Standstill Period shall be deemed to have been commenced; and

(D) notwithstanding anything to the contrary contained in Section 3.1(a)(i) above, Term Loan Agent and the other Term Loan Secured Parties may exercise any rights or remedies against any specific item or items of the Revolving Loan Priority Collateral or commence or petition for any action or proceeding with respect to such

rights or remedies after the end of the Term Loan Standstill Period, unless Revolving Loan Agent or any other Revolving Loan Secured Party is diligently pursuing in good faith the exercise of its enforcement rights or remedies against Grantors and/or all or any material portion of the Revolving Loan Priority Collateral or such item or items of Revolving Loan Priority Collateral, including, without limitation, any of the following: solicitation of bids from third parties to conduct the liquidation of all or any material portion of the Revolving Loan Priority Collateral, the engagement or retention of sales brokers, marketing agents, investment bankers, accountants, auctioneers or other third parties for the purpose of valuing, marketing, promoting or selling all or any material portion of the Revolving Loan Priority Collateral, the notification of account debtors that owe all or a material portion of the accounts to make payments to the Revolving Loan Agent or its agents, the initiation of any action to take possession of all or any material portion of the Revolving Loan Priority Collateral or the commencement of any legal proceedings or actions against or with respect to all or any material portion of the Revolving Loan Priority Collateral);

(ii) will not contest, protest or object to any foreclosure action or proceeding brought by the Revolving Loan Agent or any other Revolving Loan Secured Party, or any other enforcement or exercise by any Revolving Loan Secured Party of any rights or remedies relating solely to the Revolving Loan Priority Collateral, so long as the Liens of the Term Loan Agent attach to the Proceeds thereof subject to the relative priorities set forth in Section 2.1;

(iii) will not object to the forbearance by the Revolving Loan Agent or the other Revolving Loan Secured Parties from commencing or pursuing any foreclosure action or proceeding or any other enforcement or exercise of any rights or remedies with respect to any of the Revolving Loan Priority Collateral;

(iv) will not, so long as the Discharge of Priority Revolving Loan Debt (or the Discharge of Revolving Loan Debt with respect to Excess Term Loan Debt) has not occurred and except for actions otherwise permitted (x) in accordance with Section 3.1(a)(i)(D) or (y) in accordance with Section 6.4 but not in violation of any provision of this Agreement, take or receive any Revolving Loan Priority Collateral or any Proceeds or payment with respect thereto, in each case, in connection with the exercise of any enforcement action with respect to any Revolving Loan Priority Collateral;

(v) agrees that no covenant, agreement or restriction contained in any Term Loan Document shall be deemed to restrict in any way the rights and remedies of the Revolving Loan Agent or the other Revolving Loan Secured

Parties with respect to the Revolving Loan Priority Collateral as set forth in this Agreement and the Revolving Loan Documents;

(vi) will not object to the manner in which Revolving Loan Agent or any other Revolving Loan Secured Party may seek to enforce or collect the Revolving Loan Debt or the Liens of such Revolving Loan Secured Party on any Revolving Loan Priority Collateral to the extent not in violation of this Agreement, regardless of whether any action or failure to act by or on behalf of the Revolving Loan Agent or any other Revolving Loan Secured Party is, or could be, adverse to the interests of the Term Loan Secured Parties, and will not assert, and hereby waive, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or claim the benefit of any marshaling, appraisal, valuation or other similar right that may be available under applicable law with respect to the Revolving Loan Priority Collateral or any other rights a junior secured creditor may have under applicable law with respect to the matters described in this clause (vi); and

(vii) will not attempt, directly or indirectly, whether by judicial proceeding or otherwise, to challenge or question the validity or enforceability of any Revolving Loan Debt or any Lien of the Revolving Loan Agent or this Agreement (other than the challenging the characterization of any item of Common Collateral as Term Loan Priority Collateral or Revolving Loan Priority Collateral), or the validity or enforceability of the priorities, rights or obligations established by this Agreement.

(b) So long as the Discharge of Term Loan Debt has not occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, Revolving Loan Agent, for itself and on behalf of the other Revolving Loan Secured Parties, and any Receiver appointed by the Revolving Loan Agent:

(i) will not, subject to Section 3.1(c) below, enforce or exercise, or seek to enforce or exercise, any rights or remedies (including any right of setoff or notification of account debtors and the enforcement of any right under any lockbox agreement, account control agreement, landlord waiver or bailee's letter or any similar agreement or arrangement with respect to any Term Loan Priority Collateral to which the Revolving Loan Agent or any other Revolving Loan Secured Party is a party) or commence or join with any Person (other than Term Loan Agent with its consent) in commencing, or filing a petition for, any action or proceeding with respect to such rights or remedies (including any foreclosure action), except, that, subject at all times to the provisions of Section 4 of this Agreement and to Section 3.1(a)(ii) of this Agreement, Revolving Loan Agent may enforce or exercise any or all such rights and remedies as to any Term Loan Priority Collateral commencing one hundred fifty (150) days after the date of the receipt by Term Loan Agent of written notice from the Revolving Loan Agent of the declaration by Revolving

Loan Secured Parties of a Revolving Loan Event of Default in accordance with the terms of the Revolving Loan Documents that is continuing and the written demand by Revolving Loan Secured Parties of the immediate payment in full of all of the Revolving Loan Debt under the Revolving Loan Documents so long such Revolving Loan Event of Default has not been cured or waived (such period being referred to herein as the "Revolving Loan Standstill Period"); provided, that,

(A) in the event that at any time after the Revolving Loan Agent has sent a notice to the Term Loan Agent to commence the Revolving Loan Standstill Period, the Revolving Loan Event of Default that was the basis for such notice is waived and no other Revolving Loan Events of Default have occurred and are then continuing, then the notice shall automatically and without further action of the parties be deemed rescinded and no Revolving Loan Standstill Period shall be deemed to have been commenced;

(B) the Revolving Loan Standstill Period shall be tolled for any period during which Term Loan Agent is stayed from exercising rights or remedies pursuant to any Insolvency Proceeding or court order so long as the Term Loan Agent has used its commercially reasonable efforts to have such stay lifted;

(C) prior to taking any action to enforce or exercise any or all such rights and remedies, or commence or petition for any such action or proceeding, after the end of the Revolving Loan Standstill Period, Revolving Loan Agent shall give Term Loan Agent not more than ten (10) Business Days' and not less than five (5) Business Days' prior written notice of the intention of the Revolving Loan Agent or any other Revolving Loan Secured Party to exercise its rights and remedies, including specifying the rights and remedies that it intends to exercise, which notice may be sent prior to the end of the Revolving Loan Standstill Period and in the event that Revolving Loan Agent shall not take any action to enforce or exercise any or all of such rights within one hundred fifty (150) days after the end of the Revolving Loan Standstill Period, then the notice to commence such Revolving Loan Standstill Period shall automatically and without further action of the parties be deemed rescinded and no Revolving Loan Standstill Period shall be deemed to have been commenced; and

(D) notwithstanding anything to the contrary contained in Section 3.1(b)(i) above, Revolving Loan Agent and the other Revolving Loan Secured Parties may exercise any rights or remedies against any specific item or items of the Term Loan Priority Collateral or commence or petition for any action or proceeding with respect to such

rights or remedies after the end of the Revolving Loan Standstill Period, unless Term Loan Agent or any other Term Loan Secured Party is diligently pursuing in good faith the exercise of its enforcement rights or remedies against all or any material portion of the Term Loan Priority Collateral or such item or items of Term Loan Priority Collateral, including, without limitation, any of the following: solicitation of bids from third parties to conduct the liquidation of all or any material portion of the Term Loan Priority Collateral, the engagement or retention of sales brokers, marketing agents, investment bankers, accountants, auctioneers or other third parties for the purpose of valuing, marketing, promoting or selling all or any material portion of the Term Loan Priority Collateral, the initiation of any action to take possession of all or any material portion of the Term Loan Priority Collateral or the commencement of any legal proceedings or actions against or with respect to all or any material portion of the Term Loan Priority Collateral);

(ii) will not contest, protest or object to any foreclosure action or proceeding brought by the Term Loan Agent or any other Term Loan Secured Party, or any other enforcement or exercise by any Term Loan Secured Party of any rights or remedies relating solely to the Term Loan Priority Collateral, so long as the Liens of the Revolving Loan Agent attach to the Proceeds thereof subject to the relative priorities set forth in Section 2.1;

(iii) will not object to the forbearance by the Term Loan Agent or the other Term Loan Secured Parties from commencing or pursuing any foreclosure action or proceeding or any other enforcement or exercise of any rights or remedies with respect to any of the Term Loan Priority Collateral;

(iv) will not, so long as the Discharge of Priority Term Loan Debt (or the Discharge of Term Loan Debt with respect to Excess Revolving Loan Debt) has not occurred and except for actions otherwise permitted (x) in accordance with Section 3.1(b)(i)(D), (y) in accordance with Section 3.1(c), or (z) in accordance with Section 6.4 but not in violation of any provision of this Agreement, during the pendency of any insolvency proceeding, take or receive any Term Loan Priority Collateral, or payment with respect thereto, in each case, in connection with the exercise of any enforcement action with respect to any Term Loan Priority Collateral;

(v) agrees that no covenant, agreement or restriction contained in any Revolving Loan Document shall be deemed to restrict in any way the rights and remedies of the Term Loan Agent or the other Term Loan Secured Parties with respect to the Term Loan Priority Collateral as set forth in this Agreement and the Term Loan Documents;



(vi) will not object to the manner in which Term Loan Agent or any other Term Loan Secured Party may seek to enforce or collect the Term Loan Debt or the Liens of such Term Loan Secured Party on any Term Loan Priority Collateral to the extent not in violation of this Agreement, regardless of whether any action or failure to act by or on behalf of the Term Loan Agent or any other Term Loan Secured Party is, or could be, adverse to the interests of the Revolving Loan Secured Parties, and will not assert, and hereby waive, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or claim the benefit of any marshaling, appraisal, valuation or other similar right that may be available under applicable law with respect to the Term Loan Priority Collateral or any other rights a junior secured creditor may have under applicable law with respect to the matters described in this clause (vi); and

(vii) will not attempt, directly or indirectly, whether by judicial proceeding or otherwise, to challenge or question the validity or enforceability of any Term Loan Debt or any Lien of the Term Loan Agent or this Agreement (other than the challenging the characterization of any item of Common Collateral as Term Loan Priority Collateral or Revolving Loan Priority Collateral), or the validity or enforceability of the priorities, rights or obligations established by this Agreement.

(c) Until the Discharge of Revolving Loan Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, subject to Section 3.1(a)(i) hereof:

(i) the Revolving Loan Secured Parties shall have the exclusive right to commence, and if applicable, maintain the exercise of its rights and remedies with respect to the Revolving Loan Priority Collateral, including, without limitation, the exclusive right, to the extent provided for in the Revolving Loan Documents or under applicable law, to appoint an administrator in respect of a UK Grantor or a Receiver in respect of the Revolving Loan Priority Collateral, to take or retake control or possession of such Common Collateral and to hold, prepare for sale, process, sell, lease, dispose of, or liquidate such Revolving Loan Priority Collateral, without any consultation with or the consent of any Term Loan Secured Party; provided, that, the Lien securing the Term Loan Debt shall continue as to the Proceeds of such Common Collateral released or disposed of subject to the relative priorities described in Section 2 hereof;

(ii) in exercising enforcement rights and remedies with respect to the Revolving Loan Priority Collateral, the Revolving Loan Secured Parties may enforce the provisions of the Revolving Loan Documents with respect to the Revolving Loan Priority Collateral and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their

sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise realize on or dispose of any Revolving Loan Priority Collateral upon foreclosure, to incur expenses in connection with such sale or other realization or disposition, and to exercise all of the rights and remedies of a secured creditor under the UCC and of a secured creditor under the Bankruptcy Laws of any applicable jurisdiction;

(iii) Term Loan Secured Parties shall not have any right to direct any Revolving Loan Secured Party to exercise any right, remedy or power with respect to the Revolving Loan Priority Collateral and each Term Loan Secured Party shall have no right to consent to any exercise of remedies under the Revolving Loan Documents or applicable law in respect of any of the Revolving Loan Priority Collateral; and

(iv) no Term Loan Secured Party shall institute any suit or assert in any suit, bankruptcy, insolvency or other proceeding any claim against any Revolving Loan Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise, with respect to the Revolving Loan Priority Collateral.

(d) Until the Discharge of Term Loan Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, subject to Section 3.1(b)(i) hereof, the Term Loan Secured Parties shall have the exclusive right to commence, and if applicable, maintain the exercise of its rights and remedies with respect to the Term Loan Priority Collateral, including, without limitation, the exclusive right, to the extent provided for in the Term Loan Documents or under applicable law, to appoint an administrator or a Receiver in respect of the Term Loan Priority Collateral, to take or retake control or possession of such Common Collateral and to hold, prepare for sale, process, and subject to Section 3.1(b) hereof, sell, lease, dispose of, or liquidate such Term Loan Priority Collateral, without any consultation with or the consent of any Revolving Loan Secured Party; provided that, the Lien securing the Revolving Loan Debt shall continue as to the Proceeds of such Common Collateral released or disposed of subject to the relative priorities described in Section 2 hereof. In exercising enforcement rights and remedies with respect to the Term Loan Priority Collateral, the Term Loan Secured Parties may enforce the provisions of the Term Loan Documents with respect to the Term Loan Priority Collateral and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise realize on or dispose of any Term Loan Priority Collateral upon foreclosure, to incur expenses in connection with such sale or other realization or disposition, and to exercise all of the rights and remedies of a secured creditor under the UCC and of a secured creditor under the Bankruptcy Laws of any applicable jurisdiction. Revolving Loan Secured Parties shall not have any right to direct any Term Loan Secured Party to exercise any right, remedy or power with respect to the Term Loan Priority Collateral and each Revolving Loan Secured Party shall have no right to consent to any exercise of remedies under the Revolving Loan Documents or applicable law in respect

of any of the Term Loan Priority Collateral. No Revolving Loan Secured Party shall institute any suit or assert in any suit, bankruptcy, insolvency or other proceeding any claim against any Term Loan Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise, with respect to the Term Loan Priority Collateral.

(e) Notwithstanding the foregoing, each of the Term Loan Agent and the Revolving Loan Agent may:

(i) file a claim or statement of interest with respect to the Revolving Loan Debt or Term Loan Debt, as the case may be; provided, that, an Insolvency Proceeding has been commenced by or against any Grantor;

(ii) in the case of the Term Loan Agent, take any action in order to create, perfect, preserve or protect (but not enforce) its Lien on any of the Revolving Loan Priority Collateral, and in the case of the Revolving Loan Agent, take any action in order to create, perfect, preserve or protect (but not, subject to Section 3.1(c), enforce) its Lien on any of the Term Loan Priority Collateral;

(iii) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Revolving Loan Secured Parties or Term Loan Secured Parties represented by it, including any claims secured by the Common Collateral, if any, or otherwise make any agreements or file any motions or objections pertaining to the claims of such Secured Parties, in each case in accordance with the terms of this Agreement;

(iv) file any pleadings, objections, motions or agreements which assert rights or interests that are available to unsecured creditors of the Grantors including, without limitation, the commencement of an Insolvency Proceeding against any Company or any other Grantor, in each case, in accordance with applicable law and in a manner not inconsistent with the terms of this Agreement;

(v) vote on any plan of reorganization, file any proof of claim, make other filings and make any arguments and motions that do not, in any case, contravene the terms of this Agreement; and

(vi) exercise all other rights and remedies as unsecured creditors against Grantor so long as such exercise does not contravene any provision of this Agreement (it being understood that any provision of this Agreement that requires any party hereto to act or to refrain from acting shall be applicable to such party in its respective capacities as a secured and an unsecured creditor).

(f) Notwithstanding anything to the contrary contained in this Agreement, the Junior Agent and any other Junior Secured Party may:

(i) join (but not take any other action) any foreclosure or judicial lien enforcement proceeding with respect to the Priority Collateral initiated by Senior Agent, so long as such action would not and would not reasonably be expected to delay or interfere in any respect with the exercise by Senior Agent of its rights with respect to the Priority Collateral; and

(ii) present bids (including, without limitation, credit bids) for and purchase Priority Collateral at any private, public or judicial foreclosure upon or other disposition of Priority Collateral initiated by any Person (including without limitation, any disposition thereof pursuant to Section 363 of the Bankruptcy Code or a similar provision under any Bankruptcy Law); provided, that (x) such Junior Secured Party does not challenge the bid of the Senior Agent for its Priority Collateral, (y) each Priority Lender may, subject to the terms of its Collateral Documents offset its Priority Debt against the purchase price for the Priority Collateral and (z) such bid must comprise consideration sufficient to result in the Discharge of Priority Revolving Loan Debt with respect to a bid by the Term Loan Agent or the Discharge of Priority Term Loan Debt with respect to a bid by the Revolving Loan Agent.

### 3.2 Release of Second Priority Liens.

(a) If the Agent with the senior Lien on any Common Collateral (the "Senior Agent") releases its Liens on any part of such Common Collateral in connection with (i) any Disposition of such Common Collateral permitted under the terms of the Revolving Loan Documents and the terms of the Term Loan Documents, (ii) the Disposition by an Agent (but not by a Grantor) of such Common Collateral in connection with the exercise of such Agent's enforcement remedies in respect of such Common Collateral or (iii) the Disposition by any Grantor of such Common Collateral with the consent of the Senior Agent so long as, in the case of any Disposition of such Common Collateral pursuant to this clause (iii), (A) a Revolving Loan Event of Default (in the case of a Disposition of Revolving Loan Priority Collateral) or Term Loan Event of Default (in the case of a Disposition of Term Loan Priority Collateral) has occurred and is continuing, (B) the net cash proceeds received from such Disposition shall be applied to repay the Revolving Loan Debt (in the case of a Disposition of Revolving Loan Priority Collateral) or the Term Loan Debt (in the case of a Disposition of Term Loan Priority Collateral) and (C) such Disposition is conducted in a commercially reasonable manner (as if such Disposition were a disposition of collateral by a secured party in accordance with the UCC) and in accordance with applicable law, then (in each case) effective upon the consummation of any such Disposition or exercise of enforcement remedies, the Agent with the junior Lien on any such Common Collateral (the "Junior Agent") shall:

(i) be deemed to have automatically and without further action released and terminated any Liens it may have on such Common Collateral; provided, that, (x) the Liens of the Senior Agent so sold or disposed of are released at the same time, and (y) such junior Lien shall remain in place with respect to any Proceeds of such sale, transfer or other disposition under this clause (a)(i) that remain after the Discharge of Revolving Loan Debt (in the case of Revolving Loan Priority Collateral) or the Discharge of Term Loan Debt (in the case of Term Loan Priority Collateral);

(ii) be deemed to have authorized the Senior Agent to file UCC amendments and terminations covering the Common Collateral so sold or otherwise disposed of with respect to the UCC financing statements between any Grantor and the Junior Agent to evidence such release and termination; and

(iii) promptly upon the request of the Senior Agent, execute and deliver such other release documents and confirmations of the authorization to file UCC amendments and terminations provided for herein, in each case as the Senior Agent may require in connection with such sale or other Disposition, to evidence and effectuate such termination and release; provided, that, any such release or UCC amendment or termination by or on behalf of the Junior Agent shall not extend to or otherwise affect any of the rights, if any, of such Junior Agent to the Proceeds from any such sale or other disposition of Common Collateral upon the payment and satisfaction in full of the Revolving Loan Debt or the Term Loan Debt, as the case may be, whichever is secured by the senior Lien on such Common Collateral.

(b) Each Agent, for itself and on behalf of the other Secured Parties for whom such Agent is acting, in its capacity as Junior Agent, hereby irrevocably constitutes and appoints the other Agent, in its capacity as Senior Agent, and any officer or agent of such Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Junior Agent or such holder or in the Junior Agent's own name, from time to time in such Senior Agent's discretion, for the purpose of carrying out the terms of this Section 3.2, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Section 3.2, including any termination statements, endorsements or other instruments of transfer or release. Nothing contained in this Agreement shall be construed to modify the obligation of the Senior Agent to act in a commercially reasonable manner in the exercise of its rights to sell, lease, license, exchange, transfer or otherwise dispose of any Common Collateral.

(c) In the event that Proceeds of Collateral are received in connection with a Disposition of Common Collateral that directly or indirectly involves both of some or all of the Revolving Loan Priority Collateral and some or all of the Term Loan Priority Collateral, the Revolving Loan Agent and the Term Loan Agent shall use commercially reasonable

efforts in good faith to allocate the Proceeds received in connection with such Disposition of such Common Collateral to the Revolving Loan Priority Collateral and the Term Loan Priority Collateral. If the Revolving Loan Agent and Term Loan Agent are unable to agree on such allocation within ten (10) Business Days (or such other period of time as Revolving Loan Agent and Term Loan Agent agree) of the consummation of such Disposition, the portion of such Proceeds that shall be allocated as Proceeds of Revolving Loan Priority Collateral for purposes of this Agreement shall be an amount equal to not less than the sum of the book value of the accounts and inventory (each as defined in the UCC) included in the Common Collateral subject to such Disposition (determined at the time of such Disposition).

### 3.3 Insurance and Condemnation Awards.

(a) So long as the Discharge of Revolving Loan Debt has not occurred, Revolving Loan Agent and the other Revolving Loan Secured Parties shall have the sole and exclusive right, subject to the rights of Grantors under the Revolving Loan Documents, to settle and adjust claims in respect of the Revolving Loan Priority Collateral under policies of insurance and to approve any award granted in any condemnation or similar proceeding, or any deed in lieu of condemnation in respect of the Revolving Loan Priority Collateral. So long as the Discharge of Revolving Loan Debt has not occurred, all Proceeds of any such policy and any such award, or any payments with respect to a deed in lieu of condemnation, shall (a) first, be paid to the Revolving Loan Agent for the benefit of the Revolving Loan Secured Parties to the extent required under, and for application in accordance with, the Revolving Loan Documents, (b) second, be paid to the Term Loan Agent for the benefit of the Term Loan Secured Parties to the extent required under, and for application in accordance with, the applicable Term Loan Documents, and (c) third, if no Term Loan Debt is outstanding, be paid to the owner of the subject property or as a court of competent jurisdiction may otherwise direct or may otherwise be required by applicable law. Until the Discharge of Revolving Loan Debt, if Term Loan Agent or any other Term Loan Secured Party shall, at any time, receive any Proceeds of any such insurance policy or any such award or payment, it shall pay such Proceeds over to the Revolving Loan Agent in accordance with, and to the extent required by, the terms of Section 4.1 and 4.2.

(b) So long as the Discharge of Term Loan Debt has not occurred, Term Loan Agent and the other Term Loan Secured Parties shall have the sole and exclusive right, subject to the rights of Grantors under the Term Loan Documents, to settle and adjust claims in respect of the Term Loan Priority Collateral under policies of insurance and to approve any award granted in any condemnation or similar proceeding, or any deed in lieu of condemnation in respect of the Term Loan Priority Collateral. So long as the Discharge of Term Loan Debt has not occurred, all Proceeds of any such policy and any such award, or any payments with respect to a deed in lieu of condemnation, shall (a) first, be paid to the Term Loan Agent for the benefit of the Term Loan Secured Parties to the extent required under, and for application in accordance with, the applicable Term Loan Documents, (b) second, be paid to the Revolving Loan Agent for the benefit of the Revolving Loan Secured Parties to the extent required under, and for application in accordance with, the Revolving Loan Documents, and (c) third, if no Revolving Loan Debt is outstanding, be paid to the

owner of the subject property or as a court of competent jurisdiction may otherwise direct or may otherwise be required by applicable law. Until the Discharge of Term Loan Debt, if Revolving Loan Agent or any other Revolving Loan Secured Party shall, at any time, receive any Proceeds of any such insurance policy or any such award or payment, it shall pay such Proceeds over to the Term Loan Agent in accordance with, and to the extent required under, the terms of Sections 4.1 and 4.2.

3.4 Rights As Unsecured Creditors. Except as otherwise provided in Sections 2.3, 3.1(a), 3.1(b), 3.1(f) and 6, Revolving Loan Agent and Term Loan Agent, may exercise any and all rights and remedies available to an unsecured creditor against any Grantor in accordance with the terms of the Revolving Loan Documents and the Term Loan Documents, respectively, and applicable law. Nothing in this Agreement shall prohibit the receipt by either of the Revolving Loan Agent or Term Loan Agent of the required payments of principal, interest, fees and other amounts so long as such receipt is not the direct or indirect result of the exercise by the Revolving Loan Agent or Term Loan Agent or any other Secured Party of foreclosure rights or other remedies as a secured creditor or enforcement in contravention of this Agreement of any Lien held by any of them or any other act in contravention of this Agreement.

3.5 Intercompany Subordination Agreements. Notwithstanding the terms of any intercompany subordination agreement among the Loan Parties and Revolving Loan Agent or Term Loan Agent, as applicable, neither Revolving Loan Agent or Term Loan Agent shall exercise any rights or remedies under any such intercompany subordination agreement as a result of the prepayment of the Intercompany Note (as defined in the Revolving Loan Agreement) or any replacement thereof during a Mexican Receivables Purchase Period (as defined in the Revolving Loan Agreement) pursuant to the terms of the Mexican Receivables Purchase Documents (as defined in the Revolving Loan Agreement) or any replacements thereof.

#### Section 4. Payments

##### 4.1 Application of Proceeds.

(a) So long as the Discharge of Revolving Loan Debt has not occurred, the Revolving Loan Priority Collateral or Proceeds thereof received in connection with any Disposition of, or collection on, such Revolving Loan Priority Collateral, shall be applied in the following order of priority:

(i) first, to the Revolving Loan Debt (other than the Excess Revolving Loan Debt) and for cash collateral as required under the Revolving Loan Documents, and in such order as specified in the applicable Revolving Loan Documents until the Discharge of Priority Revolving Loan Debt has occurred;

(ii) second, to the Term Loan Debt (other than the Excess Term Loan Debt) and for cash collateral as required under the Term Loan Documents, and in such order as specified in the applicable Term Loan Documents until the Discharge of Priority Term Loan Debt has occurred;

(iii) third, to the Excess Revolving Loan Debt, and in such order as specified in the applicable Revolving Loan Documents until the Discharge of Revolving Loan Debt has occurred; and

(iv) fourth, to the Excess Term Loan Debt, and in such order as specified in the applicable Term Loan Documents until the Discharge of Term Loan Debt has occurred.

(b) So long as the Discharge of Term Loan Debt has not occurred, the Term Loan Priority Collateral or Proceeds thereof received in connection with the Disposition of, or collection on, such Term Loan Priority Collateral shall be applied in the following order of priority:

(i) first, to the Term Loan Debt (other than the Excess Term Loan Debt) and for cash collateral as required under the Term Loan Documents, and in such order as specified in the applicable Term Loan Documents until the Discharge of Priority Term Loan Debt has occurred;

(ii) second, to the Revolving Loan Debt (other than the Excess Revolving Loan Debt) and for cash collateral as required under the Revolving Loan Documents, and in such order as specified in the applicable Revolving Loan Documents until the Discharge of Priority Revolving Loan Debt has occurred;

(iii) third, to the Excess Term Loan Debt, and in such order as specified in the applicable Term Loan Documents until the Discharge of Term Loan Debt has occurred; and

(iv) fourth, to the Excess Revolving Loan Debt, and in such order as specified in the applicable Revolving Loan Documents until the Discharge of Revolving Loan Debt has occurred.

(c) Upon the Discharge of Priority Revolving Loan Debt (or the Discharge of Revolving Loan Debt with respect to Excess Term Loan Debt), to the extent permitted under applicable law and without risk of legal liability to the Revolving Loan Agent or any other Revolving Loan Secured Party and until the Discharge of the Priority Term Loan Debt, Revolving Loan Agent shall deliver to the Term Loan Agent, without representation or recourse, any Proceeds of Common Collateral held by it at such time in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct, to be applied by the Term Loan Agent to the Term Loan Debt in such order as specified in the relevant Term Loan Documents. Upon the Discharge of Priority Term



Loan Debt (or the Discharge of Term Loan Debt with respect to Excess Revolving Loan Debt), to the extent permitted under applicable law and without risk of legal liability to the Term Loan Agent or any other Term Loan Secured Party and until the Discharge of the Priority Revolving Loan Debt, Term Loan Agent shall deliver to the Revolving Loan Agent, without representation or recourse, any Proceeds of Common Collateral held by it at such time in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct, to be applied by the Revolving Loan Agent to the Revolving Loan Debt in such order as specified in the relevant Revolving Loan Documents. The provisions of this Section 4.1 are intended solely to govern the respective Lien priorities as between Term Loan Agent and Revolving Loan Agent and shall not impose on any Agent or any other Secured Party any obligations in respect of the disposition of Proceeds of foreclosure on any Common Collateral which would conflict with prior perfected claims therein in favor of any other person or any order or decree of any court or other governmental authority or any applicable law.

#### 4.2 Payments Over.

(a) So long as the Discharge of Priority Revolving Loan Debt has not occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, Term Loan Agent agrees, for itself and on behalf of the other Term Loan Secured Parties, that any Revolving Loan Priority Collateral or Proceeds thereof or payment with respect thereto received by the Term Loan Agent or any other Term Loan Secured Party (including any right of set-off), and including in connection with any insurance policy claim or any condemnation award (or deed in lieu of condemnation), in each case, in violation of this Agreement, shall be segregated and held in trust and promptly transferred or paid over to Revolving Loan Agent for the benefit of the Revolving Loan Secured Parties in the same form as received, with any necessary endorsements or assignments or as a court of competent jurisdiction may otherwise direct. Revolving Loan Agent is hereby authorized to make any such endorsements or assignments as agent for the Term Loan Agent. This authorization is coupled with an interest and is irrevocable.

(b) So long as the Discharge of Priority Term Loan Debt has not occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, Revolving Loan Agent agrees, for itself and on behalf of the other Revolving Loan Secured Parties, that any Term Loan Priority Collateral or Proceeds thereof or payment with respect thereto received by the Revolving Loan Agent or any other Revolving Loan Secured Party (including any right of set-off), and including in connection with any insurance policy claim or any condemnation award (or deed in lieu of condemnation), in each case, in violation of this Agreement, shall be segregated and held in trust and promptly transferred or paid over to Term Loan Agent for the benefit of the Term Loan Secured Parties in the same form as received, with any necessary endorsements or assignments or as a court of competent jurisdiction may otherwise direct. Term Loan Agent is hereby authorized to make any such endorsements or assignments as agent for the Revolving Loan Agent. This authorization is coupled with an interest and is irrevocable.

#### 4.3 Excess Cash Flow Payments.

Notwithstanding anything to the contrary contained in the Revolving Loan Documents or the Term Loan Documents, Grantors shall not make, or be required to make, and Term Loan Secured Parties shall not receive and retain, any Excess Cash Flow Payments in respect of the Term Loan Debt unless each of the following conditions is satisfied:

(a) such Excess Cash Flow Payments shall be made annually (commencing with the fiscal year of Borrower ending December 31, 2018), no sooner than the delivery of audited financial statements for the fiscal year to which any such Excess Cash Flow Payment corresponds;

(b) the aggregate amount of any such Excess Cash Flow Payment in respect of any fiscal year shall not exceed an amount equal to fifty percent (50%) of Excess Cash Flow for such fiscal year, and

(c) after giving effect to the making of any such Excess Cash Flow Payment, the ECF Prepayment Conditions are met; provided, that, if the ECF Prepayment Conditions are not met as of the date provided for in Section 4.3(a) (the “Scheduled Term Loan ECF Payment Date”), the ECF Prepayment Conditions shall be tested again on each of the dates that are thirty (30), sixty (60), ninety (90) and one hundred twenty (120) days following such date (each, an “Additional Term Loan ECF Payment Condition Testing Date”), and if the ECF Prepayment Conditions are met as of any Additional Term Loan ECF Payment Condition Testing Date, Grantors shall be required to make on such date any portion of the relevant Excess Cash Flow Payment that was not paid on the Scheduled Term Loan ECF Payment Date due to the failure to satisfy the conditions set forth in this Section 4.3(a).

#### 4.4 Proceeds of Mandatory Prepayments.

(a) So long as the Discharge of Term Loan Debt has not occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, all net cash proceeds (including any other Proceeds as and when converted to cash) of assets sales and casualty events received by Grantors in respect of Term Loan Priority Collateral shall (to the extent required under and in accordance with the provisions of the Term Loan Agreement) be applied to prepay the Term Loan Debt in accordance with the Term Loan Documents and this Agreement.

(b) So long as the Discharge of Revolving Loan Debt has not occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, all net cash proceeds (including any other Proceeds as and when converted to cash) of assets sales and casualty events received by Grantors in respect of Revolving Loan Priority Collateral shall (to the extent required under and in accordance with the provisions of the Revolving Loan Agreement) be applied to prepay the Revolving Loan Debt in accordance with the Revolving Loan Documents and this Agreement.

(c) So long as no Revolving Loan Event of Default has occurred, is continuing or would be caused thereby, all net cash proceeds of any extraordinary receipt, issuance of equity or incurrence of indebtedness by any Grantor shall be applied to prepay principal of the Term Loan Debt in accordance with the Term Loan Documents.

(d) If any Revolving Loan Event of Default has occurred, is continuing or would be caused thereby, all net cash proceeds of any extraordinary receipt, issuance of equity or incurrence of indebtedness by any Grantor shall be applied to prepay the Revolving Loan Debt in accordance with the Revolving Loan Documents (to the extent required under and in accordance with the provisions of the Revolving Loan Agreement).

4.5 Tracing of and Priorities in Proceeds. Prior to the delivery of notice of the commencement of any Term Loan Standstill Period or any Revolving Loan Standstill Period with respect to the Common Collateral of a Grantor (unless an Insolvency or Liquidation Proceeding of such Grantor has been commenced and is continuing), (a) any Proceeds of Revolving Loan Priority Collateral of such Grantor used by any Grantor to acquire any Term Loan Priority Collateral shall be treated as Term Loan Priority Collateral, so long as such use of Revolving Loan Priority Collateral is otherwise not in violation of the terms of this Agreement or the Revolving Loan Documents and (b) any Proceeds of Term Loan Priority Collateral of such Grantor consisting of or used by any Grantor to acquire any Revolving Loan Priority Collateral shall be treated as Revolving Loan Priority Collateral, so long as such use of Term Loan Priority Collateral is otherwise not in violation of the terms of this Agreement or the Term Loan Documents. Prior to the delivery of notice of the commencement of any Term Loan Standstill Period or any Revolving Loan Standstill Period with respect to the Common Collateral of a Grantor (unless an Insolvency or Liquidation Proceeding of such Grantor has been commenced and is continuing), any payment of principal, interest, fees and other obligations under the Term Loan Documents that are permitted to be paid under the terms of the Revolving Loan Documents (as in effect on the date hereof) or under the terms of this Agreement, in each case, shall not be deemed to constitute a payment from the Proceeds of the Revolving Loan Priority Collateral that would be subject to these payment over provisions or such similar provisions herein.

## Section 5. Bailee for Perfection

### 5.1 Each Agent as Bailee.

(a) Each Agent agrees to hold any Common Collateral that is in the possession or control of such Agent (or its agents or bailees), to the extent that possession or control thereof is effective to perfect a Lien thereon under the Uniform Commercial Code or under any other applicable law (such Common Collateral being referred to herein as the "Pledged Collateral"), as bailee and agent for and on behalf of the other Agent solely for the purpose of perfecting the Lien granted to the other Agent in such Pledged Collateral (including as to any securities or any deposit accounts or securities accounts, if any, for purposes of satisfying the requirements of Sections 8-106(d)(3), 8-301(a)(2) and 9-313(c) of

the UCC) pursuant to the Revolving Loan Documents or Term Loan Documents, as applicable, subject to the terms and conditions of this Section 5.

(b) Until the Discharge of Revolving Loan Debt has occurred, Revolving Loan Agent shall be entitled to deal with the Pledged Collateral constituting Revolving Loan Priority Collateral in accordance with the terms of the Revolving Loan Documents. The rights of the Term Loan Agent to such Pledged Collateral shall at all times be subject to the terms of this Agreement and to the Revolving Loan Agent's rights under the Revolving Loan Documents. Until the Discharge of Term Loan Debt has occurred, Term Loan Agent shall be entitled to deal with the Pledged Collateral constituting Term Loan Priority Collateral in accordance with the terms of the Term Loan Documents. The rights of the Revolving Loan Agent to such Pledged Collateral shall at all times be subject to the terms of this Agreement and to the Term Loan Agent's rights under the Term Loan Documents.

(c) Each Agent shall have no obligation whatsoever to the other Agent or any other Secured Party to assure that the Pledged Collateral is genuine or owned by any of the Grantors or to preserve rights or benefits of any Person except as expressly set forth in this Section 5. The duties or responsibilities of each Agent under this Section 5 shall be limited solely to holding the Pledged Collateral as bailee and agent for and on behalf of the other Agent for purposes of perfecting the Lien held by the other Agent.

(d) Each Agent shall not have by reason of the Revolving Loan Documents, the Term Loan Documents or this Agreement or any other document a fiduciary relationship in respect of the other Agent or any of the other Secured Parties and shall not have any liability to the other Agent or any other Secured Party in connection with its holding the Pledged Collateral, other than for its gross negligence or willful misconduct as determined by a final, non-appealable order of a court of competent jurisdiction.

## 5.2 Transfer of Pledged Collateral.

(a) Upon the Discharge of Revolving Loan Debt, to the extent permitted under applicable law, upon the request of the Term Loan Agent, Revolving Loan Agent shall, without recourse or warranty, transfer the possession and control of the Pledged Collateral, if any, then in its possession or control to the Term Loan Agent, except in the event and to the extent (i) Revolving Loan Agent or any other Revolving Loan Secured Party has retained or otherwise acquired such Common Collateral in full or partial satisfaction of any of the Revolving Loan Debt subject to the terms of this Agreement, (ii) such Common Collateral is sold or otherwise disposed of by the Revolving Loan Agent or any other Revolving Loan Secured Party or by a Grantor as provided herein or (iii) it is otherwise required by any order of any court or other governmental authority or applicable law or would result in the risk of liability of Revolving Loan Secured Party to any third party. In connection with any transfer described in the immediately preceding sentence to the Term Loan Agent, Revolving Loan Agent agrees to take reasonable actions in its power (with all costs and expenses in connection therewith to be for the account of the Term Loan Agent and to be paid by the Companies) as shall be reasonably requested by the Term Loan Agent to

permit Term Loan Agent to obtain, for the benefit of the Term Loan Secured Parties, a first priority security interest in the Pledged Collateral, including in connection with the terms of any Collateral Access Agreement (as defined in the Revolving Loan Agreement), whether with a landlord, processor, warehouse or other third party or any Deposit Account Control Agreement (as defined in the Revolving Loan Agreement), with respect to any such agreement delivered on or after the date hereof, Revolving Loan Agent shall notify the other parties thereto that it is no longer the "Secured Party Representative", "Agent Representative", "Lender Representative" or otherwise entitled to act under such agreement and shall confirm to such parties that Second Lien Agent is thereafter the "Secured Party Representative", "Agent Representative", "Lender Representative" as any of such terms are used in any such agreement and is otherwise entitled to the rights of the secured party under such agreement. The foregoing provision shall not impose on Revolving Loan Agent or any other Revolving Loan Secured Party any obligations which would conflict with prior perfected claims therein in favor of any other person or any order or decree of any court or other governmental authority or any applicable law.

(b) Upon the Discharge of Term Loan Debt, to the extent permitted under applicable law, upon the request of the Revolving Loan Agent, Term Loan Agent shall, without recourse or warranty, transfer the possession and control of the Pledged Collateral, if any, then in its possession or control to the Revolving Loan Agent, except in the event and to the extent (a) Term Loan Agent or any other Term Loan Secured Party has retained or otherwise acquired such Common Collateral in full or partial satisfaction of any of the Term Loan Debt subject to the terms of this Agreement, (b) such Common Collateral is sold or otherwise disposed of by the Term Loan Agent or any other Term Loan Secured Party or by a Grantor as provided herein or (c) it is otherwise required by any order of any court or other governmental authority or applicable law or would result in the risk of liability of Term Loan Secured Party to any third party. In connection with any transfer described in the immediately preceding sentence to the Revolving Loan Agent, Term Loan Agent agrees to take reasonable actions in its power (with all costs and expenses in connection therewith to be for the account of the Revolving Loan Agent and to be paid by The Companies) as shall be reasonably requested by the Revolving Loan Agent to permit Revolving Loan Agent to obtain, for the benefit of the Revolving Loan Secured Parties, a first priority security interest in the Pledged Collateral. The foregoing provision shall not impose on Term Loan Agent or any other Term Loan Secured Party any obligations which would conflict with prior perfected claims therein in favor of any other person or any order or decree of any court or other governmental authority or any applicable law.

(c) Each Grantor acknowledges and agrees to the delivery or transfer of control by the Revolving Loan Agent to the Term Loan Agent, and by the Term Loan Agent to the Revolving Loan Agent of any such Common Collateral and waives and releases Revolving Loan Agent and the other Revolving Secured Parties, and Term Loan Agent and the other Term Loan Secured Parties, from any liability as a result of such action.

(d) The Term Loan Agent agrees that, until the Discharge of Term Loan Debt has occurred, it will not, without the express agreement of the Revolving Loan Agent,

deliver or require a Grantor to deliver any notice or direction to any third party (including, without limitation, any bank, insurance company or contract counterparty) or seek to enter into any direct agreement with any such third party to the extent that such third party's involvement relates to any Revolving Loan Priority Collateral located in the United Kingdom and subject to a Lien under English law (including, without limitation, deposit accounts domiciled in the United Kingdom).

(e) The Revolving Loan Agent agrees that, until the Discharge of Revolving Loan Debt has occurred, it will not, without the express agreement of the Term Loan Agent, deliver or require a Grantor to deliver any notice or direction to any third party (including, without limitation, any bank, insurance company or contract counterparty) or seek to enter into any direct agreement with any such third party to the extent that such third party's involvement relates to any Term Loan Priority Collateral located in the United Kingdom and subject to a Lien under English law (including, without limitation, deposit accounts domiciled in the United Kingdom).

## Section 6. Insolvency Proceedings

### 6.1 General Applicability.

This Agreement shall be applicable both before and after the institution of any Insolvency Proceeding involving any Grantor, including, without limitation, the filing of any petition by or against any Grantor under the Bankruptcy Code or under any other Bankruptcy Law and all converted or subsequent cases in respect thereof, and all references herein to any Grantor shall be deemed to apply to the trustee or similar official for such Grantor and such Grantor as debtor-in-possession. The relative rights of the Revolving Loan Secured Parties and the Term Loan Secured Parties in or to any distributions from or in respect of any Common Collateral or Proceeds shall continue after the institution of any Insolvency Proceeding involving any Grantor, including, without limitation, the filing of any petition or other similar proceeding by or against any Grantor under the Bankruptcy Code or under any other Bankruptcy Law and all converted cases and subsequent cases or proceedings, on the same basis as prior to the date of such institution, subject to any court order approving the financing of, or use of Revolving Loan Cash Collateral by, any Grantor as debtor-in-possession, or any other court order affecting the rights and interests of the parties hereto not in conflict with this Agreement. This Agreement shall constitute a "subordination agreement" for the purposes of Section 510(a) of the Bankruptcy Code and shall be enforceable in any Insolvency Proceeding in accordance with its terms.

### 6.2 Use of Cash Collateral; Bankruptcy Financing.

(a) If any Grantor becomes subject to any Insolvency Proceeding, until the Discharge of Revolving Loan Debt has occurred, Term Loan Agent, for itself and on behalf of the other Term Loan Secured Parties, agrees that each Term Loan Secured Party will (i) raise no objection to, nor support any other Person objecting to, and will be deemed to have consented to, the use of any Revolving Loan Priority Collateral constituting cash collateral

under Section 363 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law ("Revolving Loan Cash Collateral"), or any post-petition financing under Section 364 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law, whether provided by any Revolving Loan Secured Party or other Person, but in each case to the extent consented to by the Revolving Loan Agent (a "Revolving Loan DIP Financing"), (ii) will not request or accept adequate protection or any other relief in connection with the use of such Revolving Loan Cash Collateral or such Revolving Loan DIP Financing except as set forth in Section 6.4 below, and (iii) will subordinate (and will be deemed hereunder to have subordinated) the Liens of the Term Loan Agent or any other Term Loan Secured Parties on the Revolving Loan Priority Collateral (but not the Term Loan Priority Collateral) to (x) the Liens on the Revolving Loan Priority Collateral pursuant to such Revolving Loan DIP Financing, (y) any adequate protection provided to the Revolving Loan Secured Parties and (z) any professional fee, U.S. trustee fee "carve-out" or in Canada, a court-ordered charge or security approved in connection with such Revolving Loan Cash Collateral or such Revolving Loan DIP Financing to be paid prior to the discharge of the Revolving Loan Debt, in each case, on the same terms as the Liens of the Term Loan Secured Parties are subordinated hereunder to the Liens in the Revolving Loan Priority Collateral securing the Revolving Loan Debt (and such subordination will not alter in any manner the terms of this Agreement); provided, that:

(I) Revolving Loan Agent does not oppose or object to such use of cash collateral or Revolving Loan DIP Financing,

(II) the aggregate principal amount of the Revolving Loan DIP Financing plus the aggregate outstanding principal amount of loans and letters of credit included in the Revolving Loan Debt shall not exceed an amount equal to 120% of the aggregate commitments under the Revolving Loan Documents as in effect immediately before the commencement of such Insolvency Proceeding (or, if earlier, immediately prior to the suspension or termination of such commitments in accordance with the terms of the Revolving Loan Agreement),

(III) the Term Loan Secured Parties retain a Lien on the Common Collateral (including Proceeds thereof arising after the commencement of such proceeding) with the same priority relative to the Liens on such Common Collateral of the Revolving Loan Agent as existed prior to the commencement of the case under the Bankruptcy Code or other Bankruptcy Law (junior in priority to the Liens securing such Revolving Loan DIP Financing and the existing Liens in favor of the Revolving Loan Agent on the Revolving Loan Priority Collateral but senior to the Liens of the Revolving Loan Agent (and the Liens securing the Revolving Loan DIP Financing) on the Term Loan Priority Collateral to the same extent as provided under Section 2.2),

(IV) Term Loan Agent receives, as security for the Term Loan Debt, additional or replacement Liens on all post-petition assets of any Grantor

which are subject to an additional or replacement Lien to secure the Revolving Loan DIP Financing with same priority relative to the Liens of the Revolving Loan Agent as existed prior to such Insolvency Proceeding to the extent Term Loan Agent seeks such Liens and is entitled to such additional or replacement Liens under the Bankruptcy Code or other applicable Bankruptcy Law (in each case junior to the additional or replacement Liens of the Revolving Loan Agent on the Revolving Loan Priority Collateral),

(V) such Revolving Loan DIP Financing or use of Revolving Loan Cash Collateral is subject to the terms of this Agreement, and

(VI) the Term Loan Agent retains the right to object to any ancillary agreements or arrangements regarding the use of Revolving Loan Cash Collateral or the Revolving Loan DIP Financing that require a specific treatment of a claim in respect of the Term Loan Debt for purposes of a plan of reorganization (provided, that, in no event shall the foregoing be construed to give rise to the right to object to any of the rights and remedies that are customary for the Revolving Loan Agent to receive as part of any order with respect to the use of Revolving Loan Cash Collateral or any such Revolving Loan DIP Financing).

(b) If any Grantor becomes subject to any Insolvency Proceeding, until the Discharge of Term Loan Debt has occurred, Revolving Loan Agent, for itself and on behalf of the other Revolving Loan Secured Parties, agrees that each Revolving Loan Secured Party will (i) raise no objection to, nor support any other Person objecting to, and will be deemed to have consented to, the use of any Term Loan Priority Collateral constituting cash collateral under Section 363 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law ("Term Loan Cash Collateral"), or any post-petition financing under Section 364 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law, whether provided by any Term Loan Secured Party or other Person, but in each case to the extent approved for such purpose by the Term Loan Agent (a "Term Loan DIP Financing"), (ii) will not request or accept adequate protection or any other relief in connection with the use of such Term Loan Cash Collateral or such Term Loan DIP Financing except as set forth in Section 6.4 below, and (iii) will subordinate (and will be deemed hereunder to have subordinated) the Liens of the Revolving Loan Agent or any other Revolving Loan Secured Parties on the Term Loan Priority Collateral (but not the Revolving Loan Priority Collateral) to (x) the Liens on the Term Loan Priority Collateral pursuant to such Term Loan DIP Financing, (y) any adequate protection provided to the Term Loan Secured Parties and (z) any professional fee, U.S. trustee fee "carve-out" or in Canada, a court-ordered charge or security approved in connection with such Term Loan Cash Collateral or such Term Loan DIP Financing to be paid prior to the discharge of the Term Obligations, in each case, on the same terms as the Liens of the Revolving Loan Secured Parties are subordinated hereunder to the Liens in the Term Loan Priority Collateral securing the Term Loan Debt (and such subordination will not alter in any manner the terms of this Agreement); provided, that:



(I) Term Loan Agent does not oppose or object to such use of cash collateral or Term Loan DIP Financing,

(II) the aggregate principal amount of the Term Loan DIP Financing plus the aggregate outstanding principal amount of Term Loan Debt shall not exceed 120% of the aggregate principal amount of loans included in the Term Loan Debt outstanding immediately before the commencement of such Insolvency Proceeding,

(III) the Revolving Loan Secured Parties retain a Lien on the Common Collateral (including Proceeds thereof arising after the commencement of such proceeding) with the same priority relative to the Liens on such Common Collateral of the Term Loan Agent as existed prior to the commencement of the case under the Bankruptcy Code or other Bankruptcy Law (junior in priority to the Liens securing such Term Loan DIP Financing and the existing Liens in favor of the Term Loan Agent on the Term Loan Priority Collateral but senior to the Liens of the Term Loan Agent (and the Liens securing the Term Loan DIP Financing) on the Revolving Loan Priority Collateral to the same extent as provided under Section 2.2),

(IV) Revolving Loan Agent receives, as security for the Revolving Loan Debt, additional or replacement Liens on all post-petition assets of any Grantor which are subject to an additional or replacement Lien to secure the Term Loan DIP Financing with same priority relative to the Liens of the Term Loan Agent as existed prior to such Insolvency Proceeding to the extent Revolving Loan Agent seeks such Liens and is entitled to such additional or replacement Liens under the Bankruptcy Code or other applicable Bankruptcy Law (in each case junior to the additional or replacement Liens of the Term Loan Agent on the Term Loan Priority Collateral),

(V) such Term Loan DIP Financing or use of Term Loan Cash Collateral is subject to the terms of this Agreement, and

(VI) the Revolving Loan Agent retains the right to object to any ancillary agreements or arrangements regarding the use of Term Loan Cash Collateral or the Term Loan DIP Financing that require a specific treatment of a claim in respect of the Revolving Loan Debt for purposes of a plan of reorganization (provided that, in no event shall the foregoing be construed to give rise to the right to object to any of the rights and remedies that are customary for the Term Loan Agent to receive as part of any order with respect to the use of Term Loan Cash Collateral or any such Revolving Loan DIP Financing).

(c) Neither the Revolving Loan Agent nor any Revolving Loan Secured Party shall, directly or indirectly, provide, or seek to provide, or support any other person

providing or seeking to provide, the use of Revolving Loan Cash Collateral or Revolving Loan DIP Financing secured by Liens equal or senior in priority to the Liens on the Term Loan Priority Collateral (including any assets or property arising after the commencement of an Insolvency Proceeding) of the Term Loan Agent. Neither the Term Loan Agent nor any Term Loan Secured Party, shall, directly or indirectly, provide, or seek to provide, or support any other person providing or seeking to provide, the use of Term Loan Cash Collateral or Term Loan DIP Financing secured by Liens equal or senior in priority to the Liens on the Revolving Loan Priority Collateral (including any assets or property arising after the commencement of any Insolvency Proceeding) of the Revolving Loan Agent.

### 6.3 Relief from the Automatic Stay.

(a) So long as the Discharge of Revolving Loan Debt has not occurred, neither the Term Loan Agent nor any of the Term Loan Secured Parties will seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any part of the Revolving Loan Priority Collateral, any Proceeds thereof or any Lien thereon securing any of the Term Loan Debt; provided, however, that in the event that any or all of the Revolving Loan Agent and the Revolving Loan Secured Parties have obtained relief from the automatic stay or any other stay with respect to any Revolving Loan Priority Collateral, any or all of the Term Loan Agent and Term Loan Secured Parties may seek corresponding relief from the automatic stay or any other stay with respect to such Revolving Loan Priority Collateral for purposes of joining in a foreclosure or other enforcement action commenced by any of the Revolving Loan Secured Parties against any Revolving Loan Priority Collateral (even if the Term Loan Standstill Period has not expired) so long as the Term Loan Agent and/or Term Loan Secured Parties do not hinder, delay or interfere with either the efforts by the Revolving Loan Agent and/or Revolving Loan Secured Parties to obtain relief from the automatic stay or any other stay with respect to such Revolving Loan Priority Collateral or to exercise any rights or remedies against such Revolving Loan Priority Collateral.

(b) So long as the Discharge of Term Loan Debt has not occurred, neither the Revolving Loan Agent nor any of the Revolving Loan Secured Parties will seek any relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any part of the Term Loan Priority Collateral, any Proceeds thereof or any Lien thereon securing any of the Revolving Loan Debt; provided, however, that in the event that any or all of the Term Loan Agent and the Term Loan Secured Parties have obtained relief from the automatic stay or any other stay with respect to any Term Loan Priority Collateral, any or all of the Revolving Loan Agent and Revolving Loan Secured Parties may seek corresponding relief from the automatic stay or any other stay with respect to such Term Loan Priority Collateral for purposes of joining in a foreclosure or other enforcement action commenced by any of the Term Loan Secured Parties against the Term Loan Priority Collateral (even if the Revolving Loan Standstill Period has not expired) so long as the Revolving Loan Agent and/or Revolving Loan Secured Parties do not hinder, delay or interfere with either the efforts by the Term Loan Agent and/or Term Secured Parties to obtain relief from the automatic stay or any other stay with respect to such Term Loan Priority Collateral or to exercise any rights or remedies against such Term Loan Priority Collateral.

#### 6.4 Adequate Protection.

##### (a) Objections.

(i) The Term Loan Agent, on behalf of itself and the other Term Loan Secured Parties, agrees that none of them shall contest (or support any other Person contesting) in their capacities as secured creditors, any objection by the Revolving Loan Agent or the other Revolving Loan Secured Parties to any motion, relief, action or proceeding based on the Revolving Loan Agent or the other Revolving Loan Secured Parties claiming a lack of adequate protection with respect to Liens in Revolving Loan Priority Collateral to the extent not inconsistent with the other terms of this Agreement.

(ii) The Revolving Loan Agent, on behalf of itself and the other Revolving Loan Secured Parties, agrees that none of them shall contest (or support any other Person contesting) in their capacities as secured creditors, any objection by the Term Loan Agent or the other Term Loan Secured Parties to any motion, relief, action or proceeding based on the Term Loan Agent or the other Term Loan Secured Parties claiming a lack of adequate protection with respect to Liens in Term Loan Priority Collateral to the extent not inconsistent with the other terms of this Agreement.

(b) Notwithstanding anything to the contrary in Section 6.3(a), in any Insolvency Proceeding:

(i) if any or all of the Revolving Loan Secured Parties are granted adequate protection in the form of additional collateral in connection with any use of Revolving Loan Cash Collateral or a Revolving Loan DIP Financing and such additional collateral is the type of asset or property that would constitute Revolving Loan Priority Collateral, then the Term Loan Agent, on behalf of itself or any of the Term Loan Secured Parties, may seek or request adequate protection in the form of a Lien on such additional collateral, which Lien will be subordinated to the Liens securing the Revolving Loan Debt and such use of Revolving Loan Cash Collateral or Revolving Loan DIP Financing (and all obligations relating thereto) on the same basis as the other Liens on Revolving Loan Priority Collateral securing the Term Loan Debt are so subordinated to the Liens on Revolving Loan Priority Collateral securing the Revolving Loan Debt under this Agreement;

(ii) if any or all of the Term Loan Secured Parties are granted adequate protection in the form of additional collateral in connection with any use of Term Loan Cash Collateral or a Term Loan DIP Financing and such additional collateral is the type of asset or property that would constitute Term Loan Priority Collateral, then the Revolving Loan Agent, on behalf of itself or any of the Revolving Loan Secured Parties, may seek or request adequate

protection in the form of a Lien on such additional collateral, which Lien will be subordinated to the Liens securing the Term Loan Debt and such use of Term Loan Cash Collateral or Term Loan DIP Financing (and all obligations relating thereto) on the same basis as the other Liens on Term Loan Priority Collateral securing the Revolving Loan Debt are so subordinated to the Liens on Term Loan Priority Collateral securing the Term Loan Debt under this Agreement;

(iii) in the event the Revolving Loan Agent, on behalf of itself or any other Revolving Loan Secured Parties, seeks or requests adequate protection in respect of Revolving Loan Debt and such adequate protection is granted in the form of additional collateral of a type of asset or property that would constitute Term Loan Priority Collateral, then the Revolving Loan Agent, on behalf of itself and the other Revolving Loan Secured Parties, agrees that the Term Loan Agent shall also be granted a Lien on such additional collateral as security for the Term Loan Debt and for any use of Term Loan Cash Collateral or Term Loan DIP Financing and that any Lien on such additional collateral securing the applicable Revolving Loan Debt shall be subordinated to the Lien on such collateral securing the Term Loan Debt and any such use of Term Loan Cash Collateral or Term Loan DIP Financing (and all obligations relating thereto) and to any other Liens granted to the Term Loan Secured Parties as adequate protection on the same basis as the other Liens on Term Priority Collateral securing the Revolving Loan Debt are so subordinated to the Liens on Term Loan Priority Collateral securing the Term Loan Debt under this Agreement; and

(iv) in the event the Term Loan Agent, on behalf of itself or any other Term Loan Secured Parties, seeks or requests adequate protection in respect of Term Loan Debt and such adequate protection is granted in the form of additional collateral of a type of asset or property that would constitute Revolving Loan Priority Collateral, then the Term Loan Agent, on behalf of itself and the other Term Loan Secured Parties, agrees that the Revolving Loan Agent shall also be granted a Lien on such additional collateral as security for the Revolving Loan Debt and for any use of Revolving Loan Cash Collateral or Revolving Loan DIP Financing and that any Lien on such additional collateral securing the applicable Term Loan Debt shall be subordinated to the Lien on such collateral securing the Revolving Loan Debt and any such use of Revolving Loan Cash Collateral or Revolving Loan DIP Financing (and all obligations relating thereto) and to any other Liens granted to the Revolving Loan Secured Parties as adequate protection on the same basis as the other Liens on Revolving Loan Priority Collateral securing the Term Loan Debt are so subordinated to the Liens on Revolving Loan Priority Collateral securing the Revolving Loan Debt under this Agreement.

(c) any adequate protection granted in favor of any Revolving Loan Secured Party with respect to the Revolving Loan Priority Collateral or any Term Loan Secured Party with respect to the Term Loan Priority Collateral in the form of a superpriority or other administrative expense claim and any claim in favor of such Secured Party arising under Section 507(b) of the Bankruptcy Code (or similar Bankruptcy Law) ("Senior 507(b) Claims"), shall be *pari passu* with the grant of adequate protection in favor of the other Revolving Loan Secured Parties with respect to the Revolving Loan Priority Collateral or the other Term Loan Secured Parties with respect to the Term Loan Priority Collateral in the form of a superpriority or other administrative expense claim. Any claim arising under Section 507(b) of the Bankruptcy Code in favor of any Revolving Loan Secured Party with respect to the Term Loan Priority Collateral or any Term Loan Secured Party with respect to the Revolving Loan Priority Collateral shall be *pari passu* with the claims arising under Section 507(b) of the Bankruptcy Code (or similar Bankruptcy Law) in favor of the other Revolving Loan Secured Parties with respect to the Term Loan Priority Collateral or the other Term Loan Secured Parties with respect to the Revolving Loan Priority Collateral (collectively, "Junior 507(b) Claims"), all Junior 507(b) Claims shall be junior and subordinate in right of payment to the Senior 507(b) Claims, and the holders of the Junior 507(b) Claims agree that, in connection with any plan of reorganization in such Insolvency Proceeding, such Junior 507(b) Claims may be paid in any combination of cash, securities, or other property having a present value equal to the amount of such Junior 507(b) Claims as of the effective date of confirmation of such plan.

(d) Except as otherwise provided in this Section 6.4, (i) no Revolving Loan Secured Party may seek or assert any right it may have for adequate protection of its interest in the Term Loan Priority Collateral without the prior written consent of the requisite Term Loan Lenders under the Term Loan Agreement, and (ii) no Term Loan Secured Party may seek or assert any right it may have for adequate protection of its interest in the Revolving Loan Priority Collateral without the written consent of the requisite Revolving Loan Lenders under the Revolving Loan Agreement.

#### 6.5 Reorganization Securities.

If, in any Insolvency Proceeding, debt obligations of any reorganized Grantor secured by Liens upon any property of such reorganized Grantor are distributed, pursuant to a plan of reorganization, on account of both the Revolving Loan Debt and the Term Loan Debt, then, to the extent the debt obligations distributed on account of the Revolving Loan Debt and on account of the Term Loan Debt are secured by Liens upon the same assets or property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

#### 6.6 Separate Grants of Security and Separate Classes.

Each of the parties hereto irrevocably acknowledges and agrees that (a) the claims and interests of the Revolving Loan Secured Parties and the Term Loan Secured

Parties are not "substantially similar" within the meaning of Section 1122 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law, (b) the grants of the Liens to secure the Revolving Loan Debt and the grants of the Liens to secure the Term Loan Debt constitute two separate and distinct grants of Liens, (c) the Revolving Loan Secured Parties' rights in the Common Collateral are fundamentally different from the Term Loan Secured Parties' rights in the Common Collateral and (d) as a result of the foregoing, among other things, the Revolving Loan Debt and the Term Loan Debt shall be separately classified in any plan of reorganization proposed or adopted in any Insolvency Proceeding.

#### 6.7 Asset Dispositions.

(a) Until the Discharge of Revolving Loan Debt has occurred, the Term Loan Agent, for itself and on behalf of the other Term Loan Secured Parties, agrees that, in the event of any Insolvency Proceeding, the Term Loan Secured Parties will not object or oppose (or support any Person in objecting or opposing) a motion for any Disposition of any Revolving Loan Priority Collateral free and clear of the Liens of the Term Loan Agent and the other Term Loan Secured Parties or other claims under Sections 363, 365 or 1129 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law, and shall be deemed to have consented to any such Disposition of any Revolving Loan Priority Collateral under Section 363(f) of the Bankruptcy Code or any comparable provision of any other Bankruptcy Law that has been consented to by the Revolving Loan Agent; provided, that, the Proceeds of such Disposition to be applied to the Revolving Loan Debt or the Term Loan Debt are applied in accordance with Sections 4.1 and 4.2.

(b) Until the Discharge of Term Loan Debt has occurred, the Revolving Loan Agent, for itself and on behalf of the other Revolving Loan Secured Parties, agrees that, in the event of any Insolvency Proceeding, the Revolving Loan Secured Parties will not object or oppose (or support any Person in objecting or opposing) a motion to any Disposition of any Term Loan Priority Collateral free and clear of the Liens of the Revolving Loan Agent and the other Revolving Loan Secured Parties or other claims under Sections 363, 365 or 1129 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law, and shall be deemed to have consented to any such Disposition of any Term Loan Priority Collateral under Section 363(f) of the Bankruptcy Code or any comparable provision of any other Bankruptcy Law that has been consented to by the Term Loan Agent; provided, that, the Proceeds of such Disposition to be applied to the Term Loan Debt or the Revolving Loan Debt are applied in accordance with Sections 4.1 and 4.2.

(c) The Term Loan Secured Parties agree that the Revolving Loan Secured Parties shall have the right to credit bid under Section 363(k) of the Bankruptcy Code or any comparable provision of any other Bankruptcy Law with respect to, or otherwise object to any Disposition of, the Revolving Loan Priority Collateral, and the Revolving Loan Secured Parties agree that the Term Loan Secured Parties shall have the right to credit bid under Section 363(k) of the Bankruptcy Code or any comparable provision of any other Bankruptcy Law with respect to, or otherwise object to any Disposition of, the Term Loan Priority Collateral; provided, that, the Secured Parties shall not be deemed to have agreed to

any credit bid by other Secured Parties in connection with the Disposition of Common Collateral consisting of both Term Loan Priority Collateral and Revolving Loan Priority Collateral.

6.8 Certain Waivers as to Section 1111(b)(2) of Bankruptcy Code.

Term Loan Agent, for itself and on behalf of the other Term Loan Secured Parties, waives any claim any Term Loan Secured Party may hereafter have against any Revolving Loan Secured Party arising out of the election by any Revolving Loan Secured Party of the application of Section 1111(b)(2) of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law. Revolving Loan Agent, for itself and on behalf of the other Revolving Loan Secured Parties, waives any claim they may hereafter have against any Term Loan Secured Party arising out of the election by any Term Loan Secured Party of the application of Section 1111(b)(2) of the Bankruptcy Code or any comparable provision of any other Bankruptcy Law.

6.9 Avoidance Issues.

If any Revolving Loan Secured Party is required in any Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of any Grantor or any other person any amount (a "Recovery"), then the Revolving Loan Debt shall be reinstated to the extent of such Recovery and the Revolving Loan Secured Parties shall be entitled to a Discharge of Revolving Loan Debt with respect to all such recovered amounts. If any Term Loan Secured Party is required in any Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of any Grantor or any other person any Recovery, then the Term Loan Debt shall be reinstated to the extent of such Recovery and the Term Loan Secured Parties shall be entitled to a Discharge of Term Loan Debt with respect to all such recovered amounts. If this Agreement shall have been terminated prior to any Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement.

6.10 Other Bankruptcy Laws.

In the event that an Insolvency Proceeding is filed in a jurisdiction other than the United States or is governed by any Bankruptcy Law other than the Bankruptcy Code, each reference in this Agreement to a section of the Bankruptcy Code shall be deemed to refer to the substantially similar or corresponding provision of the Bankruptcy Law applicable to such Insolvency Proceeding, or, in the absence of any specific similar or corresponding provision of Bankruptcy Law, such other general Bankruptcy Law as may be applied in order to achieve substantially the same result as would be achieved under each applicable section of the Bankruptcy Code.

## Section 7. Term Loan Lenders' Purchase Option

### 7.1 Exercise of Option.

On or after the occurrence and during the continuance of a Revolving Loan Debt Purchase Event, one or more of the Term Loan Secured Parties (the "Purchasing Term Loan Secured Parties") shall have the option for a period of thirty (30) days after a Revolving Loan Debt Purchase Event, upon no less than five (5) Business Days' and no more than twelve (12) Business Days' prior written notice by the Term Loan Agent to the Revolving Loan Agent, to purchase all (but not less than all) of the Revolving Loan Debt up to the Revolving Loan Cap from the Revolving Loan Secured Parties and to assume all of the commitments and duties of the Revolving Loan Secured Parties. Such notice from the Term Loan Agent to the Revolving Loan Agent shall be irrevocable. The obligations of Revolving Loan Secured Parties hereunder to sell the Revolving Loan Debt up to the Revolving Loan Cap owing to them are several and not joint and several. Each Grantor irrevocably consents to such sale.

### 7.2 Pro Rata Offer.

The Term Loan Secured Parties agree, solely as among themselves, that upon the occurrence of any Revolving Loan Debt Purchase Event, the Term Loan Agent shall send a notice to all Term Loan Secured Parties giving each Term Loan Secured Party the option to purchase at least its pro rata share of the Revolving Loan Debt (other than the Excess Revolving Loan Debt). No Term Loan Secured Party shall be required to participate in any purchase offer hereunder, and each Term Loan Secured Party acknowledges and agrees that a purchase offer may be made by any or all of the Term Loan Secured Parties, subject to the requirements of the preceding sentence. The provisions of this Section 7.2 are intended solely for the benefit of the Term Loan Secured Parties and may be modified, amended or waived by them without the approval of any Grantor, any Revolving Loan Secured Party, or otherwise.

### 7.3 Purchase and Sale.

On the date specified by the Term Loan Agent in such notice (which shall not be less than five (5) Business Days, nor more than twelve (12) Business Days, after the receipt by the Revolving Loan Agent of the notice from the Term Loan Agent of its election to exercise such option), Revolving Loan Secured Parties shall, subject to any required approval of any court or other regulatory or governmental authority then in effect, if any, sell to such of the Purchasing Term Loan Secured Parties as are specified in the notice from the Term Loan Agent of its election to exercise such option, and such Purchasing Term Loan Secured Parties shall purchase from Revolving Loan Secured Parties, all of the Revolving Loan Debt up to the Revolving Loan Cap. Notwithstanding anything to the contrary contained herein, in connection with any such purchase and sale, Revolving Loan Secured Parties shall retain all rights under the Revolving Loan Documents to be indemnified or held harmless by Grantors in accordance with the terms thereof. In connection with any such



purchase and sale, each Revolving Loan Lender and each Purchasing Term Loan Secured Party shall execute and deliver an assignment and acceptance agreement, in form reasonably acceptable to all parties thereto, pursuant to which, among other things, each Revolving Loan Lender shall assign to the Purchasing Term Loan Secured Parties such Revolving Loan Lender's pro rata share of the commitments and Revolving Loan Debt up to the Revolving Loan Cap. Upon the consummation of such purchase and sale, Revolving Loan Agent shall resign as the "Administrative Agent" under the Revolving Loan Documents and upon the written request of the Term Loan Agent, and at the expense of Term Loan Secured Parties, shall take reasonable actions in its power to execute and deliver all such documents and instruments reasonably requested by the Term Loan Agent and/or Purchasing Term Loan Secured Parties to assign and transfer any Common Collateral to the applicable successor Agent under the Revolving Loan Documents.

#### 7.4 Payment of Purchase Price.

(a) Upon the date of such purchase and sale, the Purchasing Term Loan Secured Parties shall (i) pay to the Revolving Loan Agent for the account of the Revolving Loan Secured Parties as the purchase price therefor the full amount of all of the Revolving Loan Debt up to the Revolving Loan Cap then outstanding and unpaid (including principal, interest, fees and expenses, and including reasonable attorneys' fees and legal expenses), (ii) furnish cash collateral to the Revolving Loan Agent in such amounts as Revolving Loan Agent determines is reasonably necessary to secure Revolving Loan Secured Parties in connection with any issued and outstanding letters of credit, banker's acceptances or similar instruments issued under the Revolving Loan Documents (but not in any event in an amount greater than one hundred five (105%) percent of the aggregate undrawn face amount of such letters of credit, banker's acceptances and similar instruments) and Bank Product Obligations (or at the option of the Revolving Loan Secured Party with respect to such Bank Product Obligations, terminate the applicable Hedging Obligations or cash management arrangements and make all payments pursuant thereto, as applicable) and in respect of indemnification obligations of Grantors under the Revolving Loan Documents as to matters or circumstances known to Revolving Loan Secured Parties and disclosed in writing to the Term Loan Agent (unless such disclosure is not permitted under applicable law) at the time of the purchase and sale which would reasonably be expected to result in any loss, cost, damage or expense (including reasonable attorneys' fees and legal expenses) to Revolving Loan Secured Parties and (iii) agree to reimburse Revolving Loan Secured Parties for any loss, cost, damage or expense (including reasonable attorneys' fees and legal expenses) in connection with any commissions, fees, costs or expenses related to any issued and outstanding letters of credit, banker's acceptances and similar instruments as described above and any checks or other payments provisionally credited to the Revolving Loan Debt, and/or as to which Revolving Loan Secured Parties have not yet received final payment.

(b) Such purchase price and cash collateral shall be remitted by wire transfer in federal funds to such bank account of the Revolving Loan Agent as Revolving Loan Agent may designate in writing to the Term Loan Agent for such purpose. Interest shall be calculated to but excluding the Business Day on which such purchase and sale shall

occur if the amounts so paid by the Purchasing Term Loan Secured Parties to the bank account designated by the Revolving Loan Agent are received in such bank account prior to 12:00 noon, New York, New York time and interest shall be calculated to and including such Business Day if the amounts so paid by the Purchasing Term Loan Secured Parties to the bank account designated by the Revolving Loan Agent are received in such bank account later than 12:00 noon, New York, New York time.

#### 7.5 Representations Upon Purchase and Sale.

Such purchase and sale shall be expressly made without representation or warranty of any kind by the Revolving Loan Agent or any Revolving Loan Secured Party as to the Revolving Loan Debt or otherwise and without recourse to the Revolving Loan Secured Parties; except, that, each Revolving Loan Secured Party that is transferring such Revolving Loan Debt shall represent and warrant, severally as to it: (a) the amount of the Revolving Loan Debt being purchased from it is as reflected in the books and records of such Revolving Loan Secured Party (but without representation or warranty as to the collectability, validity or enforceability thereof), (b) that such Revolving Loan Secured Party owns the Revolving Loan Debt being sold by it free and clear of any liens or encumbrances and (c) such Revolving Loan Secured Party has the right to assign the Revolving Loan Debt being sold by it and the assignment is duly authorized.

#### 7.6 Notice from the Revolving Loan Agent Prior to Enforcement Action.

In the absence of Exigent Circumstances, Revolving Loan Agent, for itself and on behalf of the Revolving Loan Secured Parties, agrees that it will give Term Loan Agent five (5) Business Days' prior written notice of its intention to commence any foreclosure or other action to sell or otherwise realize upon the Revolving Loan Priority Collateral. In the event that during such five (5) Business Day period, Term Loan Agent shall send to the Revolving Loan Agent the irrevocable notice of the Term Loan Secured Parties' intention to exercise the purchase option given by the Revolving Loan Secured Parties to the Term Loan Secured Parties under this Section 7, the Revolving Loan Secured Parties shall not commence any foreclosure or other action to sell or otherwise realize upon the Common Collateral; provided, that, the purchase and sale with respect to the Revolving Loan Debt provided for herein shall have closed within twelve (12) Business Days after the receipt by the Revolving Loan Agent of the irrevocable notice from the Term Loan Agent.

#### 7.7 Agency; Retained Interest.

(a) In the event that the Term Loan Agent exercises and consummates the purchase option set forth in this Section 7, (i) Revolving Loan Agent shall have the right, but not the obligation, to immediately resign under the Revolving Loan Agreement, and (ii) the Term Loan Agent shall have the right, but not the obligation, to require Revolving Loan Agent to immediately resign under the Revolving Loan Agreement.

(b) In the event that Term Loan Agent exercises and consummates the purchase option set forth in this Section 7, (i) the Revolving Loan Secured Parties shall retain their indemnification rights under the Revolving Loan Agreement for actions or other matters arising on or prior to the date of such purchase and thereafter with respect to Excess Revolving Loan Debt (if any), and (ii) in the event that, at the time of such purchase, there exists Excess Revolving Loan Debt, the consummation of such purchase option shall not include (nor shall the purchase price be calculated with respect to) such Excess Revolving Loan Debt (clauses (i) and (ii), the "Retained Interest").

(c) In the event that a Retained Interest exists, each Revolving Loan Lender shall, at the request of the Term Loan Agent, execute an amendment to the Revolving Loan Agreement acknowledging that such Retained Interest consisting of Excess Revolving Loan Debt is a last-out tranche, payable after Discharge of Priority Revolving Loan Debt and discharge of Term Loan Debt. Interest with respect to such Retained Interest consisting of Excess Revolving Loan Debt shall continue to accrue and be payable in accordance with the terms of the Revolving Loan Documents, the Retained Interest shall continue to be secured by the Common Collateral, and the Retained Interest shall be paid (or cash collateralized, as applicable) in accordance with the terms of the Revolving Loan Agreement and this Agreement. Each Revolving Loan Lender shall continue to have all rights and remedies of a lender under the Revolving Loan Agreement and the other Revolving Loan Documents; provided, that no Revolving Loan Lender shall have any right to vote on or otherwise consent to any amendment, waiver, departure from or other modification of any provision of any Revolving Loan Debt other than amendments, waivers, departures or modifications that require the vote of all lenders, all affected or similar lenders. The purchasing lenders agree not to amend the provisions of the Revolving Loan Documents with respect to the Excess Revolving Loan Debt in any way that treats any holder of the Retained Interest differently than the lenders and other secured parties under the Revolving Loan Agreement and other Revolving Loan Documents after the effective date of the purchase of the Revolving Loan Debt (excluding the Excess Revolving Loan Debt).

## Section 8. Revolving Loan Secured Parties' Purchase Option

### 8.1 Exercise of Option.

On or after the occurrence and during the continuance of a Term Loan Debt Purchase Event, one or more of the Revolving Loan Secured Parties (the "Purchasing Revolving Loan Secured Parties") shall have the option for a period of thirty (30) days after a Term Loan Debt Purchase Event, upon no less than five (5) Business Days' and no more than twelve (12) Business Days' prior written notice by the Revolving Loan Agent to the Term Loan Agent, to purchase all (but not less than all) of the Term Loan Debt up to the Term Loan Cap from the Term Loan Secured Parties and to assume all of the commitments and duties of the Term Loan Secured Parties. Such notice from the Revolving Loan Agent to the Term Loan Agent shall be irrevocable. The obligations of the Term Loan Secured Parties hereunder to sell the Term Loan Debt up to the Term Loan Cap owing to them are several and not joint and several. Each Grantor irrevocably consents to such sale.

## 8.2 Pro Rata Offer.

The Revolving Loan Secured Parties agree, solely as among themselves, that upon the occurrence of any Term Loan Debt Purchase Event, the Revolving Loan Agent shall send a notice to all Revolving Loan Secured Parties giving each Revolving Loan Secured Party the option to purchase at least its pro rata share of the Term Loan Debt (other than the Excess Term Loan Debt). No Revolving Loan Secured Party shall be required to participate in any purchase offer hereunder, and each Revolving Loan Secured Party acknowledges and agrees that a purchase offer may be made by any or all of the Revolving Loan Secured Parties, subject to the requirements of the preceding sentence. The provisions of this Section 8.2 are intended solely for the benefit of the Revolving Loan Secured Parties and may be modified, amended or waived by them without the approval of any Grantor, any Term Loan Secured Party, or otherwise.

## 8.3 Purchase and Sale.

On the date specified by the Revolving Loan Agent in such notice (which shall not be less than five (5) Business Days, nor more than twelve (12) Business Days, after the receipt by the Term Loan Agent of the notice from the Revolving Loan Agent of its election to exercise such option), Term Loan Secured Parties shall, subject to any required approval of any court or other regulatory or governmental authority then in effect, if any, sell to such of the Purchasing Revolving Loan Secured Parties as are specified in the notice from the Revolving Loan Agent of its election to exercise such option, and such Purchasing Revolving Loan Secured Parties shall purchase from Term Loan Secured Parties, all of the Term Loan Debt up to the Term Loan Cap. Notwithstanding anything to the contrary contained herein, in connection with any such purchase and sale, Term Loan Secured Parties shall retain all rights under the Term Loan Documents to be indemnified or held harmless by Grantors in accordance with the terms thereof. In connection with any such purchase and sale, each Term Loan Lender and each Purchasing Revolving Loan Secured Party shall execute and deliver an assignment and acceptance agreement, in form reasonably acceptable to all parties thereto, pursuant to which, among other things, each such Term Loan Lender shall assign to the Purchasing Revolving Loan Secured Parties such Term Loan Lender's pro rata share of the commitments and Term Loan Debt up to the Term Loan Cap. Upon the consummation of such purchase and sale, Term Loan Agent shall resign as the "Agent" under the Term Loan Documents and upon the written request of the Revolving Loan Agent, and at the expense of Revolving Loan Secured Parties, shall take reasonable actions in its power to execute and deliver all such documents and instruments reasonably requested by the Revolving Loan Agent and/or Purchasing Revolving Loan Secured Parties to assign and transfer any Common Collateral to the applicable successor Agent under the Term Loan Documents.

## 8.4 Payment of Purchase Price.

(a) Upon the date of such purchase and sale, the Purchasing Revolving Loan Secured Parties shall (a) pay to the Term Loan Agent for the account of the Term Loan

Secured Parties as the purchase price therefor the full amount of all of the Term Loan Debt up to the Term Loan Cap then outstanding and unpaid (including principal, interest, fees and expenses, and including reasonable attorneys' fees and legal expenses) and (b) agree to reimburse Term Loan Secured Parties for any loss, cost, damage or expense (including reasonable attorneys' fees and legal expenses) in connection with any commissions, fees, costs or expenses related to any issued and outstanding letters of credit, banker's acceptances and similar instruments as described above and any checks or other payments provisionally credited to the Term Loan Debt, and/or as to which Term Loan Secured Parties have not yet received final payment.

(b) Such purchase price and cash collateral shall be remitted by wire transfer in federal funds to such bank account of the Term Loan Agent as Term Loan Agent may designate in writing to the Revolving Loan Agent for such purpose. Interest shall be calculated to but excluding the Business Day on which such purchase and sale shall occur if the amounts so paid by the Purchasing Revolving Loan Secured Parties to the bank account designated by Term Loan Agent are received in such bank account prior to 12:00 noon, New York, New York time and interest shall be calculated to and including such Business Day if the amounts so paid by the Purchasing Revolving Loan Secured Parties to the bank account designated by Term Loan Agent are received in such bank account later than 12:00 noon, New York, New York time.

#### 8.5 Representations Upon Purchase and Sale.

Such purchase and sale shall be expressly made without representation or warranty of any kind by the Term Loan Agent or any Term Loan Secured Party as to the Term Loan Debt or otherwise and without recourse to the Term Loan Secured Parties; except, that, each Term Loan Secured Party that is transferring such Term Loan Debt shall represent and warrant, severally as to it: (a) the amount of the Term Loan Debt being purchased from it is as reflected in the books and records of such Term Loan Secured Party (but without representation or warranty as to the collectability, validity or enforceability thereof), (b) that such Term Loan Secured Party owns the Term Loan Debt being sold by it free and clear of any liens or encumbrances and (c) such Term Loan Secured Party has the right to assign the Term Loan Debt being sold by it and the assignment is duly authorized.

#### 8.6 Notice from the Term Loan Agent Prior to Enforcement Action.

In the absence of Exigent Circumstances, Term Loan Agent, for itself and on behalf of the Term Loan Secured Parties, agrees that it will give Revolving Loan Agent five (5) Business Days' prior written notice of its intention to commence any foreclosure or other action to sell or otherwise realize upon the Term Loan Priority Collateral. In the event that during such five (5) Business Day period, Revolving Term Loan Agent shall send to the Revolving Loan Agent the irrevocable notice of the Term Loan Secured Parties' intention to exercise the purchase option given by the Revolving Loan Secured Parties to the Term Loan Secured Parties under this Section 8, the Revolving Loan Secured Parties shall not commence any foreclosure or other action to sell or otherwise realize upon the Common

Collateral; provided, that, the purchase and sale with respect to the Revolving Loan Debt provided for herein shall have closed within twelve (12) Business Days after the receipt by the Revolving Loan Agent of the irrevocable notice from the Term Loan Agent.

#### 8.7 Agency; Retained Interest.

(a) In the event that the Revolving Loan Agent exercises and consummates the purchase option set forth in this Section 8, (i) Term Loan Agent shall have the right, but not the obligation, to immediately resign under the Term Loan Agreement, and (ii) the Revolving Loan Agent shall have the right, but not the obligation, to require Term Loan Agent to immediately resign under the Term Loan Agreement.

(b) In the event that Revolving Loan Agent exercises and consummates the purchase option set forth in this Section 8, (i) the Term Loan Secured Parties shall retain their indemnification rights under the Term Loan Agreement for actions or other matters arising on or prior to the date of such purchase and thereafter with respect to Excess Term Loan Debt (if any), and (ii) in the event that, at the time of such purchase, there exists Excess Term Loan Debt, the consummation of such purchase option shall not include (nor shall the purchase price be calculated with respect to) such Excess Term Loan Debt (clauses (i) and (ii), the "Retained Interest").

In the event that a Retained Interest exists, each Term Loan Lender shall, at the request of the Revolving Loan Agent, execute an amendment to the Term Loan Agreement acknowledging that such Retained Interest consisting of Excess Term Loan Debt is a last-out tranche, payable after Discharge of Priority Term Loan Debt and Discharge of Revolving Loan Debt. Interest with respect to such Retained Interest consisting of Excess Term Loan Debt shall continue to accrue and be payable in accordance with the terms of the Term Loan Documents, the Retained Interest shall continue to be secured by the Common Collateral, and the Retained Interest shall be paid (or cash collateralized, as applicable) in accordance with the terms of the Term Loan Agreement and this Agreement. Each Term Loan Lender shall continue to have all rights and remedies of a lender under the Term Loan Agreement and the other Term Loan Documents; provided, that no Term Loan Lender shall have any right to vote on or otherwise consent to any amendment, waiver, departure from or other modification of any provision of any Term Loan Debt other than amendments, waivers, departures or modifications that require the vote of all lenders, all affected or similar lenders. The purchasing lenders agree not to amend the provisions of the Term Loan Documents with respect to the Excess Revolving Loan Debt in any way that treats any holder of the Retained Interest differently than the lenders and other secured parties under the Term Loan Agreement and other Term Loan Documents after the effective date of the purchase of the Term Loan Debt (excluding the Excess Term Loan Debt).

Section 9. Access and Use of Term Loan Priority Collateral.

9.1 Access and Use Rights of the Revolving Loan Agent.

(a) In the event that Term Loan Agent shall acquire control or possession of any of the Term Loan Priority Collateral or shall, through the exercise of remedies under the Term Loan Documents or otherwise, sell any of the Term Loan Priority Collateral to any third party (a "Third Party Purchaser"), Term Loan Agent shall permit Revolving Loan Agent (or require as a condition of such sale to the Third Party Purchaser that the Third Party Purchaser agree to permit the Revolving Loan Agent), at Revolving Loan Agent's option and in accordance with applicable law, and at the expense of the Revolving Loan Secured Parties (reimbursable to Revolving Loan Secured Parties by Grantors): (a) to enter and use any or all of the Term Loan Priority Collateral under such control or possession (or sold to a Third Party Purchaser) consisting of real property and the improvements, structures, buildings thereon and all related rights during normal business hours or in order to inspect, finish, remove or take any action with respect to the Revolving Loan Priority Collateral or to enforce Revolving Loan Agent's rights with respect thereto, including, but not limited to, the examination and removal of Revolving Loan Priority Collateral and the examination and duplication of the books and records of any Grantor related to the Revolving Loan Priority Collateral, or to otherwise handle, deliver, ship, transport, deal with or dispose of any Revolving Loan Priority Collateral, such right to include, without limiting the generality of the foregoing, the right to conduct one or more public or private sales or auctions thereon and (b) use any of the Term Loan Priority Collateral under such control or possession (or sold to a Third Party Purchaser) consisting of equipment (including computers or other data processing equipment) to handle, manufacture, deal with or dispose of any Revolving Loan Priority Collateral pursuant to the rights of the Revolving Loan Agent and the other Revolving Loan Secured Parties as set forth in the Revolving Loan Documents, the UCC of any applicable jurisdiction and other applicable law.

(b) The rights of the Revolving Loan Agent set forth in clause (a) above as to the Term Loan Priority Collateral shall be irrevocable and without charge and shall continue at Revolving Loan Agent's option for a period of one hundred fifty (150) days as to any such Term Loan Priority Collateral from the date on which Term Loan Agent has notified Revolving Loan Agent that Term Loan Agent has acquired possession or control of such Term Loan Priority Collateral. The time periods set forth herein shall be tolled during the pendency of any proceeding of a Grantor under the Bankruptcy Code or any other Bankruptcy Law or other proceedings pursuant to which Revolving Loan Agent is effectively stayed from enforcing its rights against the Revolving Loan Priority Collateral; provided that the Revolving Loan Agent shall have used its commercially reasonable efforts to have such stay lifted. In no event shall Term Loan Agent or any of the Term Loan Secured Parties take any action to interfere, limit or restrict the rights of the Revolving Loan Agent set forth above or the exercise of such rights by the Revolving Loan Agent pursuant to this Section 9.1 prior to the expiration of such periods.

## 9.2 Responsibilities of Revolving Loan Secured Parties.

The Revolving Loan Agent shall reimburse the Term Loan Agent for all reasonable, out-of-pocket costs and expenses (including for any physical damage to any Term Loan Priority Collateral) incurred by the Term Loan Agent or any other Term Loan Secured Party in connection with or as a direct result of the actions of the Revolving Loan Agent (or its representatives, including a Receiver) in exercising its access and use rights as provided in Section 9.1 above (but not any diminution in value of the Term Loan Priority Collateral resulting from the Revolving Loan Agent so dealing with any Revolving Loan Priority Collateral), such access and use rights shall be exercised in accordance with applicable law and customary industry practices, and, if requested by the Term Loan Agent, Revolving Loan Agent shall furnish evidence of its liability insurance to the Term Loan Agent. Term Loan Agent shall not have any responsibility or liability for the acts or omissions of the Revolving Loan Agent or any of the other Revolving Loan Secured Parties, and Revolving Loan Agent and the other Revolving Loan Secured Parties shall not have any responsibility or liability for the acts or omissions of the Term Loan Agent, in each case arising in connection with such other Person's use and/or occupancy of any of the Term Loan Priority Collateral.

## 9.3 Intellectual Property.

In addition to and not in limitation of Section 9.1, in connection with any enforcement action by the Revolving Loan Agent, Term Loan Agent hereby grants to Revolving Loan Agent a non-exclusive, royalty free license with respect to any Term Loan Priority Collateral consisting of trademarks, copyrights, patents, know-how or other intellectual property and pertaining to the Revolving Loan Priority Collateral solely for purposes of disposing, collecting, or otherwise realizing on any of the Revolving Loan Priority Collateral pursuant to the rights of the Revolving Loan Agent and the other Revolving Loan Secured Parties as set forth in the Revolving Loan Documents, the UCC of any applicable jurisdiction and other applicable law. Notwithstanding anything to the contrary contained herein, any purchaser or assignee of Revolving Loan Priority Collateral pursuant to the exercise by the Revolving Loan Agent of any of its rights or remedies with respect thereto shall have the right to sell or otherwise dispose of any such Revolving Loan Priority Collateral to which any such Intellectual Property is affixed. The license and right herein shall continue in full force and effect until all Revolving Loan Priority Collateral has been sold, transferred or otherwise disposed of (or, if sooner, the occurrence of a Discharge of Revolving Loan Debt) notwithstanding (i) any exercise of remedies by any Term Loan Secured Parties with respect to any Term Loan Priority Collateral or (ii) any voluntary or involuntary transfer or assignment of any of such Term Loan Priority Collateral consisting of intellectual property or any rights therein. The Term Loan Agent makes no representation or warranty to the Revolving Loan Agent or Revolving Loan Agent's successors and assigns, as to the effectiveness or value of any right to use, license or sublicense granted in this Section 9.3 and has performed no diligence as to whether it is entitled to provide any such right to use, license or sublicense, and shall have no liability to the Revolving Loan Agent for the Term Loan Agent's failure to have any such right or the failure of any such license to be



valid or effective for any purpose whatsoever. Revolving Loan Agent acknowledges that the Term Loan Agent, as of the date hereof, has no title to any Term Loan Priority Collateral and that its interest in the Term Loan Priority Collateral as of the date hereof is a security interest.

Section 10. Reliance; Waivers; Etc.

10.1 Reliance.

(a) The consent by the Revolving Loan Secured Parties to the execution and delivery of the Term Loan Documents and the grant to the Term Loan Agent on behalf of the Term Loan Secured Parties of a Lien on the Common Collateral and all loans and other extensions of credit made or deemed made on and after the date hereof by the Revolving Loan Secured Parties to any Grantor shall be deemed to have been given and made in reliance upon this Agreement.

(b) The consent by the Term Loan Secured Parties to the execution and delivery of the Revolving Loan Documents and the grant to the Revolving Loan Agent on behalf of the Revolving Loan Secured Parties of a Lien on the Common Collateral and all loans and other extensions of credit made or deemed made on and after the date hereof by the Term Loan Secured Parties to any Grantor shall be deemed to have been given and made in reliance upon this Agreement.

10.2 No Warranties or Liability.

(a) Term Loan Agent, for itself and on behalf of the other Term Loan Secured Parties, acknowledges and agrees that each of the Revolving Loan Agent and the other Revolving Loan Secured Parties have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Revolving Loan Documents, the ownership of any Common Collateral or the perfection or priority of any Liens thereon. Term Loan Agent agrees, for itself and on behalf of the other Term Loan Secured Parties, that the Revolving Loan Secured Parties will be entitled to manage and supervise their respective loans and extensions of credit under the Revolving Loan Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate, and the Revolving Loan Secured Parties may manage their loans and extensions of credit without regard to any rights or interests that Term Loan Agent or any of the other Term Loan Secured Parties have in the Common Collateral or otherwise, except as otherwise provided in this Agreement. Neither Revolving Loan Agent nor any of the other Revolving Loan Secured Parties shall have any duty to the Term Loan Agent or any of the other Term Loan Secured Parties to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with any Grantor (including the Term Loan Documents), regardless of any knowledge thereof which they may have or with which they may be charged.

(b) Revolving Loan Agent, for itself and on behalf of the other Revolving Loan Secured Parties, acknowledges and agrees that each of the Term Loan Agent and the other Term Loan Secured Parties have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Term Loan Documents, the ownership of any Common Collateral or the perfection or priority of any Liens thereon. Revolving Loan Agent agrees, for itself and on behalf of the other Revolving Loan Secured Parties, that the Term Loan Secured Parties will be entitled to manage and supervise their respective loans and extensions of credit under the Term Loan Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate, and the Term Loan Secured Parties may manage their loans and extensions of credit without regard to any rights or interests that Revolving Loan Agent or any of the other Revolving Loan Secured Parties have in the Common Collateral or otherwise, except as otherwise provided in this Agreement. Neither Term Loan Agent nor any of the other Term Loan Secured Parties shall have any duty to the Revolving Loan Agent or any of the other Revolving Loan Secured Parties to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with any Grantor (including the Revolving Loan Documents), regardless of any knowledge thereof which they may have or with which they may be charged.

### 10.3 No Waiver of Lien Priorities.

(a) No right of the Revolving Loan Agent or any of the other Revolving Loan Secured Parties to enforce any provision of this Agreement or any of the Revolving Loan Documents shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Grantor or by any act or failure to act by the Revolving Loan Agent or any other Revolving Loan Secured Party, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the Revolving Loan Documents or any of the Term Loan Documents, regardless of any knowledge thereof which Revolving Loan Agent or any of the other Revolving Loan Secured Parties may have or be otherwise charged with.

(b) No right of the Term Loan Agent or any of the other Term Loan Secured Parties to enforce any provision of this Agreement or any of the Term Loan Documents shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Grantor or by any act or failure to act by the Term Loan Agent or any other Term Loan Secured Party, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the Term Loan Documents or any of the Revolving Loan Documents, regardless of any knowledge thereof which Term Loan Agent or any of the other Term Loan Secured Parties may have or be otherwise charged with.

(c) Term Loan Agent agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshaling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Revolving Loan Priority

Collateral or any other similar rights a junior secured creditor may have under applicable law.

(d) Revolving Loan Agent agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshaling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Term Loan Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.

#### 10.4 Amendments to Revolving Loan Documents.

The Revolving Loan Documents may be amended, supplemented or otherwise modified in accordance with their terms and the Revolving Loan Agreement may be refinanced, in each case, without notice to, or the consent of the Term Loan Agent or the other Term Loan Secured Parties, all without affecting the lien subordination or other provisions set forth in this Agreement (even if any right of subrogation or other right or remedy of the Term Loan Agent or any other Term Loan Secured Party is affected, impaired or extinguished thereby); provided, that:

(a) in the case of a refinancing or replacement of the Revolving Loan Debt, the Revolving Loan Agent on behalf of the Revolving Loan Secured Parties binds itself in a writing addressed to the Term Loan Agent to the terms of this Agreement, and

(b) without the prior written consent of the Term Loan Agent, any such amendment, restatement, supplement, modification, replacement or refinancing shall not:

(i) extend the final maturity of the Revolving Loan Debt (as set forth in the Revolving Loan Documents as in effect on the date hereof) by more than one year;

(ii) increase the "Applicable Margin", any interest rate floors or similar components of the interest rate by more than three percent (3.00%) per annum in the aggregate to be agreed (excluding increases resulting from the accrual of interest at the default rate or fluctuations in the underlying reference rates) or increase the amount, or frequency of payment, of any recurring fees provided for in the Revolving Loan Agreement;

(iii) shorten the scheduled maturity of the Revolving Loan Debt or any refinancing thereof to a date prior to the scheduled maturity date of the Revolving Loan Agreement (as in effect on the date hereof) unless imposed as a result of a default;

(iv) modify (or have the effect of a modification of) the terms of payment, including the mandatory prepayment provisions of the Revolving Loan Agreement in a manner that increases the amount or frequency of any of

such payments, or requires additional mandatory prepayments or limits the rights of Grantors with respect thereto;

(v) contravene the provisions of this Agreement;

(vi) amend or modify any provision of the Revolving Loan Documents to prohibit any Grantor from making any payment of principal, interest, fees, cost and expense reimbursements or indemnities with respect to the Term Loan Debt; or

(vii) amend or modify the Revolving Loan Documents in order to (i) permit the Grantors or any of their Affiliates to hold greater than twenty percent (20%) of the outstanding revolving loan commitments plus outstanding principal of the Revolving Loan Debt or (ii) provide the Grantors or any of the Affiliates with voting rights other than those set forth in Sections 14.1.1(c), (d) and (e) of the Revolving Loan Agreement as in effect on the date hereof.

#### 10.5 Amendments to Term Loan Documents.

The Term Loan Documents may be amended, supplemented or otherwise modified in accordance with their terms and the Term Loan Agreement may be refinanced, in each case, without notice to, or the consent of the Revolving Loan Agent, all without affecting the lien subordination or other provisions set forth in the Intercreditor Agreement (even if any right of subrogation or other right or remedy of the Revolving Loan Agent or any other Revolving Loan Secured Party is affected, impaired or extinguished thereby); provided, that,

(a) in the case of a refinancing or replacement of the Term Loan Debt, the Term Loan Agent on behalf of the Term Loan Secured Parties binds itself in a writing addressed to the Revolving Loan Agent to the terms of this Agreement, and

(b) without the prior written consent of the Revolving Loan Agent, any such amendment, restatement, supplement, modification, replacement or refinancing shall not:

(i) increase the "Applicable Margin", any interest rate floors or similar components of the interest rate by more than three percent (3.00%) per annum in the aggregate (excluding increases resulting from the accrual of interest at the default rate or changes in the underlying rate) or increase the amount, or frequency of payment, of any recurring fees provided for in the Term Loan Agreement;

(ii) shorten the scheduled maturity of the Term Loan Agreement to a date prior to the scheduled maturity date of the Revolving Loan Agreement or any refinancing thereof;

(iii) modify (or have the effect of a modification of) the terms of payment, including the regularly scheduled payments of principal or mandatory prepayment provisions of the Term Loan Agreement in a manner that increases the amount or frequency of any of such payments, or requires additional mandatory prepayments or limits the rights of Grantors with respect thereto;

(iv) contravene the provisions of this Agreement;

(v) amend or modify any provision of the Term Loan Documents to prohibit any Grantor from making any payment of principal, interest, fees, cost and expense reimbursements or indemnities with respect to the Revolving Loan Debt; or

(vi) amend or modify the Term Loan Documents in order to (i) permit the Grantors or any of their Affiliates to hold greater than twenty percent (20%) of the outstanding revolving loan commitments plus outstanding principal of the Term Loan Debt or (ii) provide the Grantors or any of the Affiliates with voting rights other than those set forth in Sections 14.1.1(c), (d) and (e) of the Term Loan Agreement as in effect on the date hereof.

## Section 11. Miscellaneous.

### 11.1 Conflicts.

In the event of any conflict between the provisions of this Agreement and the provisions of the Revolving Loan Documents or the Term Loan Documents, the provisions of this Agreement shall govern.

### 11.2 Continuing Nature of this Agreement; Severability.

This Agreement shall continue to be effective until the first to occur of the Discharge of Revolving Loan Debt and the Discharge of the Term Loan Debt. This is a continuing agreement of lien subordination and the Secured Parties may continue, at any time and without notice to the other Secured Parties, to extend credit and other financial accommodations and lend monies to or for the benefit of any Grantor constituting Revolving Loan Debt and/or Term Loan Debt (as applicable) in reliance hereof. Each of the Term Loan Agent, for itself and on behalf of the Term Loan Secured Parties, and Revolving Loan Agent, for itself and on behalf of the Revolving Loan Secured Parties, hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency Proceeding. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

### 11.3 Refinancing.

(a) Refinancing Permitted. As an agreement among the Secured Parties only and without prejudice to any rights of the Secured Parties under the Revolving Loan Documents and Term Loan Documents, as applicable, the Revolving Loan Debt and/or Term Loan Debt may be refinanced in their entirety if (a) the terms and provisions of any such refinancing debt, if instead implemented as modifications to the debt being refinanced, could be effected without the consent of the Agent to the debt not being refinanced, in accordance with the provisions of Section 10.4 or Section 10.5, as applicable, and (b) the holders of such indebtedness, or a duly authorized agent on their behalf, agree in writing to be bound by the terms of this Agreement. Revolving Loan Agent, for itself and on behalf of the Revolving Loan Secured Parties, and Term Loan Agent, for itself and on behalf of the Term Loan Secured Parties, agree, in connection with any refinancing of the Revolving Loan Debt and/or the Term Loan Debt permitted by this Section 11.3(a), promptly to enter into such documents and agreements (including amendments or supplements to this Agreement) as Grantors may reasonably request to reflect such refinancing; provided, that, the rights and powers of the Secured Parties contemplated hereby shall not be affected thereby.

#### (b) Effect of Refinancing.

(i) If substantially contemporaneously with the Discharge of Revolving Loan Debt, The Companies refinance indebtedness outstanding under the Revolving Loan Documents in accordance with the provisions of Section 11.3(a), then after written notice to the Term Loan Agent, (i) the indebtedness and other obligations arising pursuant to such refinancing of the then outstanding indebtedness under the Revolving Loan Documents shall automatically be treated as Revolving Loan Debt for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Common Collateral set forth herein, (ii) the credit agreement and the other loan documents evidencing such new indebtedness shall automatically be treated as the Revolving Loan Agreement and the Revolving Loan Documents for all purposes of this Agreement and (iii) the agent under the new Revolving Loan Agreement shall be deemed to be Revolving Loan Agent for all purposes of this Agreement. Upon receipt of notice of such refinancing (including the identity of the new Revolving Loan Agent), Term Loan Agent shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as The Companies or the new Revolving Loan Agent may reasonably request in order to provide to the new Revolving Loan Agent the rights of the Revolving Loan Agent contemplated hereby.

(ii) If substantially contemporaneously with the Discharge of Term Loan Debt, The Companies refinance indebtedness outstanding under the Term Loan Documents in accordance with the provisions of Section 11.3(a), then after written notice to the Revolving Loan Agent, (i) the indebtedness and other obligations arising pursuant to such refinancing of the then outstanding

indebtedness under the Term Loan Documents shall automatically be treated as Term Loan Debt for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Common Collateral set forth herein, (ii) the credit agreement and the other loan documents evidencing such new indebtedness shall automatically be treated as the Term Loan Agreement and the Term Loan Documents for all purposes of this Agreement and (iii) the agent under the new Term Loan Agreement shall be deemed to be Term Loan Agent for all purposes of this Agreement. Upon receipt of notice of such refinancing (including the identity of the new Term Loan Agent), Term Loan Agent shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as The Companies or the new Term Loan Agent may reasonably request in order to provide to the new Term Loan Agent the rights of the Term Loan Agent contemplated hereby.

#### 11.4 Amendments; Waivers.

No amendment or modification of any of the provisions of this Agreement by the Term Loan Agent or Revolving Loan Agent shall be deemed to be made unless the same shall be in writing signed on behalf of both of the Term Loan Agent and the Revolving Loan Agent (as directed by the applicable Secured Parties pursuant to the applicable Term Loan Documents or Revolving Loan Documents, as the case may be). No waiver of any of the provisions of this Agreement shall be deemed to be made unless the same shall be in writing signed by the party making the same or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time.

#### 11.5 Subrogation.

(a) Term Loan Agent, for itself and on behalf of the Term Loan Secured Parties, hereby waives any rights of subrogation it may acquire with respect to the Revolving Loan Debt as a result of any payment hereunder until the Discharge of Priority Revolving Loan Debt has occurred.

(b) Revolving Loan Agent, for itself and on behalf of the Revolving Loan Secured Parties, hereby waives any rights of subrogation it may acquire with respect to the Term Loan Debt as a result of any payment hereunder until the Discharge of Priority Term Loan Debt has occurred.

#### 11.6 Consent to Jurisdiction; Waivers.

The parties hereto consent to the jurisdiction of any state or federal court located in the Borough of Manhattan, City of New York, New York, and consent that all service of process may be made by registered mail directed to such party as provided in Section 11.7 below for such party. Service so made shall be deemed to be completed three

(3) days after the same shall be posted as aforesaid. The parties hereto waive any objection to any action instituted hereunder based on forum non conveniens, and any objection to the venue of any action instituted hereunder. Each of the parties hereto waives any right it may have to trial by jury in respect of any litigation based on, or arising out of, under or in connection with this Agreement, or any course of conduct, course of dealing, verbal or written statement or action of any party hereto.

#### 11.7 Notices.

All notices to the Term Loan Secured Parties and the Revolving Loan Secured Parties permitted or required under this Agreement may be sent to Term Loan Agent and Revolving Loan Agent, respectively. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, electronically mailed or sent by courier service, facsimile transmission or U.S. mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of a facsimile transmission or electronic mail or four (4) Business Days after deposit in the U.S. mail (registered or certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto shall be as set forth below, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

Revolving Loan Agent:

**BANK OF AMERICA, N.A.**  
135 South LaSalle Street, 9<sup>th</sup> Floor  
Chicago, Illinois 60603  
Telecopy: (312) 904-7190  
Attention: Thomas H. Herron

with a copy to:

**GOLDBERG KOHN LTD.**  
55 E. Monroe Street, Suite 3300  
Chicago, Illinois 60603  
Attention: William A. Starshak

Term Loan Agent:

**CALLIDUS CAPITAL CORPORATION**  
181 Bay Street, Suite 4620, P.O. Box 792  
Bay Wellington Tower, Brookfield Place  
Toronto, Ontario M5J 2T3  
Attention: Jay Rogers  
Email: JRogers@calliduscapital.ca

with a copy to:

Klee, Tuchin, Bogdanoff & Stern LLP  
1999 Avenue of the Stars, 39th Floor



Los Angeles, CA 90067  
Attention: Maria Sountas-Argiropoulos, Esq.  
Email: MSArgiropoulos@ktbslaw.com

11.8 Further Assurances.

(a) Term Loan Agent agrees that it shall, for itself and on behalf of the Term Loan Secured Parties, take such further action and shall execute and deliver to the Revolving Loan Agent such additional documents and instruments (in recordable form, if requested) as Revolving Loan Agent may reasonably request to effectuate the terms of and the lien priorities contemplated by this Agreement.

(b) Revolving Loan Agent agrees that it shall, for itself and on behalf of the Revolving Loan Secured Parties, take such further action and shall execute and deliver to the Term Loan Agent such additional documents and instruments (in recordable form, if requested) as Term Loan Agent may reasonably request to effectuate the terms of and the lien priorities contemplated by this Agreement.

11.9 Governing Law.

The validity, construction and effect of this Agreement shall be governed by the internal laws of the State of New York but excluding any principles of conflicts of law or any other rule of law that would result in the application of the law of any jurisdiction other than the laws of the State of New York.

11.10 Binding on Successors and Assigns.

This Agreement shall be binding upon Revolving Loan Agent, the other Revolving Loan Secured Parties, Term Loan Agent, the other Term Loan Secured Parties, Grantors and their respective permitted successors and assigns.

11.11 Specific Performance.

(a) Revolving Loan Agent may demand specific performance of this Agreement. Term Loan Agent, for itself and on behalf of the Term Loan Secured Parties, hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by the Revolving Loan Agent.

(b) Term Loan Agent may demand specific performance of this Agreement. Revolving Loan Agent, for itself and on behalf of the Revolving Loan Secured Parties, hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by the Term Loan Agent.

11.12 Section Titles; Time Periods.

The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of this Agreement.

11.13 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same document. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by facsimile transmission or electronic transmission (in pdf format) shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

11.14 Authorization.

By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

11.15 No Third Party Beneficiaries.

This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and their respective successors and assigns and shall inure to the benefit of each of the holders of Revolving Loan Debt and Term Loan Debt. No other Person shall have or be entitled to assert rights or benefits hereunder.

11.16 Additional Grantors.

The Companies and Guarantors shall cause each of their Subsidiaries that becomes a Grantor to acknowledge and consent to the terms of this Agreement by causing such Subsidiary to execute and deliver to the parties hereto a Grantor Joinder, substantially in the form of Annex B hereto, pursuant to which such Subsidiary shall agree to be bound by the terms of the attached Acknowledgment and Agreement to the same extent as if it had executed and delivered same as of the date hereof.

11.17 Conflicts.

Notwithstanding anything in the Revolving Loan Documents or the Term Loan Documents to the contrary, in the event of a conflict between the terms of this Agreement and the terms of the Term Loan Documents or the Revolving Loan Documents, the terms of this Agreement shall control.

**[Signature Pages Follow]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

REVOLVING LOAN AGENT

BANK OF AMERICA, N.A.

By: Thomas H. Heron  
Name: Thomas H. Heron  
Title: Senior Vice President

TERM LOAN AGENT

**CALLIDUS CAPITAL CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

REVOLVING LOAN AGENT

**BANK OF AMERICA, N.A.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TERM LOAN AGENT

**CALLIDUS CAPITAL CORPORATION**

By:           *D. Reese*          

Name:           **David Reese**          

Title:           **President & Chief Operating Officer**

## **ACKNOWLEDGMENT AND AGREEMENT**

Each of the undersigned hereby acknowledges and agrees to the representations, terms and provisions of the Intercreditor Agreement between Bank of America, N.A., in its capacity as agent for the Revolving Loan Secured Parties (in such capacity, the "Revolving Loan Agent") and Callidus Capital Corporation, in its capacity as collateral agent for the Term Loan Secured Parties (in such capacity, "Term Loan Agent"), of which this Acknowledgment and Agreement is a part. By its signature below, the undersigned agrees that it will, together with its successors and assigns, be bound by the provisions hereof.

Each of the undersigned agrees that (a) if either the Revolving Loan Agent or the Term Loan Agent holds Common Collateral it does so as bailee (under the UCC) for the other and is hereby authorized to and may turn over to such other Secured Party upon request therefor any such Common Collateral, after all obligations and indebtedness of the undersigned to the bailee Secured Party have been fully paid and performed, or as otherwise provided in the Intercreditor Agreement, and (b) it will execute and deliver such additional documents and take such additional action as may be necessary or desirable in the opinion of any Secured Party to effectuate the provisions and purposes of the foregoing Intercreditor Agreement. Each of the undersigned agrees to provide to the Term Loan Agent and the Revolving Loan Agent a copy of each Grantor Joinder hereto executed and delivered pursuant to Section 11.16 of the Intercreditor Agreement.

Each of the undersigned acknowledges and agrees that, although it may sign this Agreement, it is not a party hereto and does not and will not receive any right, benefit, priority or interest under or because of the existence of the foregoing Agreement, a breach by the undersigned of any of its obligations under the Intercreditor Agreement or this Acknowledgment and Agreement will constitute an Event of Default under the terms of each of the Revolving Loan Agreement and the Term Loan Agreement.

**[Signature Page Follows]**

**GRANTORS:**

**JD NORMAN INDUSTRIES, LLC**  
**JD NORMAN INDUSTRIES, INC.**  
**JD NORMAN METAL TECHNOLOGIES, INC.**  
**JD NORMAN OHIO HOLDINGS, INC.**  
**JD NORMAN ELECTRIC HOLDINGS, INC.**  
**JD NORMAN LESLIE BUILDING 1, LLC**  
**JD NORMAN LESLIE BUILDING 2, LLC**  
**JD NORMAN TROY TECH CENTER, LLC**  
**JD NORMAN MEXICO HOLDINGS, LLC**  
**JD NORMAN MEXICO 2 HOLDINGS, LLC**  
**JD NORMAN ROMANIA HOLDINGS, LLC**  
**JD NORMAN GERMANY HOLDINGS, LLC**  
**JD NORMAN CANADA GP, LLC**  
**JD NORMAN INDIANA HOLDINGS, LLC**  
**JD NORMAN MUNCIE, LLC**  
**JD NORMAN WINCHESTER, LLC**  
**JD NORMAN MUNCIE BUILDING, LLC**  
**JD NORMAN WINCHESTER BUILDING, LLC**

By \_\_\_\_\_  
 Name: Justin D. Norman  
 Title: President

**JD NORMAN CANADA HOLDINGS, LP**

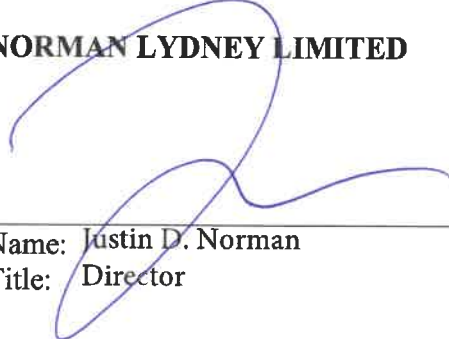
By: JD Norman Canada GP, LLC,  
its general partner

By \_\_\_\_\_  
 Name: Justin D. Norman  
 Title: President

**JD NORMAN CANADA, ULC**

By   
Name: Justin D. Norman  
Title: President


**JD NORMAN LYDNEY LIMITED**

By   
Name: Justin D. Norman  
Title: Director

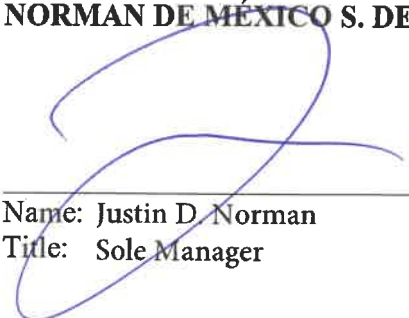
**JD NORMAN UK LIMITED**

By   
Name: Justin D. Norman  
Title: Director

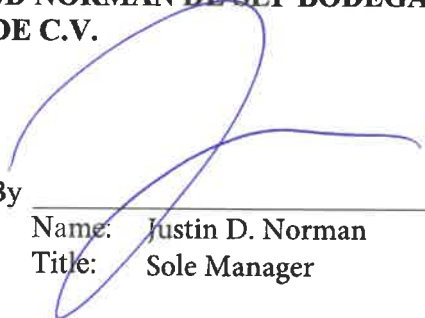
**JD NORMAN GERMANY GMBH**

By   
Name: Justin D. Norman  
Title: Sole Managing  
Director

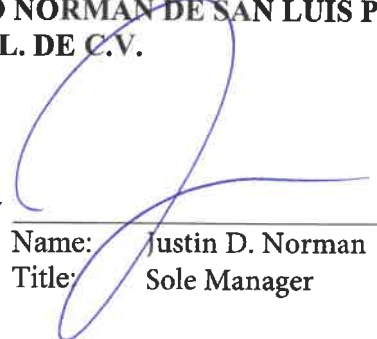
**JD NORMAN DE MÉXICO S. DE R.L. DE C.V.**

By   
Name: Justin D. Norman  
Title: Sole Manager

**JD NORMAN DE SLP BODEGA, S. DE R.L. DE C.V.**

By   
Name: Justin D. Norman  
Title: Sole Manager

**JD NORMAN DE SAN LUIS POTOSÍ, S. DE R.L. DE C.V.**

By   
Name: Justin D. Norman  
Title: Sole Manager



**Annex A**  
**to**  
**Intercreditor Agreement**

**Revolving Loan Priority Collateral**

Revolving Loan Priority Collateral consists of any and all: (i) "accounts" and "payment intangibles," other than "payment intangibles" (in each case, as defined in Article 9 of the UCC) which constitute identifiable proceeds of Term Loan Priority Collateral; (ii) all "inventory" (as defined in Article 9 of the UCC), including inventory, merchandise, goods and other personal property that are held for sale or lease or are furnished or are to be furnished under a contract of service, or that constitute raw materials, work in process, finished goods, returned goods, or materials or supplies of any kind used or consumed or to be used or consumed in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software; (iii) proceeds and receivables arising under policies of business interruption insurance; (iv) (x) "deposit accounts" (as defined in Article 9 of the UCC) and "securities accounts" (as defined in Article 8 of the UCC), including all monies, "uncertificated securities," and "securities entitlements" (as defined in Article 8 of the UCC) contained therein (including all cash, marketable securities and other funds held in or on deposit in either of the foregoing) and other cash and Cash Equivalents but excluding cash, Cash Equivalents, "uncertificated securities," and "securities entitlements" that are identifiable proceeds of Term Loan Priority Collateral and excluding any "security" (as defined in Article 8 of the UCC) constituting an equity interest of any type in any Company or any Guarantor, and (y)(A) "instruments" (as defined in Article 9 of the UCC) that are identifiable proceeds of the Revolving Loan Priority Collateral, and (B) Mexico/US Intercompany Indebtedness, including the indebtedness evidenced by the JDN Mexico Intercompany Note; (v) general intangibles and documents pertaining to the other items of property included within the other clauses of this paragraph, including, without limitation, all contingent rights with respect to warranties on accounts but excluding, for the avoidance of doubt, (x) any general intangible constituting an equity interest of any type in any Company or any Guarantor and (y) any general intangible and documents that are identifiable proceeds of Term Loan Priority Collateral; (vi) "records" (as defined in Article 9 of the UCC), "supporting obligations" (as defined in Article 9 of the UCC) and related "letters of credit" (as defined in Article 5 of the UCC), commercial tort claims or other claims and causes of action, in each case, to the extent related to any of the other items of property included within the other clauses of this paragraph; and (vii) substitutions, replacements, accessions, products and proceeds (including, without limitation, insurance proceeds, licenses, royalties, income, payments, claims, damages and proceeds of suit) of any or all of the foregoing.

**Annex B**  
**to**  
**Intercreditor Agreement**  
  
**Form of Grantor Joinder**

Reference is made to that certain Intercreditor Agreement, dated as of July 10, 2018 (as amended, amended and restated, renewed, extended, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Intercreditor Agreement"), between Bank of America, N.A., in its capacity as agent for the Revolving Loan Secured Parties (in such capacity, the "Revolving Loan Agent") and Callidus Capital Corporation in its capacity as agent for the Term Loan Secured Parties (in such capacity, "Term Loan Agent"). Capitalized terms used herein without definition shall have the meaning assigned thereto in the Intercreditor Agreement.

This Grantor Joinder, dated as of \_\_\_\_\_, 20\_\_ (this "Grantor Joinder"), is being delivered pursuant to Section 11.16 of the Intercreditor Agreement.

The undersigned, \_\_\_\_\_, a \_\_\_\_\_ (the "Additional Grantor"), hereby agrees to become a party to the Intercreditor Agreement as a Grantor thereunder, for all purposes thereof on the terms set forth therein, and to be bound by the terms of the Intercreditor Agreement as fully as if the Additional Grantor had executed and delivered the Intercreditor Agreement as of the date thereof.

This Grantor Joinder may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute one contract.

THIS GRANTOR JOINDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The provisions of Section 11 of the Intercreditor Agreement shall apply with like effect to this Grantor Joinder.

**[Signature Pages Follow]**

IN WITNESS WHEREOF, the Additional Grantor has caused this Grantor Joinder to be duly executed by its authorized representative as of the day and year first above written.

**[ADDITIONAL GRANTOR]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_