Court File No. CV-16-11582-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PERFORMANCE SPORTS GROUP LTD., BAUER HOCKEY CORP., BAUER HOCKEY RETAIL CORP., BAUER PERFORMANCE SPORTS UNIFORMS CORP., BPS CANADA INTERMEDIATE CORP., BPS DIAMOND SPORTS CORP., EASTON BASEBALL/SOFTBALL CORP., KBAU HOLDINGS CANADA, INC., PERFORMANCE LACROSSE GROUP CORP., PSG INNOVATION CORP., BAUER HOCKEY RETAIL INC., BAUER HOCKEY, INC., BAUER PERFORMANCE SPORTS UNIFORMS INC., BPS DIAMOND SPORTS INC., BPS US HOLDINGS INC., EASTON BASEBALL/SOFTBALL INC., PERFORMANCE LACROSSE GROUP INC., PSG INNOVATION INC.

(Applicants)

SUPPLEMENTARY MOTION RECORD OF THE APPLICANTS
(Returnable November 30, 2016)
(Re: Sale Process and Comeback Motion)

November 21, 2016

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TAB 1

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(Applicants)

AFFIDAVIT OF BRIAN J. FOX
(Sworn November 21, 2016)

I, BRIAN J. FOX, of the City of Port Washington, in the State of New York, MAKE OATH AND SAY:

1. I am a Managing Director with Alvarez & Marsal North America LLC ("**A&M**") and the Court-appointed Chief Restructuring Officer in Canada of Performance Sports Group Ltd. ("**PSG**"), Bauer Hockey Corp., Bauer Hockey Retail Corp., Bauer Performance Sports Uniforms Corp., BPS Canada Intermediate Corp., BPS Diamond Sports Corp., Easton Baseball/Softball Corp., KBAU Holdings Canada, Inc., Performance Lacrosse Group Corp., PSG Innovation Corp., Bauer Hockey Retail Inc., Bauer Hockey, Inc., Bauer Performance Sports Uniforms Inc., BPS Diamond Sports Inc., BPS US Holdings Inc., Easton Baseball/Softball Inc., Performance Lacrosse Group Inc., and PSG Innovation Inc. (collectively, the "**Applicants**" or the "**PSG Entities**").

2. As a result of my engagement with the Applicants I have knowledge of the Applicants' business, operations, properties and finances and as such have knowledge of the matters to which I hereinafter depose. I have also reviewed the books and records of the Applicants and have spoken with certain of the directors, officers, employees and/or

advisors of the Applicants as necessary and applicable, and where I have relied upon such information, I have set forth the source and believe such information to be true.

3. On October 31, 2016, the Applicants sought and obtained an Order (the "**Initial Order**") of this Court (the "**Canadian Court**") providing creditor protection under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**") to facilitate a going-concern sale transaction for the benefit of the Applicants' stakeholders. On the same date, the PSG Entities also filed for creditor protection (the "**Chapter 11 Proceedings**") in the United States ("**U.S.**") Bankruptcy Court for the District of Delaware (the "**U.S. Court**" and, together with the Canadian Court, the "**Courts**") under Chapter 11 of Title 11 of the U.S. Code (the "**Bankruptcy Code**").

4. Pursuant to the Initial Order, Ernst & Young Inc. was appointed as monitor (the "**Monitor**") of the Applicants in these CCAA proceedings (the "**CCAA Proceedings**" and together with the Chapter 11 Proceedings, the "**Restructuring Proceedings**").

5. Further background on the Restructuring Proceedings is set out in the affidavit of Mark Vendetti sworn October 31, 2016 in support of the Initial Order (the "**Vendetti Affidavit**"), a copy of which, without exhibits, is attached hereto as **Exhibit "A"**. The Applicants intend to subsequently provide updated information as to the progress in the bid process to set forth the situation as it exists as close as possible to the November 30 return date of the various motions.

6. This affidavit is sworn in support of the Applicants' motion seeking, among other things, an amended and restated Initial Order (the "**Amended and Restated Initial Order**"):

(a) Approving the Cross Border Protocol (defined below);

(b) Approving the engagement letter dated August 19, 2016 (the "**CV Engagement Letter**") between the Applicants and Centerview Partners LLC ("**Centerview**") and extending the Administration Charge to fees and compensation owing under the CV Engagement Letter, including the sale fee contemplated therein;

(c) Authorizing the payment of certain severance obligations in the ordinary course during the CCAA Proceedings (as defined below);

(d) Granting of the Term Loan DIP Charge (defined below) in order to permit borrowing under the Term Loan DIP Credit Agreement;

(e) Approving the Refinancing (defined below) and the payment in full of the obligations owed to PSG's pre-filing term lenders and the fees and expenses of their professional advisors;

(f) Granting super-priority to the Administration Charge, the Directors' Charge, the ABL DIP Charge, the Intercompany Charge (as those terms are defined in the Initial Order) and the Term Loan DIP Charge (collectively, the "**Charges**");

(g) Splitting the Administration Charge between the Fixed Asset (Term) Priority Collateral and the ABL Priority Collateral (as those terms are defined in the Initial Order); and

(h) Such further and other relief as this Court deems just.

A. Cross Border Protocol

7. As detailed above, the PSG Entities have commenced proceedings in Canada and the U.S. To facilitate the administration of the Restructuring Proceedings in both jurisdictions, the proposed Amended and Restated Initial Order contemplates a cross-border insolvency protocol (the "**Cross Border Protocol**"). A cross-border protocol is needed to ensure that:

(a) the Restructuring Proceedings are coordinated to avoid, if possible, conflicting or duplicative rulings by the Courts;

(b) all parties in interest are provided sufficient notice of key issues in both Restructuring Proceedings;

(c) the substantive rights of all parties in interest are protected; and

(d) the jurisdictional integrity of the Courts is preserved.

8. The Cross-Border Protocol, designed to achieve these objectives, establishes principles for issues arising out of the cross-border nature of the Restructuring Proceedings, including a protocol for communication and cooperation between the Canadian Court and the U.S. Court. The Cross-Border Protocol also establishes procedures for the Applicants and their stakeholders to file materials and conduct joint hearings.

9. The Cross-Border Protocol is the product of negotiation between the Applicants advisors and key stakeholders, including U.S. and Canadian counsel and the Monitor. The coordination contemplated by the Cross-Border Protocol is essential and should, among other things, maximize the efficiency of the Restructuring Proceedings, reduce any associated costs, avoid duplication of effort, and avoid the possibility of conflicting rulings by the Courts.

10. The Cross-Border Protocol provides that it shall not affect the independent jurisdiction of the U.S. Court over the Chapter 11 Proceedings or of this Court over the CCAA Proceedings. In particular, nothing in the Cross-Border Protocol shall be construed to, among other things,

(a) require this Court to take any action inconsistent with the laws of Canada;

(b) require the U.S. Court to take any action inconsistent with the laws of the United States;

(c) require the Applicants or any estate professionals to take any action, or refrain from taking any action, that would result in a breach of duty imposed on them by applicable law;

(d) authorize any action that otherwise requires the specific approval of this Court, except to the extent such action is specifically provided for in the Cross-Border Protocol as approved by this Court; or

(e) preclude the Applicants or any party in interest from asserting such party's substantive rights under the applicable laws of the United States, Canada, or any other jurisdiction.

11. Given the integrated nature of the PSG Entities' business in both jurisdictions, the success of any restructuring will necessarily involve cross-border cooperation. The PSG Entities expect that there will be a high degree of cooperation between the Restructuring Proceedings if the Cross Border Protocol is approved. Approving the Cross Border Protocol will allow for efficient administration of the Restructuring Proceedings.

B. The Centerview Engagement

a. CV Engagement Letter

12. The PSG Entities are seeking an order approving their engagement of Centerview *nunc pro tunc*. Centerview has been engaged by PSG since August 2016, for and on behalf of a special committee of its board of directors, to act as strategic financial advisor and investment banker to the PSG Entities. Centerview is a well-known and respected investment bank. Pursuant to the CV Engagement Letter, a copy of which is attached hereto as **Exhibit "B"**, Centerview provides corporate advisory and investment banking services to the PSG Entities, including advice relating to:

(a) **Restructuring**: the potential recapitalization or restructuring of the PSG Entities' secured term loan or asset-based revolving credit facilities as well as the potential amendment of the material terms of those same credit facilities;

(b) **Financing**: the viability of financing transactions (e.g., by way of public or private issue, sale or placement of equity, equity-linked or debt securities or through a further loan or rights offering); and

(c) **Sale**: the possibility of a sale transaction (i.e., any transaction or series of related transactions involving an acquisition, merger, consolidation, or any other business combination under which a majority of the business, equity or assets of the Applicants are, directly or indirectly, sold).

13. The PSG Entities are in the midst of a sales process in which Centerview plays a significant role. The parties are currently soliciting interest in the Applicants' business, negotiating non-disclosure agreements, facilitating due diligence with interested potential bidders and working to create a competitive dynamic that will maximize value for Applicants' assets through a sale; without Centerview's assistance, this process would be

considerably more difficult. Given its prior familiarity with the PSG Entities' business, Centerview is knowledgeable about entities who may have an interest in the Applicants' business and therefore may be enticed as potential bidders in the Applicants' sale process. Centerview's knowledge of and experience with the Applicants would be lost if the Applicants were deprived of the benefit of Centerview's continued advice and assistance and were required to retain a new financial advisor.

14. In my assessment, without continuity of Centerview's information and expertise, the Applicants would likely be unable to meet the conditions of their debtor-in-possession ("**DIP**") interim financing credit facilities and the stalking horse agreement underpinning the proposed sale process, which would in turn place the success of the Restructuring Proceedings at risk.

15. For these reasons, the Applicants believe that the continued involvement of Centerview is essential to the completion of the Restructuring Proceedings.

b. Approval of Fees

16. The fee structure contained in the CV Engagement Letter was the subject of negotiations between PSG (with the assistance of counsel) and Centerview and was approved by its special committee prior to the commencement of the CCAA Proceedings. Under the CV Engagement Letter, Centerview is entitled to be paid:

(a) **Monthly Fee:** A monthly financial advisory fee of $150,000 (all figures US unless otherwise noted). The amount of any monthly advisory fee paid to Centerview after three months will be 50% credited (one time) against any Restructuring Fee or Sale Fee (as those terms are defined below) payable to Centerview as described in subparagraphs (d) or (e) hereof.

(b) **Amendment Fee:** If the PSG Entities consummate an Amendment (as defined in the Centerview Engagement Letter), Centerview shall be entitled to receive an amendment fee, contingent upon the consummation of an Amendment and payable at the closing thereof equal to $2,000,000. The amount of any amendment fee paid to Centerview will be 100% credited (one time) against any Restructuring Fee or Sale Fee payable described in subparagraphs (d) or (e) hereof.

(c) **Financing Fee:** If at any time during Centerview's engagement (or within a certain tail period after the engagement ends, subject to certain terms and conditions, the "**Fee Period**"), the PSG Entities consummate any Financing (as defined in the Centerview Engagement Letter) Centerview shall be entitled to receive, among other things:

(i) 0.5% of the aggregate amount of financing commitments of any indebtedness (including any DIP financing) issued to Sagard Capital Partners, L.P. ("**Sagard**") and/or Power Corporation of Canada ("**Power**") or their respective affiliates, and any non-institutional investors associated with Sagard or Power or their respective affiliates (collectively, the "**Listed Investors**");

(ii) 1% of the aggregate amount of financing commitments of any indebtedness (including any debtor-in-possession financing) issued to investor(s) other than Listed Investors; and

(iii) 50% of financing fees, other than DIP Financing Fees, shall be credited against any Restructuring Fee or Sale Fee (as these terms are defined below).

(d) **Restructuring Fee:** If at any time during the Fee Period, the PSG Entities consummate any Restructuring, Centerview shall be entitled to receive a transaction fee, contingent upon the consummation of a Restructuring and payable at the closing thereof equal to $5,000,000 (unless the restructuring is effected by way of proceedings under the U.S. Code or the CCAA, in which case the restructuring fee will be payable in tranches depending on the form of plan of arrangement agreed to by the PSG Entities and their creditors).

(e) **Sale Fee:** If at any time during the Fee Period, the PSG Entities consummates a sale, they shall pay Centerview a sale fee equal to 1% of the Aggregate Consideration (as defined in the CV Engagement Letter) (the "**Sale Fee**"). The Sale Fee is contingent upon the consummation of a sale and payable at the closing thereof. If fees are payable under both subparagraph (d) and (e), only the higher of the two fees shall be payable to Centerview.

17. The total fee cap under the Centerview Engagement Letter (including monthly advisory fees, subject to applicable crediting) is $8 million. To date, Centerview has been paid monthly advisory fees for August, September and October, and has been paid an earned Financing fee advance of $1.85 million.

18. In addition to *nunc pro tunc* approval of the CV Engagement Letter, the PSG Entities seek to extend the Administration Charge to encompass the fees owing to Centerview.

C. Severance Obligations

19. The PSG Entities are seeking authorization to make payments to certain former employees (the "**Severance Payment Employees**") on account of termination or severance obligations that were incurred, whether prior to or after October 31, 2016, in the ordinary course during the Restructuring Proceedings.

20. The payment of these severance obligations captures former employees who were not insiders of the PSG Entities. I am advised by counsel to the Applicants that as the provisions of the Bankruptcy Code prohibit severance payments to "insiders", which term includes officers and persons in control of the Applicants, the Applicants are not at the present motion seeking relief from either Court to pay such insiders.

21. As of the date of this affidavit, the total severance obligation is estimated to be approximately $3.96 million. Of the total severance obligations, $1.5 million relates to the Severance Payment Employees, of which $900,000 relates to former Canadian employees. No former Canadian employees were insiders. Monthly payments to Severance Payment Employees existing as of the date of this affidavit currently total approximately $225,000 per month, which declines as certain severance obligations are satisfied. Monthly payments of severance to former Canadian employees is budgeted to range from a high of $90,000 in December, 2016 to a low of $7,000 when such obligations are fully paid in April, 2018.

22. In the PSG Entities' business judgment, paying the severance obligations in the ordinary course is necessary to sustain the morale of current employees, which is critical to ensuring smooth operations of the PSG Entities during the pendency of the Restructuring Proceedings. Without maximum effort from current employees, there is a danger the PSG Entities will be unable to maintain their current level of operations during the course of the sale process which could be detrimental to the success of the Restructuring Proceedings.

D. The Term Loan DIP Charge and the Term Loan Facility Refinancing

a. The Term Loan DIP Charge[1]

23. The Applicants have entered into a term loan DIP credit agreement (the "**Term Loan DIP Agreement**") with 9938982 Canada Inc. (the "**Stalking Horse Purchaser**"), a company co-owned by Sagard Holdings Inc. and Fairfax Financial Holdings Limited, to provide incremental liquidity and refinance PSG's pre-filing term loan credit facility (the "**Refinancing**"). A copy of the Term Loan DIP Credit Agreement is attached as **Exhibit "C"**. As part of the Amended and Restated Initial Order, the PSG Entities seek a charge securing all obligations arising under the Term Loan DIP Credit Agreement (the "**Term Loan DIP Charge**").

24. The credit facility (the "**Term Loan DIP Facility**") consists of two facilities: (i) a delayed draw term loan, funded in cash in one or more drawings occurring after the closing of the agreement, in the principal amount of $30 million; and (ii) a refinancing term loan, funded in cash on the closing date in the principal amount of approximately $331.3 million, which will be used to refinance the Term Loan Facility (as that term is defined in the Vendetti Affidavit). As described in greater detail below, the $331.3 million facility is available only so as to refinance the pre-filing Term Loan Facility.

25. This Court approved the Term Loan DIP Credit Agreement at the initial application. At the time, the PSG Entities did not seek a Court-ordered charge securing the amounts owing under the Term Loan DIP Agreement. It is a condition of the Term Loan DIP Facility that the Stalking Horse Purchaser (in its capacity as lender under the Term Loan

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[1] Additional details regarding the Term Loan DIP Agreement are set out in the Vendetti Affidavit. Capitalized terms used in this section but not otherwise defined are as defined in the Vendetti Affidavit.

DIP Agreement) be given the benefit of the Term Loan DIP Charge on the terms sought herein.

26. The Term Loan DIP Charge is proposed to rank below the security interests, charges, and liens securing the obligations under the pre-filing asset-backed revolving credit agreement (the "**Pre-Filing ABL Loan Security**") on the ABL Priority Collateral, avoiding any need to prime the ABL Lenders in respect of their first-ranking Pre-Filing ABL Security. The Term Loan DIP Lenders' Charge will prime the Pre-Filing ABL Loan Security only in respect of Fixed Asset (Term) Priority Collateral.

27. The Term Loan DIP Charge will prime the security interests, charges, and liens securing the obligations under the Term Loan Agreement (the "**Pre-Filing Term Loan Facility Security**") in respect of the Fixed Asset (Term) Priority Collateral. However, the Term Loan DIP Charge will cause no prejudice as it is being granted to the Term Loan Lenders subject to the Refinancing described in greater detail in the subsequent section of this Affidavit.

28. The Term Loan DIP Charge is also proposed to extend over all of the PSG Entities' assets, property and undertakings that are not Fixed Asset (Term) Priority Collateral or ABL Priority Collateral, including the assets of PSG Innovation Corp. and PSG Innovation Inc. (together, the "**PSG Innovation Collateral**"). The lenders under the Term Loan DIP Agreement have indicated that extending the charge to this Property is a condition to providing DIP Financing. The Amended and Restated Initial Order contemplates the Term Loan DIP Charge ranking second on the PSG Innovation Collateral, behind only the Administration Charge. With respect to all other Property that is not Fixed Asset (Term) Priority Collateral, ABL Priority Collateral and PSG Innovation Collateral, the Term Loan DIP Charge is also proposed to rank second, again behind the Administration Charge.

b. The Term Loan Facility Refinancing

29. The PSG Entities are also seeking approval of the Refinancing and the payment in full of the obligations owed to PSG's pre-filing term lenders and the fees and expenses of their professional advisors as contemplated by the Term Loan DIP Agreement.

30. With respect to professional fees and expenses, the Term Loan DIP Agreement requires that the PSG Entities pay in full all of the reasonable fees and expenses of the administrative agent under the pre-filing Term Loan Agreement (the "**Term Loan Agent**") and of the professional advisors retained by the ad hoc committee of certain pre-filing Term Lenders ("**Ad Hoc Committee of Pre-Filing Term Lenders**") or the Term Loan Agent.

31. Other creditors are not prejudiced by the Refinancing as not only is the Term Loan DIP Facility replacing the pre-filing term lenders' existing security, it is anticipated that the sale proceeds from the Stalking Horse Purchaser's bid or superior result from the auction process, if that occurs, are expected to be sufficient to pay out the secured loan in full.

32. The Term Loan DIP Credit Agreement provides that the PSG Entities will not be permitted to borrow under the delayed draw term loan facility until the Refinancing has been completed. Accordingly, approval of the Refinancing is a necessary precondition to the PSG Entities having access to the delayed draw term loan facility that is necessary for their continued operation. Without the access to the delayed drawn term loan facility, the PSG Entities will not have adequate financing to continue operating as a going concern and will not be able to complete their contemplated sales process, to their stakeholders' detriment.

E. Super-Priority for the Court-Ordered Charges

33. As described in the Vendetti Affidavit, the PSG Entities are seeking certain amendments to the priority and structure of certain charges. The Initial Order granted a series of charges on the Property of the PSG Entities, the specific ranking of which varied depending on the nature of the collateral at issue. In summary and as each capitalized term is defined in the Vendetti Affidavit (all amounts being in U.S. dollars):

(a) With respect to the Fixed Asset (Term) Priority Collateral:

First – the Administration Charge;

Second – the Pre-Filing Term-Loan Facility Security;

Third – the ABL DIP Charge;

Fourth – the Pre-Filing ABL Facility Security;

Fifth – the Directors' Charge; and

Sixth – the Intercompany Charge.

(b) With respect to the ABL Priority Collateral:

First – the Administration Charge;

Second – the ABL DIP Charge;

Third – the Pre-Filing ABL Facility Security;

Fourth – the Pre-Filing Term-Loan Facility Security;

Fifth – the Directors' Charge (to the maximum amount of $7.5 million); and

Sixth – the Intercompany Charge.

(c) With respect to the PSG Innovation Collateral:

First – the Administration Charge;

Second – the ABL DIP Charge;

Third – the Directors' Charge (to the maximum amount of $7.5 million); and

Fourth – the Intercompany Charge.

(d) With respect to all other Property that is not Fixed Asset (Term) Priority Collateral or ABL Priority Collateral or PSG Innovation Collateral:

First – the Administration Charge;

Second – the ABL DIP Charge;

Third – the Directors' Charge (to the maximum amount of $7.5 million); and

Fourth – the Intercompany Charge.

(Collectively, the "**Charges**").

34. The Initial Order provides that the Charges rank in priority to all existing security interests of any persons with notice of the initial application. Currently, the Charges rank in priority to the existing security interest created pursuant to a credit facility between the PSG Entities and their secured lenders under the term loan and asset-based revolving credit

facilities and behind all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**").

35. The Applicants are seeking priority over all Encumbrances for the Charges, including the Term Loan DIP Charge, and have served the parties listed in **Exhibit "D"** hereto.

36. It is proposed that the Charges will rank ahead of all of the Encumbrances. The PSG Entities require the services of the beneficiaries of the Charges in order to pursue a successful restructuring of their business and/or the sales process (with the Intercompany Charge being necessary in order to ensure the orderly operation of the PSG Entities going forward). I believe that absent charges in priority to the Encumbrances, the PSG Entities will likely be deprived of services being provided by the beneficiaries of these charges, which in my opinion would be highly detrimental to the success of the Restructuring Proceedings, the sale process and the interests of the PSG Entities' stakeholders.

37. The PSG Entities are seeking certain amendments to the priority and structure of certain charges. The final proposed priority scheme being sought by the PSG Entities in the Chapter 11 Proceedings and in the Amended and Restated Initial Order is set out at Schedule "A" to this affidavit.

38. Finally, the Applicants are also seeking to split the Administration Charge between the Fixed Asset (Term) Priority Collateral and the ABL Priority Collateral such that the Administration Charge will constitute two separate $3.75 million charges against each class of collateral, plus all accrued and unpaid fees, disbursements, costs and expenses incurred by the Case Professionals, the CRO and Centerview over both classes.

SWORN BEFORE ME at the City of New York, State of New York, on November 21, 2016. Commissioner for Taking Affidavits	 **BRIAN J. FOX**

SARAH L. JENSEN
Notary Public, State of New York
Qualified in King County
No. 02JE6316369
My Commission Expires Dec. 15, 2018

Schedule "A"

Charges Priority Waterfall[2]

		US	Canada
		Final Order	**Amended and Restated Initial Order**
1.	**ABL Priority Collateral**	1. Carve-Out[3] 2. ABL DIP Facility 3. Prepetition ABL Facility / adequate protection liens of Prepetition ABL lenders 4. Term Loan DIP Facility 5. Continuing adequate protection liens of the Prepetition Term Loan Lenders (if any), including any liens that are reinstated[4]	1. Administration Charge (professional fees/Carve-Out) (subject to FN 3) 2. ABL DIP Charge 3. Pre-Filing ABL Facility Security 4. Term Loan DIP Charge 5. Directors' Charge 6. Intercompany Charge 7. Pre-Filing Term Loan Security (if any), including any liens that are reinstated
2.	**Fixed Asset (Term) Priority Collateral**	1. Carve-Out (subject to FN 3) 2. Term Loan DIP Facility 3. Continuing adequate protection liens of the Prepetition Term Loan Lenders (if any), including any liens that are reinstated 4. ABL DIP Facility 5. Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders	1. Administration Charge (professional fees/Carve-Out) (subject to FN 3) 2. Term Loan DIP Charge 3. Pre-Filing Term Loan Security (if any), including any liens that are reinstated 4. ABL DIP Charge 5. Pre-Filing ABL Facility Security 6. Directors' Charge 7. Intercompany Charge
3.	**PSG Innovation Collateral[5]**	1. Carve-Out (subject to FN 3) 2. Term Loan DIP Facility 3. Continuing adequate protection	1. Administration Charge (professional fees/Carve-Out) (subject to FN 3) 2. Term Loan DIP Charge

[2] Capitalized terms used in this summary have the same meaning used in the Final Order and the Amended and Restated Initial Order.

[3] Upon entry of the Final Order, the ABL DIP Obligations and the Term Loan DIP Obligations shall each be subordinated to 50% of the Carve-Out Trigger Notice Cap.

[4] The Prepetition Term Loan Facility liens are to be released upon entry of the Final Order, subject to continuing adequate protection liens under the Final Order, and any Adequate Protection Superpriority Claims of the Prepetition Term Loan Lenders shall be senior to the Break-Up Fee and Expense Reimbursement granted pursuant to and defined in the *Debtors' Motion for (I) an Order (A) Establishing Bidding Procedures for the Sale of All, or Substantially All, of the Debtors' Assets; (B) Approving Bid Protections; (C) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (D) Approving Form and Manner of the Sale, Cure and Other Notices; and (E) Scheduling an Auction and a Hearing to Consider the Approval of the Sale; (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens and Encumbrances; (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Docket No. 16] filed in the Chapter 11 Proceedings.

[5] To the extent these assets would otherwise constitute ABL Priority Collateral, they shall be treated as such. Otherwise, they shall be treated as Fixed Asset Priority Collateral as reflected above. In addition, these assets

		US	Canada
		Final Order	Amended and Restated Initial Order
		liens of the Prepetition Term Loan Lenders (if any), including any liens that are reinstated 4.ABL DIP Facility 5.Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders	3.ABL DIP Charge 4.Directors' Charge 5.Intercompany Charge
4.	**Other Unencumbered Collateral (other than avoidance actions)**[6]	1.Carve-Out (subject to FN 3) 2.Term Loan DIP Facility 3.Continuing adequate protection liens of the Prepetition Term Loan Lenders (if any), including any liens that are reinstated 4.ABL DIP Facility 5.Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders	1.Administration Charge (professional fees/Carve-Out) (subject to FN 3) 2.Term Loan DIP Charge 3.ABL DIP Charge 4.Directors' Charge 5.Intercompany Charge
5.	**Proceeds of Avoidance Actions**[7]	1.Carve-Out (subject to FN 3) 2.ABL DIP Facility/Term Loan DIP Facility 3.Prepetition ABL Facility / Continuing adequate protection liens of the Prepetition Term Loan Lenders (if any), including liens that are reinstated	N/A

will not be available as adequate protection under the CCAA order.

[6] To the extent these assets would otherwise constitute ABL Priority Collateral, they shall be treated as such. Otherwise, they shall be treated as Fixed Asset Priority Collateral as reflected above. In addition, these assets will not be available as adequate protection under the CCAA order.

[7] Liens on proceeds of avoidance actions are subject to entry of the Final Order (other than liens on proceeds of avoidance actions brought under section 549 of the Bankruptcy Code, which are authorized upon entry of the Interim Order.

Exhibit "A" to the Affidavit

Of Brian J. Fox, sworn

November 21, 2016

Commissioner for taking affidavits

SARAH L. JENSEN
Notary Public, State of New York
Qualified in King County
No. 02JE6316369
My Commission Expires Dec. 15, 20 18

Court File No. _____________

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PERFORMANCE SPORTS GROUP LTD., BAUER HOCKEY CORP., BAUER HOCKEY RETAIL CORP., BAUER PERFORMANCE SPORTS UNIFORMS CORP., BPS CANADA INTERMEDIATE CORP., BPS DIAMOND SPORTS CORP., EASTON BASEBALL/SOFTBALL CORP., KBAU HOLDINGS CANADA, INC., PERFORMANCE LACROSSE GROUP CORP., PSG INNOVATION CORP., BAUER HOCKEY RETAIL INC., BAUER HOCKEY, INC., BAUER PERFORMANCE SPORTS UNIFORMS INC., BPS DIAMOND SPORTS INC., BPS US HOLDINGS INC., EASTON BASEBALL/SOFTBALL INC., PERFORMANCE LACROSSE GROUP INC., PSG INNOVATION INC.

(Applicants)

AFFIDAVIT OF MARK VENDETTI
(Sworn October 31, 2016)

I, MARK VENDETTI, of the City of Exeter, in the State of New Hampshire, MAKE OATH AND SAY:

1. I am the Executive Vice President and Chief Financial Officer of the applicant, Performance Sports Group Ltd. ("**PSG**"). I am also a director of each of Bauer Hockey Corp., Bauer Hockey Retail Corp., Bauer Performance Sports Uniforms Corp., BPS Canada Intermediate Corp., BPS Diamond Sports Corp., Easton Baseball/Softball Corp., KBAU Holdings Canada, Inc. ("**KBAU**"), Performance Lacrosse Group Corp., PSG Innovation Corp., Bauer Hockey Retail Inc., Bauer Hockey, Inc., Bauer Performance Sports Uniforms Inc., BPS Diamond Sports Inc., BPS US Holdings Inc. ("**BPS U.S.**"), Easton Baseball/Softball Inc., Performance Lacrosse Group Inc., and PSG Innovation Inc. (collectively with PSG, the "**Applicants**" or the "**PSG Entities**"), each of which is a direct or indirect wholly-owned subsidiary of PSG.

2. As a result of my roles with the Applicants, I have knowledge of the matters to which I hereinafter depose. I have also reviewed the books and records of the Applicants

and have spoken with certain of the directors, officers and/or employees of the Applicants, as necessary and applicable, and where I have relied upon such information, I have set forth the source and believe such information to be true.

3. All references to currency in this affidavit are references to United States ("**U.S.**") dollars, unless otherwise indicated.

I. INTRODUCTION

4. This affidavit is sworn in support of an application by the PSG Entities for an order (the **"Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). On October 31, 2016 the Applicants will file for creditor protection in the U.S. Bankruptcy Court for the District of Delaware (the "**U.S. Court**") under Chapter 11 of Title 11 of the U.S. Code (the "**Chapter 11 Proceedings**"). The first day hearing in respect of the Chapter 11 Proceedings is expected to take place on November 1, 2016.

5. The PSG Entities are leading designers, developers and manufacturers of high performance sports equipment and related apparel. Historically focused on hockey, the PSG Entities expanded their business to include equipment and apparel in the baseball/softball and lacrosse markets. The hockey business operates under the BAUER, MISSION and EASTON brands; the baseball/softball business operates under the EASTON and COMBAT brands, and the lacrosse business operates under the MAVERIK and CASCADE brands.

6. In the last 18 months, there have been significant negative events and circumstances affecting both PSG's business and the retail sports equipment industry generally. Industry-wide events include, among others:

(a) the insolvency of major sports equipment retailers in the U.S. who were key customers of the PSG Entities, leading to write-offs of accounts receivable, lower sales;

(b) weakness in the baseball/softball equipment market;

(c) consolidation of hockey retailers in the U.S. negatively impacting sales; and

(d) the strengthening of the U.S. dollar relative to other world currencies, including the Canadian dollar, compressing the PSG Entities' margins and reducing profitability.

PSG specific events include, among others:

(a) being significantly leveraged due to the purchase of a significant baseball/softball business in 2014, which was funded with debt;

(b) considerable management attention directed toward, and outside professional fees incurred, responding to regulatory investigations and defending a recent securities class action lawsuit, both arising as a consequence of the recent fall in PSG's share price that was precipitated by the negative events referred to above;

(c) considerable management attention directed toward, and incurrence of outside professional fees related to PSG's inability to file its audited annual financial statements for the fiscal year ended May 31, 2016,[1] related management discussion and analysis, its annual report on Form 10-K and related CEO and CFO certificates (together, the "**Reporting Materials**") by the filing deadline of August 15, 2016 (the "**Filing Deadline**") due to the initiation of an internal investigation regarding PSG's finalization of audited financial statements and the related certification process. The inability to file the Reporting Materials by August 29, 2016 was a breach of covenant sufficient to give rise to an event of default under PSG's secured loan documents. While the Secured Lenders (defined below) granted an extension to file the Reporting Materials to October 28, 2016, PSG has not completed its investigation and thus was unable to file the Reporting Materials by the extension deadline. As such, PSG is in default under its loan agreements as of October 28, 2016 and is not in a position to remedy this default or refinance its secured debt in a timely manner.

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[1] The PSG Entities' fiscal year is June 1 to May 31.

Together, these events have contributed to the liquidity crisis currently faced by the Applicants necessitating this CCAA application.

7. In response to this crisis, the PSG Entities have developed a plan to preserve the value of their businesses for their stakeholders. The Applicants intend to sell substantially all of their businesses as a going concern through a comprehensive marketing process. To that end, the Applicants have negotiated a going-concern asset sale with Sagard Capital Ltd. ("**Sagard**") and Fairfax Financial Holdings Limited ("**Fairfax**" and together with Sagard, the "**Stalking Horse Purchasers**"), pursuant to the terms of which the Applicants will continue as a going-concern under new ownership, their secured debt will be repaid in full, and trade debt will be paid in the ordinary course of business.

8. The PSG Entities require the protection offered by the Initial Order and the CCAA to stabilize their businesses and provide the necessary breathing space to implement a sale of their businesses and property pursuant to a court-supervised sales process.

9. Due to the cross-border nature of the Applicants' businesses and the structure of the proposed transaction, the Applicants have filed for protection in the Chapter 11 Proceedings concurrently with this CCAA application.

10. Each of the boards of directors of the Applicants has authorized this CCAA application.

II. THE PSG ENTITIES

A. Corporate Structure

11. PSG is a public company incorporated under the British Columbia *Business Corporations Act*, SBC 2002, c 57. PSG's registered office is located at Suite 1700, Park Place, 666 Burrard Street, Vancouver, British Columbia and its head office is located at 100 Domain Drive, Exeter, New Hampshire.

12. PSG is the ultimate parent of the other PSG Entities and also is the indirect parent to a number of European subsidiaries and subsidiary in Asia. The European subsidiaries are not seeking any relief in respect of this Application or in the Chapter 11 Proceedings.

13. PSG's common shares are publicly traded on the Toronto Stock Exchange ("**TSX**") and the New York Stock Exchange ("**NYSE**"), in each case under the symbol "PSG". An initial public offering was completed in Canada on March 10, 2011 and in the U.S. on June 25, 2014. Over the past 52 weeks, shares have traded between C$1.55 and C$19.16 on the TSX and $1.18 and $14.43 on the NYSE. The lowest trading value on both stock exchanges was reached on August 15, 2016, the date that PSG announced the delay in the filing of its Reporting Materials. On October 28, 2016, the closing price of PSG common shares was $4.69 on the TSX and $3.48 on the NYSE.

14. PSG's authorized share capital consists of an unlimited number of common shares without par value. As at October 28, 2016, PSG had 45,861,205 common shares issued and outstanding.

15. To my knowledge, Sagard is currently PSG's largest shareholder, with beneficial ownership of approximately 17% of PSG's issued and outstanding common shares.

16. PSG's directly owned subsidiaries are BPS U.S. and KBAU. KBAU, a company wholly-owned by PSG and incorporated under the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 (the "**CBCA**"), is a holding company that holds, directly or indirectly, the shares of the other Canadian subsidiaries and the European subsidiaries. BPS U.S. is a Delaware holding company that holds, directly or indirectly, the shares of the U.S. subsidiaries with the exception of PSG Innovation Inc., which is wholly owned by PSG Innovation Corp. PSG holds 77.93% of BPS U.S.'s equity and Bauer Hockey Corp., a wholly owned subsidiary of KBAU, holds the remaining 22.07%. A chart of the various entities is attached hereto as Exhibit "A".

17. The PSG Entities are generally structured so that there is a Canadian and U.S. subsidiary for each major business line. Set out in Exhibit "B" attached hereto is a chart detailing, on an entity-by-entity basis, the business line, region of operations, jurisdiction of incorporation and registered office of each of the Applicant entities as well as the non-applicant subsidiaries of PSG. In this affidavit, the PSG Entities which are incorporated in the U.S. shall be referred to as the "**U.S. PSG Entities**" and the PSG Entities which are incorporated in Canada shall be referred to as the "**Canadian PSG Entities**."

18. The PSG Entities operate along functional business lines which are intertwined in many respects. Each entity performs specific functions, certain of which benefit all of the PSG Entities. Each operating Applicant's general role within the PSG Entities' business is summarized below:

(a) *Bauer Hockey Corp.* ("**Bauer Canada**"): Bauer Canada sells products for the Bauer Business (defined below) in the Canadian market, and also performs the majority of the research and development for the PSG Entities from its facility in Blainville, Quebec. Bauer Canada performs limited management functions for other PSG Entities, including risk management.

(b) *Bauer Hockey, Inc.* ("**Bauer U.S.**"): Bauer U.S. sells products for the Bauer Business in the U.S. market and provides executive management services, including strategic decision-making and business oversight for the PSG Entities. The majority of the PSG Entities' senior management is employed by Bauer U.S.

(c) *Easton Baseball/Canada Corp.* ("**Easton Canada**"): Easton Canada sells and distributes products for the Easton Business (defined below) in the Canadian market.

(d) *Easton Baseball/Softball Inc.* ("**Easton U.S.**"): Easton U.S. designs and manufactures equipment for the Easton Business, such as bats, helmets, apparel and bags. Easton U.S. also sells and distributes these products in the U.S. market.

(e) *BPS Diamond Sports Corp.*: BPS Diamond Sports Corp. performed research and development, engineering and manufacturing for COMBAT branded composite bats for the Easton Business. Effective September 30, 2016, the functions performed by BPS Diamond Sports Corp. were combined with Easton Canada and this entity now has limited operations and assets. While this entity retains its intellectual property assets, it no longer has any employees or inventory.

(f) *BPS Diamond Sports Inc.*: BPS Diamond Sports Inc. sold and marketed products for the Easton Business in the U.S. market. Effective September 30, 2016, the functions performed by BPS Diamond Sports Inc. were combined with Easton U.S. and this entity now has limited operations and assets. While this entity retains its intellectual property assets, it no longer has any employees or inventory.

(g) *Performance Lacrosse Group Corp.*: The primary function of Performance Lacrosse Group Corp. is sales and marketing for the Lacrosse Business (defined below) in the Canadian market.

(h) *Performance Lacrosse Group Inc.*: Performance Lacrosse Group Inc. designs, develops and manufactures equipment for the Lacrosse Business from its facility in Liverpool, New York. The entity is also responsible for sales and marketing in the U.S. market.

(i) *Bauer Performance Sports Uniforms Corp.*: Performance Sports Uniforms Corp. sources and customizes team sports and active apparel for soccer and each of the business lines. It is also manufacturers or sources products related to the Uniforms Business (defined below) and is responsible for distribution and sales of the Uniforms Business in the Canadian and U.S. markets.

(j) *Bauer Performance Sports Uniforms Inc.*: Bauer Performance Sports Uniforms Inc. has minimal operations and does not record any sales.

(k) *PSG Innovation Corp. and PSG Innovation Inc.*: the entities have limited operations and primarily hold certain intellectual property for the PSG Entities.

(l) *Bauer Hockey Retail Corp.*: Bauer Hockey Retail Corp. is responsible for establishing and growing the Bauer Business' retail presence in Canada. The first store is planned to open in Vaughan, Ontario in June 2017.

(m) *Bauer Hockey Retail Inc.*: Similar to Bauer Hockey Retail Corp., Bauer Hockey Retail Inc. operates the Bauer Business' retail presence in the U.S, selling BAUER branded products directly to end-users. There are currently two stores in the U.S near Boston, Massachusetts and Minneapolis, Minnesota. The stores operate under the brand name Own The Moment - Hockey Experience.

19. Performance Sports Group Hong Kong Limited ("**PSG HK**") is PSG's only subsidiary incorporated in Asia. PSG HK was established to manage certain aspects of the PSG Entities' supply chain, but has not yet commenced operations. Supply chain management is currently managed out of a representative office operated by Bauer U.S.

20. The European subsidiaries, Bauer Hockey AB, and Bauer Hockey GmbH[2] operate primarily sales and marketing hubs in Europe and BPS Luxembourg S.a.r.l. (together with Bauer Hockey AB, and Bauer Hockey GmbH, , the "**European Subsidiaries**") is a holding company with limited operations. No relief is being sought in this CCAA application or in the Chapter 11 Proceedings in respect of the European Subsidiaries or PSG HK.

21. Jacmal BV and Bauer CR spol (Czech Republic), two other subsidiaries, have no operations and were incorporated in relation to financing matters.

B. Corporate Governance

22. PSG's board of directors is comprised of seven individuals and each of the boards of directors of the other PSG Entities is comprised of three individuals.

C. Business Operations

Overview

23. The PSG Entities focus on designing, developing and manufacturing high performance sports equipment and apparel for hockey, baseball, softball, and lacrosse. The hockey and baseball/softball markets are the PSG Entities' largest business focus, generating approximately 60% and 30% of the Applicants' sales in fiscal 2015, respectively, with remaining sales derived from the lacrosse and apparel businesses.

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24. The PSG Entities' history is traced back to a hockey equipment business started by the Bauer family in Kitchener, Ontario in 1927. The company was the first to manufacture ice skates with the blade attached to the boot and in 1976, the company introduced the TUUK blade holder, a predecessor to the holder currently used by more than 80% of National Hockey League ("**NHL**") players. A prior iteration of PSG, Canstar Sports Inc., owned and operated well-known brands such as MICRON, LANGE, MEGA, and DAOUST ice skates, as well as FLAK and COOPER hockey equipment. In 1995, the Bauer business was acquired by NIKE, Inc. ("**Nike**") which introduced a line of Nike branded equipment alongside the existing line of BAUER branded equipment. In 2008, Nike sold the business operated by Bauer Canada, Bauer U.S., and their respective subsidiaries to private investors. Through acquisitions, the PSG Entities expanded their business beyond hockey to the baseball/softball, lacrosse, soccer and uniforms markets.

25. The PSG Entities' products span age and experience groups from youth players to professional athletes. The PSG Entities own a number of leading and recognizable brands in the sports equipment market. The hockey business is primarily marketed under the BAUER, MISSION and EASTON brands; the baseball/softball business is marketed under the EASTON and COMBAT brands, the lacrosse business is marketed under the MAVERIK and CASCADE brands, and the uniforms business is marketed under the INARIA brand.

Hockey

26. The Bauer business, the historical business of PSG, primarily focuses on ice, roller and street hockey equipment and apparel and BAUER is a leading brand name in the industry.

27. Bauer grew its business both organically and through acquisitions. In September 2008, the PSG Entities acquired Mission-ITECH Hockey Inc. and the MISSION brand, another hockey equipment brand focused on roller hockey. In January 2016, the PSG Entities acquired substantially all of the assets and assumed certain liabilities of Easton Hockey Holdings, Inc., the manufacturer and designer of EASTON branded hockey equipment.

28. The BAUER, MISSION and EASTON brands currently offer performance-driven hockey equipment for players in every major market in the world (the "**Bauer Business**").

The equipment offerings include skates, sticks, protective equipment, helmets and goalie equipment for ice hockey, roller hockey and street hockey.

29. BAUER has a leading market share position in ice hockey equipment, which was estimated in fiscal 2015 at approximately 56% of the overall market share globally. BAUER and MISSION combined have the number one estimated market share position in roller hockey equipment with approximately 70% of the market. A significant majority of the Bauer Business' sales were derived in the Canadian and U.S. markets, with the remaining sales generated in various other countries primarily in Europe.

<u>Baseball and Softball</u>

30. In April 2014, PSG acquired the baseball and softball business of Easton-Bell Sports, Inc. in a $330 million (plus adjustments and fees) asset purchase transaction (the "**Easton Baseball Acquisition**") funded by long-term debt. The Easton Baseball Acquisition significantly expanded the PSG Entities' baseball and softball market presence which previously consisted of COMBAT branded equipment, a business that was acquired in May 2013. Effective September 30, 2016, COMBAT operations were consolidated with EASTON operations, unifying the brands and allowing the relevant PSG Entities to have a more focused market presence.

31. With the EASTON and COMBAT brands, the PSG Entities offer a broad line of baseball and softball equipment for all ages and levels of play (the "**Easton Business**"). The equipment and accessories (bats, gloves, protective equipment and apparel) for athletes and enthusiasts serve the professional, inter-scholastic, and recreational levels of the diamond sports market across a variety of price points.

32. The acquisition of the Easton Business was intended to reduce the seasonality that previously affected the PSG Entities' business. The Easton Business typically experiences the majority of its sales during the winter, spring and summer seasons which compliments the Bauer Business as it experiences the majority of its sales during the summer and fall seasons. The more evenly distributed seasonality of the combined businesses was expected to provide more consistent working capital levels and allow the PSG Entities to improve efficiency in manufacturing, distribution and other efforts across their business lines. During fiscal 2016, PSG has experienced issues with the Easton Business, which have caused

adverse effects on the group of companies as a whole. The issues are described in greater detail below.

33. The Easton Business holds approximately 19% of the baseball/softball market share in North America. In fiscal 2015, the vast majority of the Easton Business' sales were generated in the U.S., and the remainder of sales were generated in Canada.

Lacrosse

34. In June 2010, the PSG Entities entered the lacrosse market with the acquisition of Maverik Lacrosse LLC, a leading manufacturer of lacrosse equipment branded as MAVERIK. On June 29, 2012, the PSG Entities expanded further into the lacrosse business by completing the acquisition of Cascade Helmets Holdings, Inc, a manufacturer of CASCADE branded head protection and other lacrosse equipment.

35. With the MAVERIK and CASCADE brands, the PSG Entities offer a comprehensive line of lacrosse equipment for all skill levels with an estimated market share of 28% (the "**Lacrosse Business**"). The MAVERIK brand offers a full line of gloves, heads, shafts and protective equipment, as well as a women's specific line of product, for players of all ages. The CASCADE brand offers primarily head protection for lacrosse players and is the number one brand in lacrosse head protection with approximately 97% market share in the segment. In addition to equipment, CASCADE and MAVERIK design and manufacture accessories and related apparel, including performance apparel and lifestyle apparel.

36. In fiscal 2015, the Lacrosse Business primarily generates its sales in the U.S. and the remainder of sales were generated in Canada.

Uniforms

37. On October 16, 2012, the PSG Entities acquired Inaria International Inc., a Toronto-based designer and manufacturer of soccer apparel. With the INARIA brand, the PSG Entities have expanded the business line continuing to sell pro-style jerseys, practice jerseys, socks, warm-up suits and training apparel (the "**Uniforms Business**"). The primary product of the Uniforms Business is a complete ''player kit'' that includes a jersey, shorts and matching socks for each member of a team or association. Each player kit is sized and personalized with team identifiers and numbering.

38. In fiscal 2015, the majority of the Uniforms Business' sales were generated in Canada with the balance generated in the U.S.

Strategic Relationships

39. The PSG Entities also have a number of strategic investments in the sports industry:

(a) Q30: In October 2015, the PSG Entities purchased a $1 million non-controlling interest in Q30 Sports Science, LLC ("**Q30 Sports Science**"). The PSG Entities also acquired an exclusive perpetual licence from a subsidiary of Q30 Sports Science, to use certain of its patents and technology assets in the development of products that are intended to address the issue of mild traumatic brain injury in sports and athletic activity. PSG Innovation Corp. holds the interest in Q30 Sports Science and licence assets;

(b) Cocona: In September 2015, Bauer Canada purchased a non-controlling interest in Cocona, Inc. ("**Cocona**") for $5 million, a privately held entity that created and owns 37.5™ technology, a patented moisture management technology that utilizes body heat to evaporate moisture from apparel and equipment. Contemporaneously with the investment, the PSG Entities entered into a new license agreement with Concona as 37.5™ technology is used in the Bauer Business, Easton Business and Lacrosse Business;

(c) Legacy: In March 2016, Bauer U.S. acquired one million Class A Units of Legacy Global Sports, L.P. (together with its affiliates, "**Legacy**") at the cost of $1 per unit, representing a 5% stake. Legacy is a Portsmouth, New Hampshire-based sports event management company that primarily organizes and oversees youth hockey, lacrosse and soccer tours and tournaments; and

(d) Kingsbridge: In August 2014, PSG loaned $4 million to KNIC Properties LP ("**KNIC**"), a developer involved in efforts to transform the Kingsbridge Armory, located in the Kingsbridge section of the Bronx in New York City, into an ice center. In exchange for the loan, KNIC issued PSG a warrant for 47 common limited partnership units (representing less than five percent of the Common Units of KNIC), executable at $1,000 a unit. PSG has not yet executed the warrant. PSG also receives interest of twelve percent per year on the loan, which KNIC has elected to pay in kind. Political disputes and litigation related to New York City's turnover of the lease for the Kingsbridge Armory to KNIC have delayed the Kingsbridge project.

D. Customers

40. The PSG Entities have a diverse customer base, including over 4,000 retailers across the globe and more than 60 distributors. In fiscal 2015, approximately 58% of the PSG Entities' total sales were in the U.S., approximately 24% were in Canada, and approximately 18% were in the rest of the world.

41. The PSG Entities sell their products through diverse channels of distribution including to: (i) specialty retailers that cater to sports enthusiasts who typically seek premium products at the highest performance levels; (ii) national and regional full-line sporting goods retailers and distributors; (iii) institutional buyers such as educational institutions and athletic leagues; (iv) mass retailers that offer a focused selection of products at entry-level and mid-level price points; (v) directly to hockey consumers through their owned and operated Own The Moment - Hockey Experience retail stores in the U.S; and (vi) directly to end-user consumers through e-commerce channels operated by the PSG Entities.

42. The PSG Entities have a diverse customer base, with the ten largest customers making up 37% of total sales in fiscal year 2015, with the top customer, Canadian Tire Corporation, accounting for approximately 10% of those sales.

43. The Bauer Business sells directly to retailers in Canada, the U.S., and certain northern European countries. In fiscal 2015, approximately 83% of the Bauer Business' sales were directly to retailers in these markets. By specific channel, 18% of sales were to big box retailers and 82% were to hockey specialty retailers. The Bauer Business' secondary sales channel is through distributors primarily outside North America. In fiscal 2015, approximately 17% of sales were to distributors reaching over 1,000 retail outlets globally.

44. As mentioned, the PSG Entities also operate two hockey retail stores which sell BAUER branded products directly to consumers. These "Own the Moment - Hockey

Experience" stores are located near Boston, Massachusetts and Minneapolis, Minnesota. One more store is planned to open in the near term in Vaughan, Ontario.

45. The Easton Business' sales and distribution network primarily focuses on North America but was also recently launched in Japan. The Easton Business' customers are principally made up of online stores, big box retailers, sporting goods chains, and baseball specialty dealers. By channel in fiscal 2015, approximately 51% of the Easton Business' sales were to big box and sporting goods chains and approximately 49% were to baseball specialty retailers.

46. The Lacrosse Business sells its products exclusively through dealers and retailers. In fiscal 2015, approximately 89% of its sales were generated from sales to lacrosse specialty and independent dealers, who then sell to individuals, teams and institutions. The remaining 11% of the Lacrosse Business' sales were through big box retailers and sporting goods retail chains.

47. The Uniforms Business predominantly sells its products directly to teams and associations.

48. The PSG Entities strive to maintain the loyalty, support, and goodwill of their distributors, retailers, and consumers. Towards that end, in the ordinary course of business, the PSG Entities provide distributors, retailers and consumers with certain programs that engender goodwill, maintain loyalty, increase the PSG Entities' sales opportunities, and allow the PSG Entities a comparative advantage over their competition (the "**Customer Programs**").

49. Specifically, the Customer Programs include gift cards, loyalty programs, discounts, warranties allowing refunds and exchanges, and other offers or accommodations the PSG Entities, in their business judgment, provide to their wholesale customers and/or directly to retail consumers, as applicable. The Customer Programs also include consumer protection initiatives including recalls and customer reimbursement vouchers. Ongoing specific Customer Programs currently include a recall in respect of cages of certain hockey goalie masks which commenced in March 2015, and a settlement of product liability claims involving the distribution of vouchers to certain consumers.

50. In order to promote and communicate directly to end-users, the PSG Entities have agreements with approximately 100 industry experts, primarily comprised of amateur and professional athletes, who are a key part of marketing to consumers.

E. Employees

51. As of September 30, 2016, the PSG Entities, European Subsidiaries and PSG HK collectively had 728 employees globally. By location, 224 employees were located in Canada, 430 were located in the U.S., 23 were located in Taiwan, 35 were located in Sweden, 9 were located in Germany and 7 were located in Finland. By business line, 432 of the employees were employed by the Bauer Business and services shared among the PSG Entities, 165 of the employees worked in the Easton Business, 74 were employed by the Lacrosse Business and 57 were employed by the Uniforms Business and in apparel for the various business lines.

52. The majority of the PSG Entities' workforce is non-unionized. Canada is the only location with unionized employees, who are employed by Bauer Canada in Blainville, Quebec. 33 of 119 full-time Blainville situated employees are members of the United Steelworkers' Union of America (the "**USW**") Local 967 and are subject to a five-year collective bargaining agreement expiring on November 30, 2017.

53. In February, 2016, the PSG Entities closed a distribution facility in Mississauga, Ontario. Approximately 51 employees belonging to the Glass, Molders, Pottery, Plastics and Allied Workers International Union were terminated in January and February 2016 because of the closure.

54. Due to the consolidation of the COMBAT operations with the EASTON operations, the PSG Entities terminated the employment of an additional 85 individuals between July and October, 2016, of whom approximately 77% were employees located in Canada and 23% were employees located in the U.S. The workforce reductions, primarily related to consolidation of the COMBAT operations, have resulted in the number of the PSG Entities' employees falling by approximately 15% since the end of fiscal 2016 and approximately 19% since the end of calendar 2015.

F. Pensions and Benefits

Canada

55. Under the collective bargaining agreement with the unionized employees in Blainville, Quebec, Bauer Canada maintains a simplified defined contribution pension plan (the "**Union DC Plan**") registered with Retraite Quebec. Under the Union DC Plan, Bauer Canada matches employee contributions up to C$0.35/per hour worked by the employee up to a maximum of 80 hours bi-weekly. The Union manages the investments of the Union DC Plan on behalf of the participants.

56. Most non-unionized employees of certain of the Canadian PSG Entities are members of a defined contribution Registered Retirement Savings Plan (the "**Canadian RRSP Plan**"). The Canadian PSG Entities do not contribute directly to the RRSP, which is funded through payroll deductions and voluntary lump-sum payments by eligible employees. However, the Canadian PSG Entities match dollar for dollar contributions up to 4% of an employee's regular pay.

57. Bauer Canada provides a supplemental pension plan (the "**Canadian SERP**") for nine former executives which is not a registered pension plan and does not accept new participants. There is no funding obligation under these plans. As at May 31, 2016, the Canadian SERP had an accrued benefit obligation of approximately C$4.53 million. The PSG Entities do not intend to continue paying the Canadian SERP obligations during the CCAA proceedings.

58. Finally, the PSG Entities provide a post-retirement life insurance plan to most Canadian employees. The life insurance plan is not funded and as at May 31, 2016 had an accrued benefit obligation of C$614,000.

U.S.

59. The U.S. PSG Entities provide a 401(k) plan to certain of their employees which consists of matching, dollar for dollar, the first 4% contributed by the employee to the plan. Approximately 320 active employees participate in the 401(k) Plan.

60. Bauer U.S. provides a U.S. supplemental pension plan (the "**U.S. SERP**") which is not qualified, is not funded, and does not accept new participants. As at May 31, 2016, there

is one participant in the U.S. SERP who is a former employee. As at May 31, 2016, the U.S. SERP had an accrued benefit obligation of approximately US$871,000. The Applicants do not intend to continue paying the U.S. SERP obligations during the CCAA proceedings.

G. Suppliers

Sourcing and Manufacturing

61. The PSG Entities have an established and comprehensive manufacturing platform with key third party suppliers, which primarily have their facilities located in China, Thailand and Vietnam and which together produce the vast majority of PSG Entities' manufactured products. Many of these suppliers are legally or functionally exclusive to the PSG Entities such that their businesses are dependent on the Applicants. The PSG Entities also have some suppliers located in Canada and the U.S.

62. The Bauer Business orders the majority of its hockey equipment from suppliers based in Asia who are committed exclusively to supplying to the PSG Entities. The remaining hockey products are manufactured either at non-exclusive facilities in Asia or at the PSG Entities' in-house manufacturing facilities in Blainville, Quebec and Liverpool, New York. The Quebec facility manufactures professional hockey equipment for its sponsored athlete partners, including NHL players. Quality control of the Asian suppliers' manufacturing facilities is primarily managed from the PSG Entities' offices in Blainville, Quebec and Taichung, Taiwan.

63. The Easton Business sources the manufacturing of its composite bats from an exclusive supplier located in China. A small percentage of the Easton Business' products are sourced through vendors based in the U.S. and its wooden bats produced in-house by the PSG Entities at their facility located in West Lake Village, California. Its remaining baseball and softball products are manufactured in non-exclusive facilities that are located in China, Thailand, Indonesia and Vietnam.

64. For the Lacrosse Business, CASCADE branded helmets and other head protection is produced at an in-house facility in Liverpool, New York. MAVERIK branded products are primarily sourced from suppliers in China, Vietnam, and Taiwan.

65. The Uniforms Business' raw materials, work-in-process and non-custom apparel are primarily sourced from suppliers in Asia. For custom orders, production is finished at a facility in Toronto, Ontario.

Internal Supply Chain

66. The U.S. PSG Entities receive inventory from the third party suppliers described above, and the Canadian PSG Entities in turn purchase the inventory needed for their operations from the U.S. PSG Entities. The Canadian PSG Entities pay cost plus a mark-up based upon the value added to the goods provided. The Canadian PSG Entities generally purchase their inventory from the U.S. entity that operates along the same business line (e.g. Bauer Canada buys hockey inventory from Bauer U.S.).

67. For supplies received from outside of North America, the PSG Entities use customs brokers to handle duties, shipping charges and other related expenses. Generally, inventory is shipped free on board, so that title to the goods transfers at the point of shipping.

68. Approximately 40% of the PSG Entities' goods are shipped to warehouses leased by the PSG Entities, with the remaining 60% shipped directly, through third party logistics providers, to customer warehouses.

H. Intellectual Property

69. The PSG Entities protect their technologies, products and brands under the patent, copyright and trademark laws of those countries in which they conduct business in order to maintain a competitive advantage with respect to the technology and design incorporated into their products. Innovation in the PSG Entities' products enhances player performance and management believes it is a key differentiating factor between their products and those of their competitors.

70. The PSG Entities' patent portfolio includes hundreds of issued patents and pending patent applications. The patents are held by various entities and cover the following key areas:

(a) Skate construction: designs, materials, and manufacturing of skates, including their skate boot, blade holder, and blade, to help make them lighter, perform better, customizable, and be manufactured more efficiently.

(b) TUUK skate blade holders: innovative skate blade holders that allow quick and easy change of the holder and steel.

(c) Quick-connect visors: patented visors that can be quickly connected to and disconnected from the helmet to allow the player to easily remove the visor to clean or replace it.

(d) Sticks: composite hockey stick shaft technology to reduce stiffness of shafts, and enhance the elastomeric properties of shafts.

(e) Composite baseball bats: multiple patents directed to achieve desired performance and durability characteristics and allow the bat to achieve a high performance with minimal vibration.

(f) Helmets: advanced features to enhance protection, fit, and ease of adjustment.

(g) Protective gear: optimizing various equipment, including leg pads, gloves and shoulder pads, for protection and performance.

71. In addition to the PSG Entities' patent portfolio, the Applicants have a number of registered trademarks to protect their brands which have become trusted by consumers in their respective markets. The trademarks have been registered in each of the jurisdictions in which the PSG Entities operate and are typically held by the legal entity that operates the business line that uses the trademark. For example, Bauer Canada and Bauer U.S. hold the majority of the trademarks used by the Bauer Business.

72. In addition to having their own registered trademarks, the PSG Entities use certain trademarks that are owned by Nike. Upon selling Bauer Canada, Bauer U.S. and their respective subsidiaries, Nike granted an exclusive, worldwide, royalty-free, perpetual license to use certain trademarks associated with the VAPOR and SUPREME sub-brands in the hockey equipment and apparel markets. Nike continues to brand and mark certain products with the brands outside of the hockey equipment and apparel markets.

I. Properties and Facilities

73. As of October 28, 2016, the PSG Entities leased 17 facilities across the globe for various functions, including sales, marketing, research and development, warehousing and distribution and retail stores. The PSG Entities' global headquarters is located in Exeter, New Hampshire and another nine leased facilities are located in the U.S. Six facilities are located in either Ontario or Quebec, including the research and development centre in Blainville, Quebec. Bauer U.S. also leases a facility located in Taiwan.

74. The European Subsidiaries lease another 5 facilities located in Finland, Sweden, and Germany.

75. PSG has issued a letter of credit in respect of the Exeter, New Hampshire leased property in the amount of approximately $1 million.

J. Cash Management System and Intercompany Transactions

Cash Management

76. In the ordinary course of their business, the PSG Entities use a centralized cash management system (the "**Cash Management System**") to, among other things, collect funds and pay expenses associated with their operations. The Cash Management System gives the Applicants the ability to quickly, cost-effectively and accurately track and control corporate funds and ensure cash availability

77. As described below, the PSG Entities maintain bank accounts in both Canada and the U.S. for their respective Canadian and U.S. operations as well as accounts related to the holding companies. Most of the PSG Entities' North American accounts are with Bank of America ("**BOA**"). While the Applicants' business is intertwined in many ways, in other ways there are low levels of integration, for example with respect to their cash management, which is complex and has only recently been standardized and integrated internally.

Canada

78. The PSG Entities maintain 23 bank accounts with BOA in Canada (the "**Canadian Accounts**"), consisting of:

(a) Two bank accounts for Bauer Canada;

(b) Two bank accounts for Bauer Performance Lacrosse Corp.;

(c) Two bank accounts for Bauer Performance Sports Uniforms Corp.;

(d) One bank account for BPS Diamond Sports Corp.;

(e) Four bank accounts for Easton Canada;

(f) Two bank accounts for PSG;

(g) Two bank accounts for PSG Innovation Corp.; and

(h) One bank account for each of the U.S. PSG Entities which hold approximately $1,000 each.

79. The Canadian Accounts are all located at BOA's branch in Toronto, Ontario.

80. Four Canadian Accounts are used to deposit receipts (the "**Canadian Receipt Accounts**"), typically payments received from customers. All the Canadian Receipt Accounts are denominated in Canadian dollars. There is a Canadian Receipt Account for each business line, each of which is held by the respective entity operating the business line. The Canadian Receipt Accounts are blocked accounts and are swept daily by BOA to repay amounts outstanding under the ABL Facility (defined below).

81. Eleven Canadian Accounts are used as operating accounts (the "**Canadian Operating Accounts**") to make disbursements on account of expenses owed by the PSG Entities, including payroll and accounts payable. Eight Canadian Operating Accounts are denominated in Canadian dollars and two are denominated in U.S. dollars. The primary Canadian Operating Accounts are funded by draws on the ABL Facility as funds are required.

82. One Canadian Account is a concentration account that is held by Easton Canada. The concentration account disburses funds to two of the Canadian Operating Accounts.

83. The Canadian PSG Entities' Canadian dollar accounts are ultimately aggregated into the Bauer Canada operating account.

<u>United States</u>

84. The PSG Entities maintain another 19 bank accounts with BOA in the U.S. (the "**U.S. Accounts**"), consisting of:

(a) Two accounts held by Bauer U.S.;

(b) Two accounts held by Bauer Canada;

(c) Two accounts held by Bauer Performance Lacrosse Inc.;

(d) Two accounts held by Bauer Hockey Retail Inc.;

(e) One account held by Bauer Performance Sports Uniforms Corp.;

(f) Two accounts held by BPS Diamond Sports Inc.;

(g) One account held by BPS Diamond Sports Corp.;

(h) Four accounts held by Easton U.S.;

(i) One account held by PSG Innovation Inc.;

(j) One account held by BPS Canada Intermediate Corp.; and

(k) One account held by BPS US Holdings Inc.

85. The U.S. Accounts are located at BOA branches in Concord, California and Farmington, Connecticut.

86. Six of the U.S. Accounts denominated in U.S. dollars are used to deposit receipts (the "**U.S. Receipt Accounts**"). Similar to Canada, there is a U.S. Receipt Account for each business line held by the respective entity operating the business line. There is also a U.S. Receipt Account for deposits in respect of the PSG Entities' retail operations in the U.S. and a U.S. Receipt Account held by Bauer Canada which is not currently operational, but was set up to be used to allow Canadian customers to pay in U.S. dollars. The U.S. Receipt Accounts are all denominated in U.S. dollars. Five of the accounts are blocked accounts and are swept daily by BOA to repay amounts outstanding under the ABL Facility.

87. Twelve U.S. Accounts are used as operating accounts (the "**U.S. Operating Accounts**") to make disbursements on account of expenses owed by the PSG Entities, including payroll and accounts payable. All of the U.S. Operating Accounts are denominated in U.S. dollars. The primary U.S. Operating Accounts are funded by draws on the ABL Facility.

Europe and Asia

88. Outside of North America, Bauer U.S. (through its branch office in Taiwan), the European Subsidiaries and PSG HK hold three bank accounts with BOA, fifteen bank accounts with Handelsbanken, and two bank accounts with Cathay United Bank (the "**Eurasia Accounts**"). In particular:

(a) BPS Luxembourg S.a.r.l. holds two bank accounts with BOA;

(b) Bauer Hockey AB holds twelve bank accounts with Handelsbanken;

(c) Bauer Hockey GmbH holds three accounts with Handelsbanken;

(d) PSG HK holds an account with BOA; and

(e) Bauer U.S. holds two accounts with Cathay United Bank through its representative office in Taiwan.

89. One of the Eurasia Accounts is a customs guarantee account and the remaining are general operating accounts used to deposit receipts and pay disbursements of the European Subsidiaries and PSG HK.

90. The cash management for the European Subsidiaries is structured so that each subsidiary retains sufficient cash to pay for ongoing operations. Funds received from sales are paid by customers to the applicable European Subsidiary, which converts the funds to U.S. dollars and sends them to Bauer Canada. The inventory sold is never owned by the European Subsidiaries and Bauer Canada retains title of the inventory until it is delivered to the customer.

91. Continued access to the Cash Management System is critical to the ongoing business of the Applicants.

Foreign Exchange Forward Contracts

92. With a global customer-base and operations in various jurisdictions, the PSG Entities' financial results are exposed to fluctuations in foreign currency exchange rates. Due to the significant amount of Canadian sales, a declining Canadian dollar is the most significant currency exposure of the PSG Entities. The PSG Entities are also exposed to fluctuations in the Swedish krona and the euro, among others.

93. The PSG Entities use foreign exchange forward contracts to manage these currency exchange risks, hedging the effect of changes in currency exchange rates on product costs. The hedging practice is designed to provide stability around the receipt of cash, and at least partially offset the impact of exchange rate changes on the underlying exposure.

94. Currently, the PSG Entities are not initiating new hedges or forward contracts. The PSG Entities hold approximately $51.3 million in forward contracts allowing for the purchase of certain currencies at pre-determined exchange rates. Forward contracts with a current value of approximately $7.5 million expire in the second quarter of fiscal 2017, forward contracts with a current value of approximately $34.8 million expire in the third and fourth quarters of 2017 and the remaining contracts expire in fiscal 2018.

Transfer Pricing

95. The PSG Entities' business is integrated such that certain PSG Entities perform specific functions for the benefit of all of the Applicants. This organizational structure results in high levels of inter-company receivables and payables necessitating an inter-company transfer pricing model.

96. The PSG Entities' transfer pricing model (the "**Transfer Pricing Model**"), in most instances, involves allocating certain costs incurred by specific entities across the PSG Entities. Generally, the Transfer Pricing Model can be broken down as follows:

(a) *Provision of Physical Goods*: Certain PSG Entities are responsible for the procurement and manufacturing of products. To access global markets these PSG Entities sell inventory and products to other PSG Entities who perform sales and marketing functions. When selling products between the PSG Entities, each company sells at cost plus a mark-up. Each business line applies a mark-up of 5% or 25% based upon the value added to the products by the selling PSG Entity and the costs ancillary to the products, such as warehousing and arranging freight.

(b) *Provision of Research and Development*: Certain entities provide research and development services to the other PSG Entities. In particular, Bauer Canada and Bauer U.S. focus on research and development and a majority of the employees responsible for product development are employed by these two entities. Research and development costs are allocated between the PSG Entities using a two-step methodology. First, the research and development costs are allocated to each functional division or business line. Second, the costs of each functional division are allocated to legal entities based upon the entity that benefits from such services. A mark-up of 10% based on the arm's length principle is applied when allocating the costs on each legal entity.

(c) *Provision of Selling, General and Administrative Services*: The PSG Entities and the European Subsidiaries provide sales and marketing and administrative services to each other. Bauer Canada and Bauer U.S. employ the majority of the employees that are responsible for providing administrative services to the PSG Entities, such as legal, sourcing, finance and accounting. The main function of the European Subsidiaries is sales and marketing and therefore, they generally invoice Bauer Canada and the other relevant entities for their services. Generally, selling, general and administrative expenses costs are allocated in same fashion as research and development costs. First, the costs are allocated to each functional division and second, the costs are allocated to the legal entity that benefited from the services. General and administrative costs are allocated at cost without a mark-up. Sales and marketing costs are allocated either at cost or cost plus a mark-up of 10%.

97. The PSG Entities engage an independent accounting firm to analyze whether the transactions under the Transfer Pricing Model represent a reasonable measure of arm's length prices. The most recent report, consistent with past reports, concluded that the current Transfer Pricing Model provides a reasonable measure of the arm's length price

associated with the transactions which that the accounting firm analyzed. The report was based upon transfer pricing analysis on the accounting firm's expertise and analysis of comparable companies operating in similar industries.

III. ASSETS AND LIABILITIES OF THE PSG ENTITIES

98. A copy of the PSG Entities' fiscal 2015 audited financial statements are attached hereto as Exhibit "C" and a copy of the unaudited financial statements for the quarter ending November 30, 2015 are attached hereto as Exhibit "D". The PSG Entities' latest unaudited financial statements are for the quarter ending February 29, 2016, a copy of which are attached hereto as Exhibit "E". As detailed starting at paragraph 147 to this affidavit, as at the date of this affidavit, the fiscal 2016 financial statements have not been prepared and are pending, among other things, internal review.

A. Assets of PSG

99. As at September 30, 2016, PSG's assets had a book value of approximately $594 million. The majority of these assets were comprised of accounts receivable, inventory and intangible assets. The bulk of the intangible net assets line item relates to the PSG Entities' proprietary research and development, license agreements with third parties, and brand names.

B. Liabilities of PSG

100. As at September 30, 2016, PSG had liabilities totalling approximately $608 million. The major liabilities of the PSG Entities consisted of short term debt and long term debt. The majority of the PSG Entities' liabilities are obligations under the Term Loan Facility and ABL Facility (both defined below).

Term Loan Facility

101. PSG, as borrower, and a syndicate of lenders, as lenders, are among the parties to a term loan credit agreement dated as of April 15, 2014 (as amended from time to time, the "**Term Loan Agreement**") in the principal amount of $450 million (the "**Term Loan Facility**"). The Term Loan Facility matures on April 15, 2021. As at October 28, 2016, approximately $330.5 million was outstanding under the Term Loan Facility.

102. The rate of interest payable on amounts outstanding under the Term Loan Facility varies based on the type of advance, the appropriate applicable margin, and PSG's choice of LIBOR or the U.S. base rate. The current rate of interest under the Term Loan Facility is 4.83% per annum.

103. Principal amounts outstanding under the Term Loan Facility are repayable according to a repayment schedule set out in the Term Loan Agreement. The next scheduled payment of principal and interest is due on November 30, 2016.

104. PSG's obligations in respect of the Term Loan Facility are jointly and severally guaranteed by Bauer Canada, Bauer U.S., Performance Lacrosse Group Corp., Performance Lacrosse Group Inc., Bauer Performance Sports Uniforms Corp., Bauer Performance Sports Uniforms Inc., BPS Diamond Sports Corp., BPS Diamond Sports Inc., Easton Canada, Easton U.S., BPS U.S., KBAU, BPS Canada Intermediate Corp., Bauer Hockey Retail Inc., and Bauer Hockey Retail Corp. (collectively, the "**PSG Guarantors**"). PSG Innovation Corp. and PSG Innovation Inc. are the only Applicants which are not PSG Guarantors.

105. The obligations of PSG and the PSG Guarantors in respect of the Term Loan Facility are secured by, among other things, a U.S. security agreement and a Canadian security agreement (collectively, the "**Term Loan Security Agreements**") and a U.S. pledge agreement and a Canadian pledge agreement (collectively, the "**Term Loan Pledge Agreements**"), each dated as of April 15, 2014.

106. Pursuant to the Term Loan Security Agreements and the Intercreditor Agreement (as defined below), the administrative agent under the Term Loan Agreement (the "**Term Loan Agent**") was granted a first priority security interest in the following collateral, subject to permitted liens and certain exceptions:

(a) all present and future shares of capital stock (or other ownership or profit interests) held by PSG or any PSG Guarantor (subject to certain exceptions);

(b) all present and future debt owed to PSG or any of the PSG Guarantors;

(c) all present and future property and assets, real and personal (other than assets constituting the ABL Priority Collateral, as defined below) of PSG and the PSG Guarantors, including, but not limited to, machinery and equipment, patents, trademarks, trade names, copyrights, other intellectual property and other contract rights; and

(d) all proceeds and products of the property and assets described above (collectively, the "**Fixed Asset (Term) Priority Collateral**").

107. The Term Loan Facility is further secured by perfected second priority security interest in the ABL Priority Collateral (defined below), subject to permitted liens and certain exceptions.

108. Pursuant to the Term Loan Pledge Agreements, PSG and the PSG Guarantors pledged a security interest in, among other things, all accounts, shares, notes, interests, participations or other equivalents owned or acquired from time to time by PSG and the PSG Guarantors.

109. Repayment of the Term Loan Facility may be accelerated upon occurrence of an event of default, subject (in certain cases) to a requirement that the Term Loan Agent give notice that an event of default has occurred and to certain cure rights. Events of default under the Term Loan Agreement include, among other things, non-payment of the principal or interest when due, failure to file financial statements, defaults under any other indebtedness to which the PSG Entities or PSG's other restricted subsidiaries are subject and the commencement of insolvency proceedings by any of those entities.

110. PSG did not file its annual audited financial statements for fiscal 2016 by the filing deadline, as described in greater detail below. As a result, the PSG Entities which were borrowers under the Term Loan Agreement would have been in default under same.

111. Pursuant to an amendment to the Term Loan Agreement dated as of August 29, 2016 (the "**Term Loan Amendment**"), the period of time granted to PSG to file its annual financial statements for fiscal 2016 was extended to October 28, 2016. A copy of the Term Loan Amendment is attached hereto as Exhibit "F".

ABL Facility

112. Bauer Hockey Corp., Bauer Hockey, Inc., and most of the other U.S. and Canadian subsidiaries of PSG[3] (collectively, the "**ABL Borrowers**"), as borrowers, and Bank of America, N.A., as administrative agent, collateral agent and lender (the "**ABL Agent**"), and others are parties to a revolving ABL credit agreement dated as of April 15, 2014 (as amended from time to time, the "**ABL Agreement**"), in the principal amount of $200 million (the "**ABL Facility**"). The ABL Facility matures on April 15, 2019. As at October 28, 2016, approximately $158.9 million was outstanding under the ABL Facility.

113. The ABL Facility is an asset-backed loan governed by a borrowing base calculation that is comprised of eligible accounts receivable and eligible inventory. The ABL Facility requires that a certain cash balance be maintained to meet a minimum calculated borrowing base equal to the outstanding principal amount. The ABL Facility contains various restrictive covenants which, among other things, limit PSG's ability to incur additional indebtedness or encumber its assets.

114. The rate of interest payable on amounts outstanding under the ABL Facility is determined according to formulas set out in the ABL Agreement. The current rate of interest under the ABL Facility is 3.33%.

115. The ABL Borrowers' obligations in respect of the ABL Facility are jointly and severally guaranteed by PSG and the PSG Guarantors.

116. The ABL Borrowers' obligations in respect of the ABL Facility are secured by, among other things, a U.S. security agreement and a Canadian security agreement (collectively, the "**ABL Security Agreements**") and a U.S. pledge agreement and a Canadian pledge agreement (collectively, the "**ABL Pledge Agreements**"), each dated as of April 15, 2014.

117. Pursuant to the ABL Security Agreements and the Intercreditor Agreement (defined below), the ABL Agent was granted a first priority security interest in certain collateral, including:

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[3] PSG Innovation Corp. and PSG Innovation Inc. are not parties to the ABL Facility. PSG and BPS Canada Intermediate Corp. are guarantors but not borrowers under the ABL Facility.

(a) all present and future accounts receivable (except to the extent constituting proceeds of equipment, real property, intellectual property, or intercompany loans);

(b) all present and future inventory;

(c) all present and future instruments, chattel paper and other contracts, in each case, evidencing or substituted for, the accounts receivable;

(d) all present and future guarantees, letters of credit, security and other credit enhancements for the accounts receivable;

(e) all present and future documents of title for any inventory;

(f) all present and future bank accounts, or investment property but excluding certain deposit accounts and any capital stock;

(g) all present and future tax refunds;

(h) all present and future supporting obligations, documents and books and records relating to any of the above; and

(i) all substitutions, replacements, accessions, products or proceeds of any of the above, (collectively, the "**ABL Priority Collateral**").

118. The ABL Facility is further secured by perfected second priority security interest in the Fixed Asset (Term) Priority Collateral, subject to permitted liens and certain exceptions.

119. Pursuant to the ABL Pledge Agreements, PSG and the PSG Guarantors pledged a security interest in, among other things, all accounts, shares, notes, interests, participations or other equivalents owned or acquired from time to time by PSG and the PSG Guarantors.

120. Repayment of the ABL Facility may be accelerated upon occurrence of an event of default, subject (in some cases) to a requirement that the ABL Agent give notice that an event of default has occurred and to certain cure rights. Events of default under the ABL Agreement include, among other things, non-payment of the principal or interest when due, failure to file financial statements, defaults under any other indebtedness to which the PSG

Entities and PSG's other restricted subsidiaries are subject and the commencement of insolvency proceedings by any of those entities.

121. As discussed above, PSG failed to file its annual financial statements, which would have triggered a breach of covenant sufficient to give rise to an event of default under the ABL Agreement without an amendment under same.

122. Pursuant to an amendment to the ABL Agreement dated as of August 29, 2016 (the "**ABL Loan Amendment**"), the period of time granted to PSG to file its annual financial statements for fiscal 2016 was extended to October 28, 2016. A copy of the ABL Loan Amendment is attached hereto as Exhibit "G".

<u>Intercreditor Agreement</u>

123. In connection with the Term Loan Facility and the ABL Facility (collectively, the "**Credit Facilities"**), PSG and the PSG Guarantors thereunder, entered into an intercreditor agreement with their lenders as contemplated by the Term Loan Agreement and the ABL Agreement (as amended from time to time, the "**Intercreditor Agreement"**), dated April 15, 2014.

124. Pursuant to the Intercreditor Agreement:

(a) the lenders under the ABL Facility (the "**ABL Lenders**") have first-ranking security on the ABL Priority Collateral and second-ranking security on the Fixed Asset (Term) Priority Collateral ; and

(b) the lenders under the Term Loan Facility (the "**Term Lenders**" and, together the "**Secured Lenders**") have first-ranking security on the Term Loan Collateral and second-ranking security on the ABL Priority Collateral.

IV. FINANCIAL DIFFICULTIES AND NEED FOR CCAA PROTECTION

A. Financial Difficulties

125. Over the last year, the PSG Entities have experienced significant unfavourable financial results due to the occurrence of a number of negative events in a relatively short timeframe. Sales for the first nine months of fiscal 2016 declined by 10%, as compared to the first nine months of fiscal 2015, contributing to a decrease in gross profit by $25 million. At

the same time, expenses have increased significantly due to, among other things, write-offs of accounts receivables due to customer insolvencies and other non-operational expenses described below. Further, due in part to a decline in sales and gross margins of the products sold by the PSG Entities, PSG impaired goodwill by over $145 million by February 29, 2016. As result of these and other events described below, for the nine-month period ending February 28, 2016, the PSG Entities experienced an operating loss of approximately $164 million and a net loss of approximately $197 million, as compared to a net profit of $3.28 million in fiscal 2015 and $19.99 million in fiscal 2014. The causes of these poor results are described in greater detail below.

Customer Insolvencies

126. A major factor leading to the PSG Entities' current liquidity position has been the consequences of the unexpected financial difficulties experienced by a number of key customers in late 2015 and 2016, primarily Team Express Distributing, LLC ("**Team Express**"), the Sports Authority ("**TSA**"), Vestis Retail Group, LLC ("**Vestis**") and Total Hockey Inc. ("**Total Hockey**").

127. On December 16, 2015, Team Express filed chapter 11 proceedings in the U.S. Team Express was primarily an online retailer of baseball and softball equipment. At the time of its filing, the PSG Entities were owed approximately $4.75 million in accounts receivable and have since written-off approximately $4.5 million of that amount. In fiscal 2015, the Easton Business' sales to Team Express totalled approximately $9.5 million.

128. On March 2, 2016, TSA filed chapter 11 proceedings in the U.S. TSA was a major sports retailer in the U.S. with approximately 450 locations. TSA was one of the Easton Business' most significant customers with fiscal 2015 sales totalling approximately $19.9 million. According to initial news reports and TSA's own public disclosure, it intended to close only 140 of its 450 stores during the course of its restructuring. However, according to subsequent news reports, after failing to reach an agreement with its creditors on a restructuring plan, TSA proceeded to close all remaining stores and liquidate its remaining assets. At the time of TSA's bankruptcy, the PSG Entities were owed approximately $2.6 million in accounts receivable and have since written-off the entire amount. The PSG

Entities also entered into settlement agreements with TSA with respect to consignment inventory and other anticipated liabilities.

129. On April 16, 2016, Vestis, the company operating Sport Chalet, a network of sporting goods store in the southwest U.S, filed for chapter 11 protection. The Sport Chalet stores were a customer of the Easton Business, stocking various baseball and softball products. After commencing its chapter 11 proceedings, Vestis proceeded to shut down approximately 47 Sport Chalet stores. At the time of its filing, the PSG Entities were owed approximately $800,000 in accounts receivable.

130. Finally, Total Hockey, a hockey and lacrosse retailer with approximately 30 stores and a significant online presence, filed chapter 11 proceedings in the U.S. in July 2016. Total Hockey was a significant customer of the Bauer Business and the Lacrosse Business. In fiscal 2015, the PSG Entities' sales to Total Hockey were approximately $19 million and upon Total Hockey's filing for creditor protection, the PSG Entities were owed approximately $14 million. Since the filing the PSG Entities have written-off approximately $13 million of that amount.

131. Ultimately, Team Express and Total Hockey's insolvency proceedings resulted in sales of these businesses to other sporting goods retailers in May and July 2016, respectively. Though continuing as going-concerns, Team Express and Total Hockey have reduced the size of their operations through the course of their respective chapter 11 cases, affecting the amount of product that the PSG Entities are able to sell to the businesses. These hockey and lacrosse retailer insolvencies were compounded by the fact that in 2015, two large retailers consolidated the market through acquisitions such that the industry was already more concentrated when the insolvencies and resulting tightening of the industry occurred.

132. TSA and the Sports Chalet stores owned by Vestis have both wound down operations and liquidated their inventories.

133. The insolvency of these customers significantly negatively affected the PSG Entities' financial performance by causing a number of receivables to become fully or partially uncollectable within a short-period of time. Compounding the negative impact on receivables is the fact that as these customers have entered into restructuring and/or

liquidating proceedings, they have reduced purchase orders from the PSG Entities and their unsold existing inventory is being liquidated in the market.

Below-Target Performance of Key Business Lines

134. As noted above, in 2014, PSG acquired the Easton baseball/softball business line for $330 million (plus adjustments and fees). The Easton Baseball Acquisition, funded by proceeds of the Credit Facilities, substantially increased the leverage of the PSG Entities.

135. In fiscal year 2015, the Easton Business' sales were strong and new product launches and a geographical expansion was expected to roll out in 2016.

136. However, in fiscal 2016, the Easton Business suffered from a reduction in sales attributed to weakness in the baseball/softball market generally and the above-noted challenges faced by the PSG Entities' customers. During fiscal 2016, PSG wrote down the value of the Easton Business due to these events.

137. The PSG Entities also experienced lower than expected sales in the Bauer Business, in part due to a consolidation of hockey retailers in the U.S. and the insolvency of the hockey equipment retailers noted above.

138. The underperformance in the two most significant of the PSG Entities' business lines has significantly negatively affected the PSG Entities' overall profitability.

Unfavourable Exchange Rates

139. As explained above, the PSG Entities' financial results are exposed to fluctuations in currency exchange rates. With the Bauer Business' significant amount of Canadian dollar denominated sales while the majority of production costs are denominated in U.S. dollars, a declining Canadian dollar compresses the PSG Entities' margins and reduces overall profitability.

140. Despite the PSG Entities' hedging efforts, in fiscal 2015, the PSG Entities experienced a $19.5 million currency loss and, as of February 29, 2016, had experienced a further $8.7 million loss. The losses were primarily due to the weakening Canadian dollar starting in late 2014, which weakened by 8.3% over the course of fiscal 2015 and 4.2% over the course of fiscal 2016. The declining Canadian dollar resulted in lower revenue realized by the PSG Entities relative to their cost of goods sold.

141. In all, responding to the significant number of adverse events affecting the Applicants in the past year has taken up a considerable amount of management time in an effort to improve profitability and turn around the business for the benefit of all stakeholders.

Commencement of Regulatory Investigations

142. In response to the difficulties experienced by their customers and the below target performance of the Easton Business, the PSG Entities reduced their earnings guidance for the third quarter of fiscal 2016 and entire fiscal 2016. The press releases issued in respect of the revisions in January and March 2016 are attached hereto as Exhibits "H" and "I", respectively. After issuing the revised earning guidance, on March 8, 2016, the PSG Entities common share price fell by approximately 67%.

143. The Ontario Securities Commission (the "**OSC**") has commenced an issue-oriented review of PSG's continuous disclosure record, and the Securities and Exchange Commission (the "**SEC**") Enforcement Division has opened an inquiry into PSG's revised earnings guidance and several other related topics of interest, in response to PSG's revised third quarter and full fiscal year earnings guidance. Following the August 15, 2016 announcement that an internal investigation was ongoing which would impact the filing of audited financial statements, the OSC and SEC extended their inquiries to related matters. In addition, the Financial Industry Regulatory Authority ("**FINRA**") conducted a review of trading in PSG's common shares surrounding (i) PSG's March 8, 2016 revised earnings guidance announcement and (ii) PSG's August 15 announcement that its Annual Report on Form 10-K would not be filed by the required filing date. PSG provided the information requested by FINRA pursuant to these reviews.

144. The PSG Entities have cooperated with the OSC, SEC and FINRA throughout their reviews.

Commencement of U.S. Securities Litigation

145. Connected to the revised earnings guidance, on May 16, 2016, certain equity investors commenced a class action lawsuit in the U.S. against PSG and certain former officers of PSG (the "**Class Action**"). The lead plaintiff in the Class Action is the Plumbers & Pipefitters National Pension Fund and it is proceeding before the U.S. District Court,

Southern District of New York (Case No. 1:16-cv-03591) (the "**U.S. District Court**"). The former officers of PSG named by the Class Action are Kevin Davis, the former Chief Executive Officer of PSG and Amir Rosenthal, the former President of PSG.

146. Per the filed complaint, the Class Action alleges that (i) PSG and the named officers withheld information from investors about PSG's sales practices and their impact on the PSG's financial performance; and (ii) that shareholders were injured as a result of this misconduct because they purchased PSG shares at inflated prices. PSG has filed a comprehensive defence to the Class Action denying the allegation contained in the complaint. The PSG Entities also filed to a motion to dismiss the Class Action on October 13, 2016. Paul, Weiss, Rifkind, Wharton & Garrison LLP represents PSG in its defence of the Class Action.

Inability to File Fiscal 2016 Financial Statements

147. Pursuant to securities laws in both Canada and the U.S., PSG was required to file the Reporting Materials by the Filing Deadline.

148. However, on August 15, 2016, PSG announced that the Reporting Materials would not be filed by the Filing Deadline. The delay was the result of the decision of the audit committee (the "**Audit Committee**") of PSG's board of directors to commence an internal investigation in connection with the finalization of the Reporting Materials. The press release issued in respect of the internal investigation is attached hereto as Exhibit "J".

149. The Audit Committee retained Richards Kibbe & Orbe LLP ("**RKO**") as outside independent legal counsel to assist with the internal investigation. RKO subsequently retained Alix Partners, LLP to provide accounting services, including forensic services, if necessary. The Audit Committee is working closely with these professionals as well as the PSG Entities' Canadian and U.S. outside counsel during this investigation.

150. The Audit Committee's investigation remains ongoing as of the date of this affidavit and consequently, the Applicants remain unable to file the Reporting Materials.

151. As noted above, not filing the Reporting Materials in a timely manner constitutes a breach of covenant sufficient to give rise to an event of default under the Credit Facilities. The Secured Lenders and PSG initially agreed to extend the period for filing the Reporting

Materials to October 28, 2016. However, PSG has not been able to file the Reporting Materials by the extended deadline and are now in default under the Credit Facilities.

B. Reponses to Financial Difficulties

152. Taken together, the events of the past year have presented significant and unforeseen challenges to the business and operations of a group of companies that had undertaken an assertive acquisition approach to its business in the past eight years.

153. The PSG Entities have undertaken significant efforts to counteract the recent financial difficulties experienced, including:

(a) Reorganizing certain key members of management within the company, including replacing the CEO;

(b) Consolidating the EASTON and COMBAT brands into one business line;

(c) Other cash generating initiatives , including workforce reductions, operating consolidation and reducing overall working capital requirements through reductions in inventory and accounts receivable;

(d) Efficiency improvements including inventory quality improvements, reduced product costs and reduced working capital requirements in the PSG Entities' supply chain;

(e) Hiring a restructuring advisor (Alvarez & Marsal North America, LLC ("**A&M**")) to assist with liquidity management; and

(f) Forming a special committee of the board of directors of PSG which has hired an investment bank (Centerview Partners LLC ("**Centerview**")) to assist with reviewing strategic alternatives and finding a potential financer to or purchaser of the Applicants' businesses.

C. The Applicants are Insolvent

154. The Applicants have experienced a net loss for the first nine months of fiscal year 2016, and significantly reduced expectations, and have limited cash with which to run a business of this size.

155. The Applicants (with the exception of the PSG Innovation Corp. and PSG Innovation Inc.) are in default under the Credit Facilities as of October 28, 2016. The Applicants have not been able to enter into any further amendments or forbearances under the Credit Facilities with respect to the delayed filing of the Reporting Materials on commercially reasonable terms. Further, the Applicants are not able to repay the amounts owing under the Credit Facilities. The Applicants are not able to obtain further funding on reasonable terms or at all given the inability to file the Reporting Materials.

156. Further, PSG is expending significant funds each month in professional fees responding to the OSC, SEC and FINRA regulatory inquiries, conducting the internal investigations and defending the Class Action, which is not sustainable in the long and likely even short term.

157. PSG Innovation Corp. has intercompany debts of approximately $13 million and PSG Innovation Inc. has intercompany debts of approximately $50,000, neither of which has the means to repay these debts as they have no operations of their own.

158. As a result, the Applicants are insolvent. The PSG Entities cannot meet their liabilities as they come due and do not have sufficient cash to fund their operations without CCAA protection and access to DIP Financing (defined below). Without the protection of the CCAA, a shut-down of operations is inevitable, which would be extremely detrimental to the PSG Entities' stakeholders, including employees, suppliers, and customers. CCAA protection will allow the PSG Entities to access DIP Financing and maintain operations while giving them the necessary time to consult with their stakeholders regarding the future of their business operations and structure, including the proposed sales process.

V. RESTRUCTURING THE PSG ENTITIES

159. The Applicants, in response to the myriad of issues leading to the current liquidity crisis and in particular in response to their failure to timely file the Reporting Materials,

engaged in a thorough review of the PSG Entities' strategic alternatives with the advice and guidance of their legal and financial advisors. The PSG Entities concluded that negotiating a going-concern sale of their businesses was the optimal course to maximize value, and structured a process by which do so. As part of that process, the PSG Entities have entered into an asset purchase agreement (the "**Stalking Horse Agreement**") for the sale of substantially all of their assets to a group of investors led by the Stalking Horse Purchasers.

160. The bid contemplated under the Stalking Horse Agreement will, subject to Court approval, serve as the stalking horse bid in a CCAA/Chapter 11 sales process to take place over the next 60 days of the proceedings and which is expected to conclude early in 2017. As noted in greater detail herein, the Stalking Horse Purchasers will provide the Term Loan DIP Facility (defined below) to fund the CCAA proceeding.

161. The Stalking Horse Agreement provides for the sale of substantially all of the Applicants' business for a base purchase price of $575 million in the aggregate plus the assumption of certain liabilities. The Stalking Horse Agreement contemplates that the Applicants will continue as a going concern under new ownership, their secured debt will be fully repaid and payment of trade creditors. The Stalking Horse Agreement further contemplates the preservation of a significant number of jobs in Canada and the U.S. Other features of the Stalking Horse Agreement include:

(a) The assignment of substantially all of the contracts to which the PSG Entities are party;

(b) Payment of a good faith deposit of 5% of the base purchase price by the Stalking Horse Purchasers;

(c) The option to pay part of the purchase price by offsetting as against the amounts funded under the Term Loan DIP Facility;

(d) A break-up fee of 3.5% of the base purchase price (the "**Break Fee**") and an expense reimbursement fee of $3.5 million due only in certain instances;

(e) Payment of a work fee of approximately $2.5 million paid pursuant to a side letter of Stalking Horse Agreement, which shall be credited against the Break

Fee and returned if the transaction contemplated by the Stalking Horse Agreement closes.

(f) Court approval of the Stalking Horse Agreement and the bidding procedures governing the sale process; and

(g) Closing of the transaction within two business days of the satisfaction of the conditions to closing, which is expected to be in early February, 2017.

162. It is anticipated that the Applicants will commence the sale process contemplated by the Stalking Horse Agreement on November 1, 2016 and seek approval of the sale process (including the Stalking Horse Agreement) at a motion returnable on November 21, 2016. It is further anticipated that the bid deadline will be January 4, 2017, and auction (if necessary) will take place on January 9, 2017 and the motion to approve the sale of assets will be heard by January 11, 2017.

VI. CASH FLOW FORECAST

163. As set out in the 13-week cash flow projection (the "**Cash Flow Statement**") that was prepared by the PSG Entities in consultation with their restructuring advisor, A&M, and reviewed by the proposed Monitor for the period from October 31, 2016 to the week ending January 27, 2017, the Applicants' estimated principal uses of cash will consist of the payment of ongoing day-to-day operational expenses and professional fees and disbursements in connection with these CCAA proceedings. I understand from counsel to the Applicants that a copy of the Cash Flow Statement will be attached to the pre-filing report of the proposed Monitor which is to be filed with the Court.

164. As at the time of execution of this affidavit, the Applicants have $7.2 million cash on hand. The Cash Flow Statement projects that, subject to obtaining the relief outlined herein including approval of the DIP Financing (defined below), they will have sufficient cash to fund their projected operating costs until the end of the stay period. If the DIP Financing is not approved, the Applicants do not have sufficient cash to support their operations during the stay period.

165. The Cash Flow Statement is consolidated so that it includes the U.S. PSG Entities, the Canadian PSG Entities and all of their subsidiaries. The PSG Entities do not maintain country-by-country cash flows, and the interconnected nature of the business and the operation along business lines prevents the PSG Entities' restructuring advisors from creating country-by-country basis without significant expenditures of cost and time.

166. The PSG Entities, in consultation with their restructuring advisor, have conducted a high level analysis of cash flows as between the Canadian PSG Entities and the U.S. PSG Entities and have estimated that, on a cash basis, the European Subsidiaries will realize net positive cash flows of approximately $31 million and the Canadian PSG Entities will realize net positive cash flows of approximately $9 million for the 15 week period ended January 20, 2017.

167. These cash amounts do not include operational obligations borne by the Canadian PSG Entities (with respect to the European Subsidiaries) and certain operational and non-operational obligations borne by the U.S. PSG Entities (with respect to the Canadian PSG Entities).

168. With respect to the positive net cash flows of the European Subsidiaries, as described above, Bauer Canada retains title to the inventory sold by the European Subsidiaries. Substantially all of the cash brought in by the European Subsidiaries is flowed to Bauer Canada in the normal course to cover inventory costs. The European Subsidiaries maintain approximately 5% from the collection in order to fund limited operating expenses, facilities, employees and sale agent commissions.

169. With respect to the positive net cash flows of the Canadian PSG Entities, certain of this cash would be owed to the U.S. PSG Entities to cover some transfer pricing amounts for cost of goods sold and sales, as well as to cover certain non-operating costs, such as interest payments and professional fees. Even incorporating these adjustments, however, the Canadian PSG Entities are predicted to have net positive cash flows over the CCAA Proceeding, while the U.S. PSG Entities are predicted to have net negative cash flows over the CCAA proceedings.

VII. PROPOSED INITIAL ORDER

A. Payment of pre-filing amounts

170. The Applicants believe that authority to pay the pre-filing amounts set out below is vital to their efforts to preserve and maximize the value of their estates and to their reorganization efforts.

Foreign Suppliers

171. As noted above, the PSG Entities source the majority of their manufacturing operations out to suppliers located in various jurisdictions in Asia (such suppliers being the "**Foreign Suppliers**"). The PSG Entities' business is reliant on those suppliers, many of which are committed exclusively to the PSG Entities and integrated with the PSG Entities' ongoing operations, including their technology and quality specifications. Further, the PSG Entities do not have sufficient inventory to complete the CCAA proceedings and Chapter 11 Proceedings and will need to order from the Foreign Suppliers.

172. It is the opinion of management of the PSG Entities that, without payment of the pre-filing amounts owing to them, the Foreign Suppliers may refuse to deliver goods which are critical to the PSG Entities' ongoing business, leading to a supply chain disruption during the first critical weeks of the CCAA proceedings. Finding replacement suppliers would interrupt operations and require a lengthy qualification process. Enforcing an order of a Canadian court in multiple countries in Asia could take weeks or longer, during which time the Applicants would be at significant risk of not being able to supply their customers with product.

173. As such, the Applicants are seeking authorization to pay pre-filing amounts of the Foreign Suppliers, with consent of the proposed Monitor on individual payments in excess of $10,000. The CRO has calculated the pre-filing amount owing to Foreign Suppliers as being approximately $19.2 million, as discussed with and reviewed by the proposed Monitor. The Applicants believe that payment to the Foreign Suppliers is in the best interests of their stakeholders. The proposed Monitor will be kept apprised of any payments that are made on a weekly basis.

Critical Suppliers

174. The PSG Entities also have a number of suppliers in North America who are critical to ensuring there is no disruption to the Applicants' business, such suppliers being the "**Critical Suppliers**".

175. The PSG Entities have worked with their financial advisors in determining the list of Critical Suppliers and have discussed this list with the proposed Monitor, considering (i) the importance of each supplier to the PSG Entities' operations; (ii) the nature of the goods or services supplied and whether there are alternative supply sources; (iii) the ability of the supplier to either remain in business or continue normal operations if not paid for pre-filing goods and services; (iv) the ability and likelihood that the supplier may delay or otherwise restrict supplying goods or services in the event of the PSG Entities' non-payment; (v) the volume of goods or services supplied; (vi) the potential for disruption of the PSG Entities' operations if the supplier delays or fails its supply of goods pursuant to its existing contracts; and (vii) the amount that the PSG Entities currently owe the supplier.

176. The Critical Suppliers are the most cost-efficient and, in many cases, the only source from which the Applicants can procure critical goods and services within a timeframe that would permit the Applicants to avoid unanticipated interruptions, delays or shutdowns in their operations. The proposed Monitor will be kept apprised of any payments that are made on a weekly basis.

177. Based on the above criteria, the PSG Entities identified approximately 31 Critical Suppliers which are owed in the aggregate approximately $1.2 million. The PSG Entities are seeking authorization, but not the requirement, to make those payments with consent of the proposed Monitor on individual payments in excess of $10,000.

178. To the extent that the PSG Entities determine that additional critical suppliers are paid, the PSG Entities are seeking authorization to pay pre-filing amounts to those suppliers with the approval of the proposed Monitor.

179. The PSG Entities intend to continue to rely on their suppliers during the CCAA proceedings and require the flexibility to pay these suppliers to ensure adequate and timely supply of required products and services to attempt to obtain and negotiate credit terms.

<u>20 Day Goods Suppliers</u>

180. Pursuant to 503(b)(9) of the U.S. Bankruptcy Code, the Applicants are required to pay any suppliers who delivered goods to the Applicants in the 20 days leading to the filing, in this case, October 11, 2016 (the "**20 Day Goods Suppliers**").

181. As the Applicants have commenced the Chapter 11 Proceedings, the Applicants are required to pay the 20 Day Goods Suppliers. The proposed Initial Order seeks authorization, but not the requirement, for the PSG Entities to pay 20 Day Good Suppliers, with consent of the proposed Monitor for individual amounts over $5,000.

182. The amounts owing to the 20 Day Goods Suppliers total approximately $1.4 million in the aggregate.

<u>Shippers and Warehousemen</u>

183. The PSG Entities depend on an extensive shipping, warehousing and distribution network to move raw materials from the PSG Entities' suppliers, which are largely based overseas, and to move finished products to the PSG Entities customers, including those in Europe. This network is dependent on shippers, brokers, warehousers, distributors and logistics providers, based at various locations around the world, including in Canada (together, the "**Shippers and Warehousemen**").

184. The failure to pay any of these parties for charges incurred in connection with the transportation and storage of any goods or materials may result in Shippers and Warehousemen asserting possessory liens against the Applicants' Property. In addition, in respect of the Shippers and Warehousemen, shipments may be stopped in transit if customs duties are not paid by the PSG Entities or their customs agents when due in the ordinary course.

185. The PSG Entities rely on Shippers and Warehousemen to provide the inventory necessary to continue their business without interruption. The successful uninterrupted operation of the Applicants' business during the CCAA proceedings is critical to the Applicants' restructuring, and the payment of the amounts owing to the Shippers and Warehousemen.

186. As at October 28, 2016, the PSG Entities estimate that approximately $2.5 million is owed in the aggregate to the Shippers and Warehousemen.

187. To the extent that additional amounts are found to be outstanding to Shippers and Warehousemen (most likely due to delayed invoicing or the timing of certain shipments), for shipments that are important to the PSG Entities' ongoing operations, the PSG Entities must be able to pay such amounts, and thus request the authority to make such payments, with the consent of the proposed Monitor for amounts in excess of $5,000.

188. Payment to these parties will avoid disruption in the Applicants' business, prevent the possibility of possessory liens being asserted against merchandise, and enable the PSG Entities to realize the value of the merchandise and other property and allow the PSG Entities' to continue their business operations uninterrupted.

Lien Claimants

189. The Applicants also routinely transact with third parties such as contractors, builders, and repairers, who may potentially assert liens under applicable law against the PSG Entities (collectively, "**Lien Claimants**") if they are not paid for goods or services rendered. The Lien Claimants may be able to assert possessory liens against the Applicants' Property. Lien Claimants without violating the automatic stay in the U.S. These possessory liens could cause interruptions to the Applicants' business.

190. The Applicants are requesting the authorization, but not the requirement, to pay Lien Claimants with consent of the proposed Monitor and up to a maximum of $3 million in the aggregate.

Taxes

191. In the ordinary course of business, the PSG Entities are responsible for paying or collecting and remitting various taxes to governmental authorities, including (i) sales taxes; (ii) use taxes (iii) franchise taxes; (iv) property taxes; (v) import duties; (vi) goods and services taxes; and (vii) certain other miscellaneous taxes ("**Taxes**"). The proposed Initial Order includes the standard relief from the Model Order regarding the collection and remittance of priority source deductions and property taxes; however, the PSG Entities are also seeking the authority, but not the obligation, to pay Taxes outstanding as of the filing

date up to an individual maximum amount of $1,000 and up to $15,000 in the aggregate. The PSG Entities are seeking similar relief in the Chapter 11 Proceedings.

192. Failure to pay certain Taxes could damage the PSG Entities' relationships with the taxing authorities or could cause the taxing authorities to exercise action contrary to the stay of proceedings, including conducting audits, filing liens or seeking to impose liability against the directors of the Applicants. Such actions could disrupt the PSG Entities' business and restructuring efforts and cause the PSG Entities to incur professional fees as result of needing to seek relief from this Court or the U.S. Court. The PSG Entities believe that authorizing, but not requiring, them to pay pre-filing Taxes with the approval of the proposed Monitor would minimize the interruptions to their business operating in the ordinary course and benefit stakeholders generally.

B. Maintenance of Customer Programs

193. As described above, consistent with industry practice, the PSG Entities maintain various Customer Programs to generate sales and maintain customer loyalty. The Customer Programs often result in the PSG Entities' accruing liabilities for the benefit of their customers, some of which will not have been paid upon commencement of the CCAA proceedings.

194. Maintaining the loyalty, support, and goodwill of their wholesale and retail customers is critical to the business of the PSG Entities and their efforts to maximize the value for the benefit of stakeholders. Accordingly, the proposed Initial Order provides that the PSG Entities are authorized, but not required, to continue to honour and fulfill their obligations under the Customer Programs, including those relating to the pre-filing period. The PSG Entities are seeking similar relief in the Chapter 11 Proceedings.[4]

195. Allowing the PSG Entities to honour their Customer Programs will maintain goodwill and positive relationships with customers for the duration of the CCAA proceedings and Chapter 11 Proceedings. It will also allow the PSG Entities to maintain

[4] In the Chapter 11 Proceedings, the PSG Entities are not seeking authorization to pay liabilities accruing in respect of certain indemnity obligations under standard form agreements with certain wholesale customers. The proposed Initial Order also provides a carve-out of these indemnity obligations and the PSG Entities are not seeking authorization to pay such amounts. As of September 30, 2016, the PSG Entities are not aware of any amounts owing in respect of the indemnity obligations.

their operations in the ordinary course without any interruption. The Cash Flow Statement presents customer receipts on a net basis after the deduction of such applicable Customer Program amounts.

C. Engagement of A&M and Chief Restructuring Officer

196. As described above, A&M was previously retained by the Applicants and A&M has played a central role in advising and assisting the PSG Entities with liquidity management and operational restructuring initiatives. PSG and A&M have entered into an engagement letter dated as of October 24, 2016 (the "**A&M Engagement Letter**"), conditional upon the initiation of the CCAA proceedings and Chapter 11 Proceedings and the appointment of Brian J. Fox as the Chief Restructuring Officer (the "**CRO**") of the PSG Entities, with respect to A&M's mandate moving forward. A copy of the A&M Engagement Letter is attached hereto as Exhibit "K".

197. Pursuant to the A&M Engagement Letter, A&M will provide restructuring personnel to assist the PSG Entities during the CCAA and Chapter 11 Proceedings. Brian J. Fox of A&M will serve as CRO of the PSG Entities, subject to Court approval. The A&M Engagement Letter provides that A&M will be compensated based on the services of the CRO and the engagement team at their hourly rates, and that PSG shall be responsible for the payment of the fees and expenses of A&M for the services provided by A&M to the PSG Entities. A&M is not entitled to a success fee under the A&M Engagement Letter.

198. In the proposed Initial Order, the PSG Entities are seeking the Court's confirmation of the retention of A&M and the CRO and the approval of the A&M Engagement Letter. The PSG Entities will also be seeking confirmation of the retention of A&M and the CRO in the Chapter 11 Proceedings. The approval of the engagement of A&M, including the CRO, is appropriate in the circumstances as A&M has worked extensively with the PSG Entities since its initial engagement and has significant knowledge with respect to their business, operations and finances. A&M's continued involvement will be critical to the successful completion of the going-concern restructuring transaction as part of the CCAA proceedings and Chapter 11 Proceedings that will maximize value for stakeholders. The Applicants believe that the retention of A&M and appointment of the CRO, is in the best interests of the PSG Entities and their stakeholders.

D. Continuance of Transfer Pricing System

199. As described above, the PSG Entities operate as hubs for certain operations that are used in their business necessitating use of the Transfer Pricing Model to record intercompany transactions. The Transfer Pricing Model is critical to ensuring that intercompany transactions are recorded at fair market value and a PSG Entity providing goods or services to another PSG Entity receives appropriate value for those goods or services. Accordingly, the proposed Initial Order contemplates approval of the continued use of the Transfer Pricing Model. Use of the Transfer Pricing Model during the CCAA proceedings will allow the PSG Entities to continue operating in an integrated manner and facilitate intercompany transactions in the ordinary course, preserving going-concern value for benefit of their stakeholders.

200. During the CCAA proceedings, the PSG Entities will continue to settle inter-company receivables and payables arising from use of the Transfer Pricing Model in the ordinary course.

E. Administration Charge

201. The Applicants seek a Charge (defined below) on the assets, property and undertakings of the Applicants (the "**Property**") in the maximum amount of $7.5 million to secure the fees and disbursements incurred in connection with services rendered to the Applicants both before and after the commencement of the CCAA proceedings by the proposed Monitor, U.S. and Canadian counsel to the Monitor, U.S. and Canadian counsel to the Applicants, counsel to the directors of the Applicants and the CRO (the "**Administration Charge**").

202. The PSG Entities worked with A&M to estimate the proposed quantum of the Administration Charge. The proposed Monitor has reviewed the quantum of the Administration Charge and believes it is reasonable and appropriate in view of the complexities of the Applicants' CCAA proceedings and the services to be provided by the beneficiaries of the Administration Charge.

203. The Initial Order provides that the Administration Charge shall rank first on the Property of the Applicants.

204. At the Comeback Motion (defined below), the Applicants will be seeking to split the Administration Charge between the Fixed Asset (Term) Priority Collateral and the ABL Priority Collateral such that the Administration Charge will be two separate $3.5 million Charges against each class of collateral.

F. DIP Financing

205. As described above, the Applicants have insufficient liquidity to maintain operations through the proposed CCAA proceedings and require interim debtor-in-possession financing ("**DIP Financing**") to provide suppliers, customers and other stakeholders with confidence that the business of the PSG Entities will continue to operate smoothly throughout these CCAA proceedings. Further, the liquidity position of the PSG Entities and the inability to file the Reporting Materials and the corresponding default under the Credit Facilities, resulted in the PSG Entities not having the time nor resources to run a comprehensive pre-filing sales process making access to DIP Financing critical to preserve value for the PSG Entities and their stakeholders and allow them the appropriate time to run a post-filing sales process.

206. I am advised by Kathryn Esaw of Stikeman Elliott LLP, counsel to the PSG Entities, that the counsel to the ABL Lenders and counsel to the Term Loan Lenders will receive notice of this application.

Process for Selecting DIP Financing

207. Due to the current capital structure of PSG and its recent business performance, the PSG Entities, with the assistance of Centerview, determined that obtaining DIP Financing from a third party would be extremely challenging, unless such facility was provided either junior to the ABL Facility and Term Loan Facility or on unsecured basis or paired with a refinancing of the PSG Entities' existing indebtedness. In both cases, the only third parties likely to provide such financing were those evaluating a potential purchase of the PSG Entities' businesses (with the DIP Financing effectively serving as a "down payment" on such purchase). As such, the PSG Entities focused their efforts on negotiating with the three parties most likely to provide DIP Financing: the ABL Lenders, the Term Loan Lenders and Sagard, due to its interest in acquiring the Applicants' businesses.

208. The PSG Entities received three DIP Financing proposals: one from each of the above noted parties. The PSG Entities evaluated the DIP Financing proposals with the assistance of Centerview, A&M and their counsel, considering, among other things, the costs and fees associated with each proposal, the priority ranking of charges securing the proposed DIP Financing and the liquidity requirements to fund the sales process and operations during these CCAA proceedings and Chapter 11 Proceedings.

209. After evaluating the proposals, on an informed basis and in good faith with a view to the best interests of the Applicants and their stakeholders, the PSG Entities, with the assistance of their advisors, focused on negotiating with Sagard and the ABL DIP Lenders due to the superiority of their proposals. After negotiating, through Centerview and their Canadian and U.S. counsel, the PSG Entities selected the DIP Financing proposal from Sagard and an interim DIP Financing proposal from the ABL Lenders to provide supplementary liquidity.

210. The DIP facility provided by Sagard (the "**Term Loan DIP Facility**") is provided on terms that are fair and reasonable and the product of significant arms'-length negotiation and compromise. For example, Sagard initially sought to link its DIP Financing package to its stalking horse bid, including by inserting cross-default provisions in its proposed Term Loan DIP Credit Agreement (defined below) and the Stalking Horse Agreement. The PSG Entities were successfully able to persuade Sagard to "de-link" its Term Loan DIP Facility from the Stalking Horse Agreement, resulting in greater flexibility and value for the PSG Entities. In addition, the economic terms of the Term Loan DIP Credit Agreement were subject to significant negotiation and the interest rate and fees embedded in the Term Loan DIP Facility are on economic and other terms significantly better than those initially proposed by Sagard. In fact, the interest rate on the Term Loan DIP Facility provided by Sagard is equivalent to the default rate on the Term Loan Facility. As well, as set out below, the Term Loan DIP Facility is structured as a delayed draw term loan facility so the PSG Entities may borrow and incur concomitant interest expenses, only as needed. The PSG Entities also requested that Sagard provide the Applicants with the required financing on a junior basis to the Term Loan Facility, so it would not need to be refinanced early in the CCAA proceedings and Chapter 11 Proceedings, but Sagard declined to provide the requisite financing on such terms.

211. The DIP Financing proposal submitted by the Term Loan Lenders was predicated on the Term Loan Lenders credit bidding their approximately $330 million of secured debt and being named the stalking horse bidder in connection with the sale process. The Term Loan Lenders were not willing to provide the PSG Entities with DIP Financing without also being named the stalking horse bidder. Further, the overall economic terms of their initial DIP Financing proposal, were less favourable than the combined proposals of Sagard and the ABL Lenders, including higher fees, interest rates and tighter sale process milestones. Also important, the Stalking Horse Agreement provides value well in excess of the PSG Entities' aggregate secured indebtedness and, therefore, by definition well in excess of any potential credit bid offered by the Term Loan Lenders. For these and other reasons, the PSG Entities determined in their business judgment not to accept the Term Loan Lenders' DIP Financing proposal.

212. While evaluating the other DIP Financing proposals, the PSG Entities with the assistance of their advisors, engaged in extensive discussions and good faith, arms'-length negotiations with the ABL Lenders on the terms of a DIP Financing proposal. In the view of the PSG Entities, with the eligible inventory and receivables levels forecasted in the near term, the borrowing base is not sufficient to support an asset-backed facility large enough to fund the entirety of the CCAA proceedings and Chapter 11 Proceedings and supplemental liquidity is required. However, given that the PSG Entities' ABL Facility is their lowest cost form of indebtedness, the Applicants negotiated extensively and in good faith, terms of a DIP facility to be provided by the ABL Lenders (the "**ABL DIP Facility**" and together with the Term Loan DIP Facility, the "**DIP Facilities**") to supplement the liquidity provided by the Term Loan DIP Facility, reducing the PSG Entities' overall weighted average cost of DIP Financing.

<u>Summary of DIP Financing</u>

213. In connection with the selection, the PSG Entities, through Centerview, A&M and their Canadian and U.S. counsel, have negotiated the Term Loan Superpriority Debtor-In-Possession Credit Agreement (as amended, supplemented or otherwise modified from time to time, the "**Term Loan DIP Credit Agreement**") with the Stalking Horse Purchasers and the other lenders party thereto (the "**Term Loan DIP Lenders**") pursuant to which the PSG

Entities will obtain access to the Term Loan DIP Facility in the maximum amount of $361 million. A copy of the Term Loan DIP Credit Agreement is attached hereto as Exhibit "L".

214. The PSG Entities also negotiated the ABL Superpriority Debtor-In-Possession Credit Agreement (as amended, supplemented or otherwise modified from time to time, the "**ABL DIP Agreement**" and together with the Term Loan DIP Credit Agreement, the "**DIP Agreements**") with the ABL Lenders (in such capacity, the "**ABL DIP Lenders**") giving the PSG Entities' access to the ABL DIP Facility in a maximum principal amount of $200 million. A copy of the ABL DIP Agreement is attached hereto as Exhibit "M".

215. The ABL DIP Facility and Term Loan DIP Facility are coordinated facilities. The ABL DIP Facility will be available to the PSG Entities on an interim basis upon entry of the appropriate orders of the Canadian and U.S. Courts (the "**Interim DIP Orders**") in order to provide immediate liquidity to the Applicants. The Term Loan DIP Facility, which is proposed to be approved by the Initial Order, but shall not be funded until entry of the applicable final orders of Canadian and U.S. Courts (the "**Final DIP Orders**"), will be used to refinance the existing Term Loan Facility and provide the PSG Entities with incremental liquidity for the remainder of the CCAA proceedings and Chapter 11 Proceedings.

216. It is essential that both the ABL DIP Facility and Term Loan DIP Facility be committed to the Applicants upon entry of the Initial Order, with borrowing on the Term Loan DIP Facility subject to entry of the Final DIP Orders, so that the PSG Entities may be certain that adequate financing is available from the first day of the CCAA proceedings and Chapter 11 Proceedings to support operation of the business, vendor and customer relationships, and execution of the sales process to completion.

ABL DIP Agreement

217. Some of the material terms of the ABL DIP Agreement are set out below:

(a) **Borrowers**: Bauer Canada, Bauer Hockey Retail Corp., Bauer Performance Sports Uniforms Corp., BPS Canada Intermediate Corp., BPS Diamond Sports Corp., Easton Canada, KBAU, Performance Lacrosse Group Corp., Bauer Hockey Retail Inc., Bauer U.S., Bauer Performance Sports Uniforms Inc., BPS Diamond Sports Inc., BPS U.S., and Easton U.S., Performance Lacrosse Group Inc.

(b) **Guarantors**: PSG, PSG Innovation Corp. and PSG Innovation Inc.

(c) **Facility Amount:** US$200,000,000

(d) **Availability:** Subject to a borrowing base calculated by adding the U.S. borrowing base and Canadian borrowing base *less* a carve-out reserve, and *less* the amount outstanding under the ABL Facility. The Canadian borrowing base is calculated as follows: (i) the book value of the eligible accounts of the Canadian PSG Entities *multiplied by* 85%; *plus* (ii) the book value of the foreign eligible accounts of the Canadian PSG Entities *multiplied by* 85% of; *plus* (iii) the lesser of (x) the cost of eligible inventory of the Canadian PSG Entities *multiplied by* the advance rate of 70% and (y) the net recovery cost percentage *multiplied by* the cost of eligible inventory of the Canadian PSG Entities *multiplied by* the advance rate of 85%; plus (iv) the cost of eligible in-transit inventory of the Canadian PSG Entities *multiplied by* the advance rate of 30%; *minus* (v) any reserves established from time to time by the administrative agent under ABL DIP Agreement. The U.S. borrowing base is calculated as follows: (i) the book value of eligible accounts of the U.S. PSG Entities *multiplied by* the advance rate of 85%; *plus* (ii) the lesser of (x) the cost of eligible inventory of the U.S. PSG Entities *multiplied by* the advance rate of 70% and (y) the net recovery cost percentage *multiplied by* the cost of eligible inventory of the U.S. PSG Entities *multiplied by* the advance rate of 85%; *plus* (c) the cost of eligible in-transit inventory of the U.S. PSG Entities *multiplied by* the advance rate of 30%; *minus* (d) any reserves established from time to time by the administrative agent under ABL DIP Agreement.

(e) **Maturity**: The earlier of (i) February 28, 2017; (ii) the date on which the PSG Entities consummate a sale transaction approved in the Canadian and U.S. Courts; (iii) the acceleration of the ABL DIP Facility in accordance with the ABL DIP Agreement; (iii) three (3) business days after the filing date if the Interim DIP Orders are not issued; and (iv) 30 days after the date of the issuance of the Interim DIP Orders, if the Final DIP Orders are not issued.

(f) **Conditions**: The essential terms for drawing on the ABL DIP Facility are: (i) issuance of the Interim DIP Orders; (ii) all reasonable fees of the administrative agent and other lenders under the ABL DIP Facility will be paid in accordance with the ABL DIP Agreement; (iii) the ABL Lenders have received and approved the most recent budget prepared by the PSG Entities; and (iv) the ABL DIP Facility shall be in full force and effect.

(g) **Milestones**: The milestones to the ABL DIP Agreement are set out in section 8.15 thereof, the key provisions of which are as follows: (i) the PSG Entities will obtain the Interim DIP Orders within three business days of the filing date and the Final DIP Orders within 30 days of the filing date; (ii) that the PSG Entities will file a motion to approve bidding procedures as soon as reasonably possible and obtain orders from the Canadian and U.S. Courts approving the bidding procedures within 21 days of the filing date; and (iii) certain bid deadlines set out in subsections 8.15(e)-(h) will be complied with in full.

(h) **Negative Covenants**: The PSG Entities shall not, amongst other things, (i) create, incur, or assume any liens on the Property except for certain permitted liens; (ii) convey, sell, lease or otherwise dispose of all or any part of their property or assets; (iii) pay any dividends; (iv) create, incur, or assume any indebtedness except certain permitted indebtedness; (v) make any investments except in certain permitted instances; (vi) permit the proceeds of the ABL DIP Facility to be used in a manner other than for permitted uses in accordance with a budget approved by the Term Loan DIP Lenders; (vii) appoint a CRO, other than a CRO employed by A&M or as otherwise agreed to by the ABL DIP Lenders; or (viii) make payments to critical vendors except in accordance with orders of the Canadian and U.S. Courts.

(i) **Interest Rate**: Canadian prime rate plus 3.5% per annum in respect of Canadian prime rate loans and CDOR rate (annual yield rates applicable to banker's acceptances) plus 4.5% per annum in respect of CDOR rate loans.

The US prime rate and LIBO rate also apply as a base rate to certain loans, which are equivalent to the Canadian prime rate and CDOR rate.

(j) **Fees:** The fees under the ABL DIP Agreement are (i) an unused line fee of 0.5% per annum of the average daily unused availability; (ii) an agent fee of $120,000; (iii) an origination fee of $600,000; and (iv) a letters of credit fronting fee of 0.125% per annum of face amount of issued letters of credit.

(k) **Charge**: The obligations under the ABL DIP Agreement are proposed to be secured by a Charge over the Property (the "**ABL DIP Charge**") having second-ranking priority on the ABL Priority Collateral, subject only to the Administration Charge, and third-ranking priority on the Fixed Asset (Term) Priority Collateral, described in more detail below. The

218. The ABL DIP Agreement provides that any amounts collected in accounts controlled by the ABL DIP Lenders will be applied to reduce the outstanding amount of the ABL Facility. Amounts repaid under the ABL Facility will create additional availability for the PSG Entities under the ABL DIP Facility. Refinancing the ABL Facility in such a fashion is a requirement of the ABL Lenders agreeing to provide additional liquidity to the PSG Entities under the ABL DIP Facility. Further, pursuant to the Stalking Horse Agreement, the ABL DIP Facility will be paid in full at closing of the sale transaction.

219. Because the proposed ABL DIP Facility is provided by the ABL Lenders and the ABL Lenders have first-ranking security on the ABL Priority Collateral, the PSG Entities believe there will be no material prejudice to any of their existing creditors. Further, the PSG Entities do not believe that the ABL Lenders would consent to any DIP Financing that primed their security position. Accordingly, the ABL DIP Facility is the only option to provide immediate liquidity to the PSG Entities until at least the Final DIP Orders are issued and the Term Loan DIP Facility is able to be advanced.

220. Altogether, the PSG Entities believe in their business judgement that the repayment provisions of ABL DIP Agreement are a necessary component to the ABL DIP Facility and will ensure the PSG Entities have access to sufficient liquidity for working capital and general corporate purposes during the CCAA proceedings and Chapter 11 Proceedings.

Term Loan DIP Credit Agreement

221. Some of the material terms of the Term Loan DIP Credit Agreement are set out below:

(a) **Borrower**: PSG

(b) **Guarantors:** The PSG Entities, other than PSG.

(c) **Facility Amount**: The Term Loan DIP Facility consists of two facilities: (i) a delayed draw term loan, funded in cash in one or more drawings occurring after the closing date in the principal amount of approximately $30 million; and (ii) a refinancing term loan, funded in cash on the closing date in the principal amount of approximately $331 million, which will be used to refinance the Term Loan Facility.

(d) **Maturity**: The earlier of (i) February 28, 2017; (ii) the date on which the PSG Entities consummate a sale transaction approved by the Canadian and U.S. Courts; (iii) the acceleration of the Term Loan DIP Facility in accordance with the Term Loan DIP Credit Agreement; (iii) three business days after the filing date, if the Interim DIP Orders are not issued; and (iv) 30 days after the date of the issuance of the Interim DIP Orders, if the Final DIP Orders are not approved.

(e) **Conditions**: The essential terms for drawing on the delayed draw term loan facility are: (i) the issuance of the Interim DIP Orders; (ii) all reasonable fees of the administrative agent and other lenders under the Term Loan DIP Facility will be paid in accordance with the Term Loan DIP Credit Agreement; (iii) the PSG Entities will comply with the budget in the Term Loan DIP Credit Agreement; and (iv) the ABL DIP Facility shall be in full force and effect. The refinancing term loan is functionally a debt roll-over of the PSG Entities' secured term loan facility, whose central condition is that the PSG Entities pre-filing term loan facility is paid in full.

(f) **Milestones**: The milestones to the Term Loan DIP Credit Agreement are set out in section 8.15 thereof, the key provisions of which are as follows: (i) the PSG Entities will obtain the Interim DIP Orders within three (3) business days of the filing date and the Final DIP Orders within 30 days of the filing date (ii) that the PSG Entities will file a motion to approve bidding procedures as soon as reasonably possible and the PSG Entities' obtain orders from the Canadian and U.S. Courts approving the bidding procedures within 21 days of the filing date; and (iii) that certain bid deadlines set out in subsections 8.14(e)-(h) of the Term Loan DIP Credit Agreement will be complied with in full.

(g) **Negative Covenants**: The PSG Entities shall not, amongst other things, (i) create, incur, or assume any liens on the Property except for certain permitted liens; (ii) convey, sell, lease or otherwise dispose of all or any part of their property or assets; (iii) pay any dividends; (iv) create, incur, or assume any indebtedness except certain permitted indebtedness; (v) make any investments except in certain permitted instances; (vi) permit the proceeds of the Term Loan DIP Facility to be used in a manner other than permitted uses in accordance with a budget approved by the Term Loan DIP Lenders; (vii) appoint a CRO, other than a CRO employed by A&M or otherwise agreed to by the Term Loan DIP Lenders; or (viii) make payments to critical vendors except in accordance with orders of the Canadian and U.S. Courts.

(h) **Interest Rate**: 8% per annum.

(i) **Fees**: The fees under the Term Loan DIP Credit Agreement are (i) an unused line fee of 1% per annum of the delayed draw term loan; (ii) a commitment fee of 1% on the portion of the Term Loan DIP Facility being used to refinance the Term Loan Facility; (iii) a commitment fee of 3% on the delayed draw term loan; (iv) an agent fee of $100,000; and (v) 1% on amounts prepaid that were used to refinance Term Loan Facility and 2.5% on amounts prepaid that were from the delayed draw term loan, reducing to 0% in each case if the

Stalking Horse Agreement and corresponding Break Fee are approved by Canadian and U.S. Courts.

(j) **Charge**: The obligations under the Term Loan DIP Credit Agreement will not secured by a Charge under the Interim DIP Orders, including the Initial Order. However, it is proposed that under the Final DIP Orders obligations under the Term Loan DIP Credit Agreement will be secured by a Charge (the "**Term Loan DIP Charge**" and together with the ABL DIP Charge, the "**DIP Lenders' Charges**") having second-ranking priority on the Fixed Asset (Term) Priority Collateral, subject only the Administration Charge, and fourth-ranking priority on the ABL Priority Collateral, described in more detail below. For greater certainty, the Applicants are not seeking the Term Loan DIP Charge in the proposed Initial Order but will seek it at the Comeback Motion.

222. Although funds under the Term Loan DIP Facility are not being advanced until after the Comeback Motion, the PSG Entities are seeking approval of it under the Initial Order. Obtaining approval on the first day of the CCAA proceedings and Chapter 11 Proceedings will allow the Applicants to communicate to its employees, vendors, regulators and customers, as well as potential bidder's assets, that the PSG Entities are entering creditor protection on strong financial footing and will continue operating without interruption.

223. In addition, interim relief is critical to prevent any value destruction that could diminish the likelihood of receiving bids in connection with the sales process. By approving the Term Loan DIP Facility at the outset of these proceedings, the PSG Entities will be able to maintain the value of their business during the course of the sale process.

224. Given the PSG Entities' current projections, and absence of meaningful unencumbered assets, immediate access to the DIP Facilities is necessary for continued operations, including to fund wages, salaries, and benefits of the PSG Entities' employees, procure necessary goods and services (and maintain trade terms with the PSG Entities' vendors), finance the cost of these CCAA proceedings and Chapter 11 Proceedings and meet other working capital needs.

225. Following the competitive selection process between the ABL Lenders, the Term Lenders and Sagard, the Applicants have determined that the DIP Facilities, as reflected by the DIP Agreements, represent the best interim financing available under the circumstances. Based on current projections, the DIP Facilities are necessary to fund their continued operations. In the circumstances, the PSG Entities believe in their business judgement, that the pricing, fees, interest rates, and other terms and conditions of the DIP Facilities are reasonable and are generally consistent with those contained in the pre-filing ABL Facility and Term Loan Facility. In addition, the milestones, covenants, and restrictions included in the DIP Agreements are reasonable and are not designed to make the PSG Entities disproportionately susceptible to a breach of their terms.

226. The DIP Facilities are expected to provide sufficient liquidity to allow the Applicants to pursue a restructuring in these CCAA proceedings and the Chapter 11 Proceedings. Accordingly, the Applicants seek an order authorizing and empowering the Applicants to obtain and borrow under the DIP Facilities in order to refinance the Term Loan Facility and finance the operations of the Applicants during the CCAA proceedings and Chapter 11 Proceedings.

227. I understand from counsel to the Applicants that the proposed Monitor supports approval of the DIP Agreements.

DIP Lenders' Charges

228. The proposed Initial Order only contains an ABL DIP Charge. The ABL DIP Charge is proposed to rank below the security interests, charges, and liens securing the obligations under the Term Loan Agreement (the "**Pre-Filing Term Loan Security**") on the Fixed Asset (Term) Priority Collateral, avoiding any need to prime the Term Loan Lenders in respect of their first-ranking Pre-Filing Term Loan Security. Only the ABL DIP Lenders' Charge and only Administration Charge will prime the Pre-Filing Term Loan Security in respect of the ABL Priority Collateral.

229. The ABL DIP Charge will prime the security interests, charges, and liens securing the obligations under the ABL Facility Agreement (the "**Pre-Filing ABL Facility Security**") in respect of the ABL Priority Collateral. However, the ABL DIP Charge will cause no

prejudice as it is being granted to the ABL Lenders themselves in their capacity as the ABL DIP Lenders.

230. The ABL DIP Charge is also proposed to be over the Property that is not Fixed Asset (Term) Priority Collateral or ABL Priority Collateral, including the assets of PSG Innovation Corp. and PSG Innovation Inc. The ABL DIP Lenders have indicated that extending this Property is a condition to them providing DIP Financing. Under the proposed Initial Order, with respect to the assets, property and undertakings of PSG Innovation Corp. and PSG Innovation Inc. (the "**PSG Innovation Collateral**"), the ABL DIP Charge is proposed to rank second, behind the Administration Charge. With respect to all other Property that is not Fixed Asset (Term) Priority Collateral, ABL Priority Collateral and PSG Innovation Collateral (the "**Other Unencumbered Collateral**"), the ABL DIP Charge is also proposed to rank second, again behind the Administration Charge.

231. The Applicants will be seeking relief with respect to the Term Loan DIP Charge at the Comeback Motion.

232. I understand from counsel to the Applicants that the proposed Monitor supports approval of the ABL DIP Charge. The priority with respect to the other Charges is explained further below.

G. Directors' Charge

233. To ensure the ongoing stability of the Applicants' business during the CCAA proceedings, the Applicants require the continued participation of their respective directors, officers, managers and employees.

234. The Applicants are seeking, what I am informed by counsel are, typical provisions staying all proceedings against the directors and officers of the PSG Entities with respect to all claims against the directors or officers that relate to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers of the Applicants.

235. I am advised by counsel to the Applicants that in certain circumstances directors can be held liable for certain obligations of a corporation owing to employees and government entities. As of October 21, 2016, the Applicants are potentially liable for accrued but unpaid

vacation pay, wages, source deductions and sales tax in the aggregate amount of approximately $7.5 million.

236. The Applicants maintain directors' and officers' liability insurance (the "**D&O Insurance**") that benefit the directors and officers of the Applicants. The current D&O Insurance policy provides $70 million in aggregate coverage (plus certain additional amounts in respect of certain claims). In addition, there are also contractual indemnities which have been given to the directors and officers by the PSG Entities. The Applicants may not have sufficient funds to satisfy those indemnities should their directors and officers be found responsible for the full amount of the potential directors' liabilities. Lastly, there is a deductible for certain claims and the presence of a number of exclusions creates a degree of uncertainty.

237. The directors and officers of the Applicants have indicated that, due to the potentially significant personal exposure arising going forward, they cannot continue their service with the Applicants unless the Initial Order grants a charge on the Property in the amount of $7.5 million (the "**D&O Charge**").

238. The D&O Charge is proposed to rank fifth in priority on the Property.

239. The D&O Charge will allow the Applicants to continue to benefit from the efforts and knowledge of their directors and officers. The Applicants and the proposed Monitor believe the D&O Charge is reasonable in the circumstances.

H. Intercompany Charge

240. As described above, the Canadian PSG Entities are expected to have positive net cash flows during the first 26 weeks of the CCAA Proceeding. Certain of these monies will be used to fund the deficit expected to be experienced by the U.S. PSG Entities during the first 26 weeks of the CCAA proceedings. To the extent that one or more of the Canadian PSG Entities have cash on hand that could be utilized by other Applicants, the Applicants are seeking authorization to effect intercompany advances secured by a charge (the "**Intercompany Charge**") on the Property of the borrowing Applicant. The provision of an Intercompany Charge will minimize the amounts needed to be borrowed under the DIP Facilities.

241. The Intercompany Charge is proposed to rank sixth on the Property.

I. Ranking of the Court Ordered Charges

242. As mentioned above, each of the DIP Agreements requires issuance of Interim DIP Orders and Final DIP Orders which include Court-ordered charges (the "**Charges**" and each a "**Charge**") on the Property for the DIP Facilities. Under the proposed Initial Order, the Applicants are only seeking the ABL DIP Charge and the Term Loan DIP Charge will only be sought at the Comeback Motion for the Final DIP Orders. The Applicants are also seeking an Administration Charge, D&O Charge and Intercompany Charge in the Initial Order.

243. The Administration Charge is proposed to have first-ranking priority on all the Property. The D&O Charge is to rank in priority to the Intercompany Charge, and both are proposed to rank junior to the Administration Charge, ABL DIP Charge, the Pre-Filing ABL Facility Security and the Pre-Filing Term Loan Security on all the Property. In the Chapter 11 Proceedings, the PSG Entities are seeking liens from the U.S. Court with the same priority scheme as in Canada except for slightly minor difference with respect to the PSG Innovation Collateral and Other Unencumbered Collateral.

244. The full proposed waterfall priority scheme being sought in the Interim DIP Orders is set out at Schedule "1" to this affidavit.

245. The PSG Entities believe the provision of protections to ABL Lenders and Term Loan Lenders, the payment of default rate interest, fees and expenses (including certain reasonable fees and expenses of counsel and financial advisors, as agreed), is reasonable and appropriate under the circumstances. Absent such provisions, the ABL Lenders and Term Loan Lenders likely would not consent to the ranking of the Charges, including the priming of the Pre-Filing ABL Facility Security and Pre-Filing Term Loan Security. Thus, the PSG Entities likely would have been required to litigate with the ABL Lenders and Term Loan Lenders over the imposition of priming Charges, if the above-mentioned protections were not granted. Given the distraction, uncertainty, and costs associated with such a dispute, the PSG Entities believe that the protections agreed to be provided by the PSG Entities to the ABL Lenders and Term Loan Lenders is in the best interest of the PSG Entities and their stakeholders.

J. Retention of Prime Clerk

246. As part of the Chapter 11 Proceedings, the Applicants have retained Prime Clerk LLC ("**Prime Clerk**") as claims and noticing agent. In order to realize efficiencies within the two proceedings, the Applicants propose to use the noticing services of Prime Clerk for the services of all notices and motion materials in these CCAA proceedings.

247. In selecting Prime Clerk, the Applicants solicited proposals from a number of agents. Prime Clerk was determined by U.S. Counsel to the Applicants to provide the most value to the Applicants. A copy of the Prime Clerk engagement letter is attached hereto as Exhibit "N".

248. Any party who advises the Applicants in writing that it prefers to be served via the E-Service Protocol will be served as such going forward.

VIII. COMEBACK MOTION

249. The Applicants intend to return to Court on notice to the service list for a motion (the "**Comeback Motion**") seeking, among other things:

(a) Approval of a Cross Border Protocol;

(b) Approval of the Term Loan DIP Charge;

(c) Amendments to the priority and structure of certain Charges;

(d) A super-priority ranking for the Charges;

(e) Approval of the Stalking Horse Agreement and bidding procedures;

(f) Approval of the Centerview engagement letter, including the success fee contemplated therein;

(g) Approval of the key employee incentive and retention programs; and

(h) Extension of the stay of proceedings established by the proposed Initial Order.

250. Pursuant to the Stalking Horse Agreement, the Applicants are required to serve and file the Comeback Motion materials within two business days of the commencement of the CCAA proceedings, at which point all parties will have the full details and documents relating to the relief sought at the Comeback Motion.

IX. MONITOR

251. Ernst & Young Inc. (**"EY"**) has consented to act as the Court-appointed Monitor (the "**Monitor**") of the PSG Entities, subject to Court approval.

252. EY is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* as amended, and is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA.

253. I am advised by Brian Denega of EY that the proposed Monitor is supportive of the relief being sought in favour of the PSG Entities, including authorization to pay certain pre-filing amounts, approval of the DIP Agreements and approval of the Charges. Mr. Denega has also advised me that the proposed Monitor will be filing a pre-filing Monitor's report in respect of that relief.

SWORN BEFORE ME at the City of Exeter, State of New Hampshire, on October 31, 2016. Kathleen Jewkes Commissioner for Taking Affidavits	MARK VENDETTI

KATHLEEN A. JEWKES, Notary Public
My Commission Expires April 6, 2021

Schedule "1"

Charges Priority Waterfall[5]

		US	Canada
		Interim Order	**Initial Order**
1.	**ABL Priority Collateral**	1.Carve-Out 2.ABL DIP Facility 3.Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders 4.Prepetition Term Loan Facility / adequate protection liens of Prepetition Term Loan Lenders	1.Administration Charge (professional fees/Carve-Out) 2.ABL DIP Charge 3.Pre-Filing ABL Facility Security 4.Pre-Filing Term Loan Security 5.D&O Charge 6.Intercompany Charge
2.	**Fixed Asset (Term) Priority Collateral**	1.Carve-Out 2.Prepetition Term Loan Facility / adequate protection liens of Prepetition Term Loan Lenders 3.ABL DIP Facility 4.Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders	1.Administration Charge (professional fees/Carve-Out) 2.Pre-Filing Term Loan Security 3.ABL DIP Charge 4.Pre-Filing ABL Facility Security 5.D&O Charge 6.Intercompany Charge
3.	**PSG Innovation Collateral**[6]	1.Carve-Out 2.Prepetition Term Loan Facility/ adequate protection liens of Prepetition Term Loan Lenders 3.ABL DIP Facility 4.Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders	1.Administration Charge (professional fees/Carve-Out) 2.ABL DIP Charge 3.D&O Charge 4.Intercompany Charge
4.	**Other Unencumbered Collateral (other than avoidance actions)**[7]	1.Professional fees Carve-Out 2.Prepetition Term Loan Facility/ adequate protection liens of Prepetition Term Loan Lenders 3.ABL DIP Facility 4.Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders	1.Administration Charge (professional fees/Carve-Out) 2.ABL DIP Charge 3.D&O Charge 4.Intercompany Charge

[5] Capitalized terms used in this summary have the same meaning used in the Interim Order and Initial Order.
[6] To the extent these assets would otherwise constitute ABL Priority Collateral, they shall be treated as such. Otherwise, they shall be treated as Fixed Asset Priority Collateral as reflected above. In addition, these assets will not be available as adequate protection under the CCAA order.
[7] To the extent these assets would otherwise constitute ABL Priority Collateral, they shall be treated as such. Otherwise, they shall be treated as Fixed Asset Priority Collateral as reflected above. In addition, these assets will not be available as adequate protection under the CCAA order.

Exhibit "B" to the Affidavit

Of Brian J. Fox, sworn

November 21, 2016

Commissioner for taking affidavits

SARAH L. JENSEN
Notary Public, State of New York
Qualified in King County
No. 02JE6316369
My Commission Expires Dec. 15, 20 18

August 19, 2016

Performance Sports Group Ltd.
100 Domain Drive
Exeter, NH 03833

Attention: Special Committee of the Board of Directors

Dear Sirs/Mesdames:

This letter (the "Agreement") confirms the terms under which Performance Sports Group Ltd. and its subsidiaries (collectively, the "Company") has engaged Centerview Partners LLC ("Centerview") for, and on behalf of, and at the direction of, the Special Committee (the "Committee") of the Board of Directors of the Company, it being understood and acknowledged that Centerview shall act on an exclusive basis as strategic financial advisor and investment banker with respect to a possible Amendment, Restructuring, Financing and/or Sale (each as defined below) and with respect to such other financial matters as to which the Company and Centerview may agree in writing during the term of this engagement. For purposes hereof, the term "Company" also includes any entity that the Company may form or invest in to consummate an Amendment, Restructuring, Financing and/or Sale, and shall also include any successor to or assignee of all or a portion of the assets and/or businesses of the Company, whether pursuant to a Plan (as defined below) or otherwise. If appropriate in connection with performing its services for the Company hereunder, Centerview may utilize the services of one or more of its affiliates, in which case references herein to Centerview shall include, as applicable, such affiliates. The terms of this Agreement shall apply to all services provided by Centerview to the Company in connection with the matters contemplated herein, including those provided prior to the date of this Agreement.

As used herein, the term "Amendment" shall mean any material modification or amendments to the terms, conditions or covenants of the Company's secured term loan and asset-based revolving credit facilities or other credit facilities (collectively, the "Credit Facilities"). For the purposes of this Agreement, the term Amendment shall not include any temporary waiver or forbearance or any series of temporary waivers or forbearance.

As used herein, the term "Restructuring" shall mean any recapitalization or restructuring (including, without limitation, through any exchange, conversion, cancellation, forgiveness, retirement' refinancing, and/or purchase or repurchase) of the Company's Credit Facilities, including pursuant to a repurchase or an exchange transaction, a Plan (as defined below) or a solicitation of consents, waivers, acceptances or authorizations, but excluding, for greater certainty, any Amendment.

As used herein, the term "Financing" shall mean a public or private issuance, sale or placement of equity, equity-linked or debt securities, instruments or obligations of the Company with one or more lenders and/or investors (each such lender or investor, an "Investor"), or any loan, rights offering or other financing, including any "debtor in possession financing" or "exit financing" in connection with a case under the United States Code, 11 U.S.C. §§ 101 et. seq. (the "Bankruptcy Code") or similar applicable bankruptcy or insolvency legislation in Canada.

As used herein, the term "Sale" shall mean any transaction or series of related transactions involving an acquisition, merger, consolidation, or any other business combination pursuant to which a majority of the business, equity or assets of the Company are, directly or indirectly, sold, purchased or combined with another entity or company.

1. Centerview, as exclusive strategic financial advisor and investment banker to the Committee, will assist the Committee in considering, exploring and evaluating strategic alternatives that may be available to, and appropriate for, the Company, and in connection thereof, perform the following financial advisory and investment banking services. Marc Puntus will lead Centerview's engagement team, as appropriate:

    a. General Financial Advisory and Investment Banking Services. To the extent requested by the Committee, Centerview shall:

        i. familiarize ourselves with the business, operations, properties, financial condition and prospects of the Company;

        ii. review the Company's financial condition and outlook;

        iii. assist in the development of financial data and presentations to the Committee and the Company's Board of Directors, various creditors and other parties;

        iv. evaluate the Company's debt capacity and alternative capital structures;

        v. participate in negotiations among the Company, and related creditors, suppliers, lessors and other interested parties with respect to any of the transactions contemplated by this Agreement; and

        vi. perform such other financial advisory services as may be specifically agreed upon in writing by the Committee and Centerview.

    b. Restructuring Services. To the extent requested by the Committee, Centerview shall:

        i. analyze various Restructuring scenarios and the potential impact of these scenarios on the value of the Company; and the recoveries of those stakeholders impacted by the Restructuring;

        ii. provide financial and valuation advice and assistance to the Committee in developing and seeking approval of a Restructuring plan (as the same may be modified from time to time, a "Plan");

iii. provide financial advice and assistance to the Committee in structuring any new securities to be issued pursuant to the Restructuring;

iv. assist the Committee and/or participate in negotiations with entities or groups affected by the Restructuring; and

v. if requested by the Committee, participate in hearings before the bankruptcy court with respect to the matters upon which Centerview has provided advice, including, as relevant, coordinating with the Company's counsel with respect to testimony in connection therewith.

c. Financing Services. To the extent requested by the Committee, Centerview shall:

i. provide financial advice and assistance to the Committee in structuring and effecting a Financing, identifying potential Investors and, at the Committee's request, contacting such Investors; and

ii. assist in the arranging of a Financing, the due diligence process and negotiating the terms of any proposed Financing.

d. Sale Services. To the extent requested by the Committee, Centerview shall:

i. provide financial advice and assistance to the Committee in connection with a Sale, identifying potential acquirors and, at the Committee's request, contacting such potential acquirors; and

ii. assist the Committee and/or participate in negotiations with potential acquirors.

In rendering its services to the Committee hereunder, Centerview is not assuming any responsibility for the Company's underlying business decision to pursue any business strategy or to effect any Amendment, Restructuring, Financing, and/or Sale. The Committee agrees that Centerview shall not have any obligation or responsibility to provide accounting, audit, "crisis management," or business consultant services for the Company, and shall have no responsibility for designing or implementing operating, organizational, administrative, cash management or liquidity improvements. Any fairness or valuation opinions requested by the Committee will be provided by a separate engagement letter to be agreed upon by the Committee and Centerview but subject to the fee cap set out in Section 2 below. The Committee acknowledges that Centerview is not providing any advice on tax, legal, regulatory or accounting matters, and the Committee agrees that it will seek and rely on the advice of its own professional advisors for such matters, and will make an independent decision with respect to the matters that are the subject of this engagement based on such advice.

In order to coordinate effectively the Committee's and Centerview's activities to consider and evaluate strategic alternatives, and if appropriate, effect an Amendment, Restructuring, Financing and/or Sale, the Committee will promptly inform Centerview of any discussions, negotiations or inquiries regarding a possible Amendment, Restructuring, Financing and/or Sale (including any such discussions, negotiations or inquiries that have occurred in the six month period prior to the date of this Agreement).

The Committee shall make (and shall cause the Company to make) available to Centerview all information in its possession concerning the business, assets, operations, financial condition and prospects of the Company that Centerview reasonably requests in connection with the services to be performed for the Committee hereunder, and shall provide Centerview with reasonable access to the Company's officers, directors, employees, independent accountants, and counsel, and other advisors, agents and other representatives of the Company as appropriate. To the best of the Committee's knowledge, all information furnished by or on its behalf to Centerview pertaining to the Company, when delivered, will be accurate and complete in all material respects. In addition, the Committee agrees that it will promptly notify Centerview of any material event or change in the business affairs, condition (financial or otherwise) of the Company that occurs during the term of the engagement hereunder, or if it learns of any material inaccuracy or misstatement in, or material omission from, any information theretofore delivered to Centerview. The Committee understands and agrees that, in performing our services hereunder, Centerview (a) will be using and relying on publicly available information and on materials, data and other information furnished to Centerview by or on behalf of the Company and such other parties as Centerview determines to be appropriate subject to the exercise of Centerview's professional judgment, (b) is entitled to, subject to the exercise of Centerview's professional judgment, assume and rely upon the accuracy and completeness of such publicly available information and the other information so furnished without having independently verified the same, and (c) does not assume any responsibility for the accuracy or completeness of such information. Centerview will not conduct an independent evaluation or appraisal of the assets or liabilities (including any contingent, derivative or off -balance sheet assets or liabilities) of the Company, or advise or opine on any solvency or viability issues, nor will it make an inspection of the properties or assets of the Company. With respect to any forecasts or projections that may be furnished to Centerview or discussed with the Company, Centerview will assume that they have been reasonably prepared on bases reflecting the best then currently available estimates and judgments of the management of the Company as to the matters covered thereby. In connection with the services described above, with the Committee's authorization, Centerview shall be entitled to transmit any memorandum prepared by the Company describing the Company and its assets, properties or businesses in connection with a Sale or a Financing to potential parties to a Sale or Financing. The Company will be solely responsible for the contents of this memorandum. Any proprietary or non public information concerning the Company shall be subject to the terms and conditions of the Confidential Disclosure Agreement, dated August 19, 2016 between the Company and Centerview.

2. As compensation for our services, the Company agrees to pay Centerview in cash, by wire transfer of immediately available funds when due, the following fees:

   a. A monthly financial advisory fee of $150,000 (the "Monthly Advisory Fee"), the first of which shall be due and paid by the Company upon execution of this Agreement and thereafter on each monthly anniversary thereof during the term of this engagement. The amount of any Monthly Advisory Fee paid to Centerview after three months will be 50% credited (but only once) against any Restructuring

Fee or Sale Fee payable to Centerview pursuant to subparagraphs 2(c) or 2(d) hereof.

b. If at any time during the term of this engagement the Company consummates an Amendment, Centerview shall be entitled to receive an amendment fee, contingent upon the consummation of an Amendment and payable at the closing thereof equal to $2,000,000 (the "Amendment Fee"). The amount of any Amendment Fee paid to Centerview will be 100% credited (but only once) against any Restructuring Fee or Sale Fee payable to Centerview pursuant to subparagraphs 2(c) or 2(d) hereof.

c. If at any time during the term of this engagement or within the eighteen full months following the termination of this engagement (the "Tail Period") other than a termination by Centerview or a termination by the Committee for Cause (as defined below) (the term of this engagement, together with the Tail Period, the "Fee Period"), the Company consummates any Restructuring, Centerview shall be entitled to receive a restructuring fee (a "Transaction Fee"), contingent upon the consummation of a Restructuring and payable at the closing thereof equal to $5,000,000. Notwithstanding anything to the contrary in this subparagraph 2(c), in connection with any Restructuring that is intended to be effected, in whole or in part, as a prepackaged, partial prepackaged or prearranged plan of reorganization anticipated to involve the solicitation of acceptances of such plan in compliance with the Bankruptcy Code or similar applicable bankruptcy or insolvency legislation in Canada, by or on behalf of the Company, from holders of any class of the Company's securities, indebtedness or obligations (a "Prepackaged Plan") the Transaction Fee shall be payable (x) (i) in the case of a Prepackaged Plan that takes the form of prepackaged or partial prepackaged plan or reorganization, 75% upon receipt of votes from the Company's creditors necessary to confirm such Prepackaged Plan or (ii) in the case of a Prepackaged Plan that takes the form of a prearranged plan of reorganization, 50% upon obtaining commitments of support from the Company's creditors that in the good faith judgment of the Board of Directors of the Company are sufficient to justify filing such Prepackaged Plan, and (y) the balance shall be payable upon consummation of such Restructuring. As used herein, the term "Cause" shall mean a final judicial determination that Centerview acted with bad faith, gross negligence or willful misconduct in the performance of its services hereunder, which bad faith, gross negligence or willful misconduct was not cured (if curable) within 30 days following written notice thereof by the Company.

d. If at any time during the Fee Period, the Company consummates any Sale, the Company shall pay Centerview a sale fee (a "Sale Fee") equal to 1% of the Aggregate Consideration (as defined below). Such Sale Fee shall be contingent upon the consummation of a Sale and payable at the closing thereof. If fees are payable under both 2(c) and 2(d) of this Agreement, only the higher of the two shall be payable.

For purposes of this Agreement, the term "Aggregate Consideration" shall mean the total amount of cash and the fair market value (on the date of payment and as determined by the Committee and Centerview in good faith) of all securities and other property paid or payable, directly or indirectly, by the acquiring party (the "Acquiror") to the acquired party or the seller of the acquired business (in either case, the "Acquired"), or to the Acquired's security (debt or equity) holders, claim holders or by the Acquired to the Acquired's security (debt or equity) holders and claim holders in connection with a Sale or a transaction related thereto (including, without limitation, amounts paid by the Acquiror to holders of any warrants, stock purchase rights, convertible securities or similar rights of the Acquired and to holders of any options or stock appreciation rights issued by the Acquired, whether or not vested), but excluding in all cases any payments or settlements made by, or on behalf of, the Company in connection with any civil litigation, class action lawsuits or regulatory proceedings. Aggregate Consideration shall also include the value of any liabilities (including obligations relating to any capitalized leases and the principal amount of any indebtedness for borrowed money) net of cash and cash equivalents (x) existing on the Acquired's balance sheet at the time of a Sale or repaid or retired in connection with a Sale (if such Sale takes the form of a merger or sale or exchange of stock) or (y) assumed directly or indirectly by the Acquiror in connection with a Sale (if such Sale takes the form of a sale or exchange of assets). Aggregate Consideration shall also include (i) the net value (on the closing date of the Sale and as determined by the Committee and Centerview in good faith), if positive, of any current assets not sold to the Acquiror. If a Sale takes the form of a joint venture, partnership or other entity, Aggregate Consideration shall mean the fair market value (equity plus debt) of the Company's interest in the joint venture, partnership or similar entity on the date of formation of such entity. In the event that any part of the consideration in connection with any Sale will be payable (whether in one payment or a series of two or more payments) at any time following the consummation thereof, the term Aggregate Consideration shall include the present value of such future payment or payments, as determined by the Committee and Centerview in good faith, except that amounts (if any) held in escrow shall be deemed to have been paid at closing. As used in this Agreement, the terms "payment," "paid" or "payable" shall be deemed to include, as applicable, the issuance or delivery of securities or other property other than cash.

e. If at any time during the Fee Period, the Company consummates any Financing, the Company will pay to Centerview the following:

   i. 0.5% of the aggregate amount of financing commitments of any indebtedness (including any debtor-in-possession financing) issued to Sagard Capital Partners, L.P. and/or Power Corporation of Canada and/or their respective affiliates, and any non-institutional investors associated with Sagard Capital Partners, L.P. or Power Corporation of Canada and/or their respective affiliates (collectively, the "Listed Investors");

   ii. 1% of the aggregate amount of financing commitments of any indebtedness (including any debtor-in-possession financing) issued to investor(s) other than Listed Investors;

   iii. 1.5% of the aggregate amount of financing commitments of any equity or equity-linked securities or obligations issued to Listed Investors;

iv. 3% of the aggregate amount of financing commitments of any equity or equity-linked securities or obligations issued to investor(s) other than Listed Investors; and

v. 50% of financing fees, other than debtor-in-possession financing fees, shall be credited against any Restructuring Fee or Sale Fee payable to Centerview pursuant to subparagraph 2(c) or 2(d) hereof.

It is understood and agreed that if the proceeds of any such Financing are to be funded in more than one stage, Centerview shall be paid its applicable compensation hereunder upon the closing date of each stage even if one or more of such stages is consummated after the expiration of the Fee Period, so long as one or more of such stages is consummated during the Fee Period.

It is understood and agreed that nothing contained herein shall constitute an expressed or implied commitment by Centerview to underwrite, place or purchase any securities, in a financing or otherwise, which commitment shall only be set forth in a separate underwriting, placement agency or other appropriate agreement relating to a Financing, provided that any Financing fees payable pursuant to this Section 2 will be 100% credited against any fee payable to Centerview pursuant to such separate underwriting, placement agency or other appropriate agreement.

The Committee acknowledges and agrees that Centerview's restructuring expertise as well as its capital markets/financing knowledge and mergers and acquisitions capabilities, some or all of which may be required by the Company during the term of Centerview's engagement hereunder, were important factors in determining the amount of the various fees set forth herein, and that the ultimate benefit to the Company of Centerview's services hereunder could not be measured merely by reference to the number of hours to be expended by Centerview's professionals in the performance of such services. The Committee also acknowledges and agrees that the various fees set forth herein have been agreed upon by the parties in anticipation that a substantial commitment of professional time and effort will be required of Centerview and its professionals hereunder over the life of the engagement, and in light of the fact that such commitment may foreclose other opportunities for Centerview and that the actual time and commitment required by Centerview and its professionals to perform its services hereunder may vary substantially from week to week or month to month, creating "peak load" issues for the firm. In addition, given numerous issues which Centerview may be required to address in the performance of its services hereunder, Centerview's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for Centerview's services for engagements of this nature in an out-of-court context, each party hereto agrees that the fee and expense arrangements hereunder are reasonable under all applicable legal standards.

The Company and Centerview acknowledge and agree that during the term of this Agreement more than one success fee may become payable to Centerview under subparagraphs 2(b), 2(c), 2(d) and/or 2(e) hereof in connection with a series of independent transactions, but notwithstanding anything else contained in this Agreement (i) if a Restructuring Fee or Sale Fee is payable during the term of this Agreement, no other fee shall be payable in the Tail Period; and (ii) no Restructuring Fee, Sale Fee or Financing fee shall be payable in the Tail Period to the extent that Centerview was not involved in any part of the structuring or execution of the relevant Restructuring, Sale or Financing. It is understood and agreed that if more than one fee becomes so payable to Centerview in connection with a series of independent transactions, each such fee shall be paid to Centerview, other than as specified herein and subject to applicable credits as provided in this paragraph 2. Notwithstanding the foregoing, fees payable pursuant to this paragraph 2 shall be capped at $8,000,000 during the Fee Period (including if any Restructuring, Sale or Financing is consummated following the expiration of the Fee Period).

3. In addition to the fees payable by the Company to Centerview hereunder, the Company shall, whether or not any Amendment, Restructuring, Financing and/or Sale shall be proposed or consummated, reimburse Centerview on a periodic basis for its travel and other reasonable out-of-pocket expenses (including all fees, disbursements and other charges of counsel and other consultants and advisors, in each case, retained by Centerview with the Committee's consent), incurred in connection with, or arising out of Centerview's activities under or contemplated by this engagement, provided that in no event shall such fees and expenses exceed $50,000 in aggregate amount without the prior written consent of the Committee. The Company shall also reimburse Centerview, at such times as Centerview shall request, for any sales, use or similar taxes (including additions to such taxes, if any) arising in connection with any matter referred to in, or contemplated by, this engagement. Such reimbursements shall be made promptly upon submission by Centerview of statements for such expenses. It is understood and agreed that nothing contained herein shall be deemed to limit in any manner the indemnification, expense reimbursement and other obligations of the Company contained in the Indemnification Agreement attached hereto as Annex A.

4. The Company and Centerview have entered into a separate letter agreement, dated the date hereof and attached hereto as Annex A (the "Indemnification Agreement"), providing for indemnification by the Company of Centerview and certain related persons. Such Indemnification Agreement is an integral part of this Agreement and the terms thereof are incorporated by reference herein. As stated therein, the Indemnification Agreement shall survive any termination or completion of Centerview's engagement hereunder.

5. This Agreement and Centerview's engagement hereunder may be terminated by either the Committee or Centerview at any time upon 10 business days' prior written notice thereof to the other party and unless earlier terminated, shall terminate automatically without any action by any person one year from the date hereof (unless extended in writing between the Committee and Centerview); provided, however, that (A) termination of Centerview's engagement hereunder shall not affect the Company's continuing obligations under the Indemnification Agreement, and its continuing obligations and agreements under paragraphs 4 and 6 hereof, (B) notwithstanding any such termination, Centerview shall be entitled to the full fees in the amounts and at the times provided for in paragraph 2 hereof and (C) termination of Centerview's engagement hereunder shall not affect the Company's obligation to reimburse the expenses accrued prior to such termination to the extent provided in paragraph 3 hereof.

6. Centerview has been retained under this Agreement as an independent contractor with duties owed solely to the Company, and the Committee acknowledges that Centerview is not acting as an agent of the Company or in a fiduciary capacity, whether pursuant to

contract or otherwise, with respect to the Company or its stockholders, employees, creditors or any other third party. The advice (oral or written) rendered by Centerview pursuant to this Agreement is intended solely for the benefit and use of the Committee and the Board of Directors of the Company (in their capacity as directors and not in any individual capacity) in considering the matters to which this Agreement relates, and the Committee agrees that such advice may not be relied upon by any other person, used for any other purpose or reproduced, disseminated, quoted or referred to at any time, in any manner or for any purpose, nor shall any public references to Centerview be made by the Company, without the prior written consent of Centerview. Centerview is not assuming any duties or obligations other than those expressly set forth in this Agreement.

7. The Committee agrees that in the event of a successful Amendment, Restructuring, Sale or Financing, Centerview shall have the right to place advertisements in financial and other newspapers and journals and in marketing materials at its own expense describing its services to the Company hereunder in connection with such Amendment, Restructuring, Sale or Financing, subject to the Committee's prior review of such advertisements. Notwithstanding the foregoing, upon such public announcement of a successful Amendment, Restructuring, Sale or Financing, Centerview shall, without the Company's consent, have the right to include a "tombstone" with respect to such Amendment, Restructuring, Sale or Financing on its website or in any "pitch-book" or similar marketing materials to the extent such tombstone does not include any information not previously publicly disclosed by the Company.

8. In the event that the Company becomes a debtor under the Bankruptcy Code (or similar applicable bankruptcy or insolvency legislation in Canada), the Company shall use its best efforts to promptly apply to the applicable bankruptcy court having jurisdiction over the chapter 11 case or cases (or similar Canadian proceeding) (a "Bankruptcy Court") for the approval pursuant to sections 327(a) and 328(a) of the Bankruptcy Code (or similar Canadian legislation) of this Agreement and Centerview's retention by the Committee under the terms of this Agreement, and subject to the standard of review provided for in Section 328(a) of the Bankruptcy Code (or similar Canadian legislation), and not subject to any other standard of review under section 330 of the Bankruptcy Code or any other standard of review (or similar Canadian legislation or standard of review), and shall use its best efforts to obtain Bankruptcy Court (or similar Canadian legislation) authorization thereof. The Company shall supply Centerview and its counsel with a draft of such application and any proposed order authorizing Centerview's retention that is proposed to be submitted to the applicable Bankruptcy Court sufficiently in advance of the filing of such application or the submission of such order, as the case may be, to enable Centerview and its counsel to review and comment thereon. Centerview shall have no obligation to provide any services under this Agreement in the event that the Company becomes a debtor under the Bankruptcy Code (or similar Canadian legislation) unless and until Centerview's retention under the terms of this Agreement is approved under Section 327(a) and 328(a) of the Bankruptcy Code (or similar Canadian legislation) by a final order of the applicable Bankruptcy Court no longer subject to appeal, rehearing, reconsideration or petition for certiorari, and which order is acceptable to Centerview, acting reasonably, in all respects. Centerview acknowledges that in the event that the applicable Bankruptcy Court approves its retention by the Company pursuant to the

application process described in this paragraph 9, payment of Centerview's fees and expenses shall be subject to (i) jurisdiction and approval of the Bankruptcy Court under Section 327(a) and 328(a) of the Bankruptcy Code and any order approving Centerview's retention (or similar Canadian legislation or order), (ii) any applicable fee and expense guidelines and/or orders and (iii) any requirements governing interest and final fee applications. Centerview shall have no obligation to keep time records except as it does so in its normal practice and will have no obligation to provide services under this Agreement if it will be required to vary its normal time-keeping practices. In the event that the Company becomes a debtor under the Bankruptcy Code (or similar Canadian legislation) and Centerview's engagement hereunder is approved by the applicable Bankruptcy Court, the Company shall pay all fees and expenses of Centerview hereunder as promptly as practicable in accordance with the terms hereof. In so agreeing to seek Centerview's retention under section 328(a) of the Bankruptcy Code (or similar Canadian legislation), the Company acknowledges that it believes that Centerview's experience and expertise, its knowledge of the industry in which the Company operates and the capital markets and its other capabilities will inure to the benefit of the Company, that the value to the Company of Centerview's services hereunder derives in substantial part from that expertise and experience and that, accordingly, the structure and amount of the fees payable to Centerview hereunder are reasonable regardless of the number of hours to be expended by Centerview's professionals in performance of the services to be provided hereunder. Prior to commencing a chapter 11 case (or similar Canadian proceeding), the Company shall pay all undisputed amounts theretofore due and payable to Centerview in cash.

The Company agrees that Centerview's post-petition compensation as set forth herein and payments made pursuant to the expense reimbursements and indemnification provisions of this Agreement (including, without limitation, Annex A hereto) shall be entitled to priority as expenses of administration under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code (or similar Canadian legislation), and shall be entitled to the benefits of any "carve-outs" for professional fees and expenses in effect pursuant to one or more financing orders entered by the applicable Bankruptcy Court. The Company also agrees to assist Centerview in preparing, filing and serving all required fee statements, interim fee applications, and final fee application, The Company agrees to support Centerview's fee applications during any Bankruptcy Court hearing on such fee applications, so long as the fees and expenses sought by Centerview therein are consistent with this Agreement. In the event the Company files a Companies Creditors Arrangement Act proceeding or Bankruptcy and Insolvency Act under applicable laws in Canada, the Company shall use its commercially reasonable efforts to apply to the court for similar relief.

9. This Agreement shall be deemed made in New York. This Agreement and all controversies arising from or relating to performance hereunder shall be governed by, and construed in accordance with, the laws of the State of New York applicable to agreements made and to be performed entirely in such State, without giving effect to such State's rules concerning conflicts of laws that might provide for any other choice of law. Each of the Company and Centerview agree that any action or proceeding based hereon, or arising out of Centerview's engagement hereunder, shall be brought and maintained in

the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York or, if the Company becomes a debtor under the Bankruptcy Code, in the Bankruptcy Court with jurisdiction over the Company's bankruptcy case for the purpose of any such action or proceeding as set forth above. The Company and Centerview each hereby irrevocably submit to the jurisdiction of the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York or, if the Company becomes a debtor under the Bankruptcy Code, in the Bankruptcy Court with jurisdiction over the Company's bankruptcy case. Each of the Company and Centerview hereby irrevocably waive, to the fullest extent permitted by law, any objection which it may have or hereafter may have to the laying of venue of any such action or proceeding brought in any such court referred to above and any claim that any such action or proceeding has been brought in an inconvenient forum and agree not to plead or claim the same. THE COMPANY (FOR ITSELF, ANYONE CLAIMING THROUGH IT OR IN ITS NAME, AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS EQUITY HOLDERS) AND CENTERVIEW EACH HEREBY IRREVOCABLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

10. This Agreement may be executed in counterparts, each of which together shall be considered a single document. This Agreement may not be assigned by either party (except by Centerview to an affiliate upon written notice to the Company) without the prior written consent of the other. This Agreement shall be binding upon Centerview and the Company and their respective successors and permitted assigns (including, in the case of the Company, any successor to all or a portion of the assets and/or the businesses of the Company under a Plan). This Agreement is not intended to confer any rights upon any shareholder, creditor, owner or partner of the Company, or any other person or entity not a party hereto, other than the Indemnified Persons referenced in the Indemnification Agreement attached hereto as Annex A. This Agreement and the Indemnification Agreement and that certain Confidential Disclosure Agreement, dated as of August 19, 2016, between the parties hereto constitute the entire agreement of the parties with respect to the subject matter hereof, and may not be amended or otherwise modified or its provisions waived except by a writing executed by Centerview and the Company.

11. Centerview is engaged directly and through its affiliates and related parties in a number of investment banking, financial advisory and merchant banking activities. The Company acknowledges and agrees that in performing its services for the Company hereunder, Centerview shall have no duty to disclose to the Company, or to use for the benefit of the Company, any proprietary or non public information obtained by Centerview or its affiliates or related parties in the course of providing services to any other entity or person, engaging in any transaction (including as principal) or otherwise conducting its business.

We are pleased to accept this engagement and look forward to working with the Company. Please confirm that the foregoing is in accordance with our mutual understanding by signing and returning to Centerview this letter and the Indemnification Agreement attached hereto as Annex A , which shall thereupon constitute binding agreements between Centerview and the Company.

Very truly yours,

CENTERVIEW PARTNERS LLC

By: Marc Puntus
Name: Marc Puntus
Title: Partner

Accepted and Agreed to:

Performance Sports Group Ltd.

By: ______________________
Matthew Mannelly,
on behalf of the Special Committee
of its Board of Directors

11. Centerview is engaged directly and through its affiliates and related parties in a number of investment banking, financial advisory and merchant banking activities. The Company acknowledges and agrees that in performing its services for the Company hereunder, Centerview shall have no duty to disclose to the Company, or to use for the benefit of the Company, any proprietary or non public information obtained by Centerview or its affiliates or related parties in the course of providing services to any other entity or person, engaging in any transaction (including as principal) or otherwise conducting its business.

We are pleased to accept this engagement and look forward to working with the Company. Please confirm that the foregoing is in accordance with our mutual understanding by signing and returning to Centerview this letter and the Indemnification Agreement attached hereto as Annex A , which shall thereupon constitute binding agreements between Centerview and the Company.

Very truly yours,

CENTERVIEW PARTNERS LLC

By:

____
Name: Marc Puntus
Title: Partner

Accepted and Agreed to:

Performance Sports Group Ltd.

By: ________________________________
Matthew Mannelly,
on behalf of the Special Committee
of its Board of Directors

Annex A

August 19, 2016

Centerview Partners LLC
31 West 52nd Street
New York, NY 10019

Ladies and Gentlemen:

In connection with the engagement (the "Engagement") of Centerview Partners LLC ("Centerview") by the undersigned (the "Company") to render financial advisory services to the Special Committee of the Board of Directors of the Company pursuant to a letter agreement dated the date hereof (the "Engagement Agreement"), the Company hereby agrees as follows:

1. Except as provided in paragraph 3 hereof, the Company agrees to indemnify and hold harmless Centerview and each of its affiliates, their respective members, directors, officers, employees and controlling persons, and each of their respective successors and assigns (collectively, the "Indemnified Persons" and each individually, an "Indemnified Person") from and against any and all losses, claims, damages, demands and liabilities, joint or several, or actions or proceedings in respect thereof, brought by or against any person (collectively, "Losses"), which are related to or arise out of the Engagement or any matter or transaction contemplated thereby, provided, however, that in no event shall the Company be obligated to pay for more than one counsel (and one local counsel) for all of the Indemnified Persons as a group..

2. The Company agrees to reimburse each Indemnified Person promptly upon request for all reasonably incurred costs and expenses (including fees, disbursements and other charges of legal counsel), as they are incurred in connection with investigating, preparing for, pursuing, defending against or providing evidence in, any pending or threatened action, claim, suit, investigation or other proceeding brought by or against any person in any jurisdiction related to or arising out of the Engagement or any matter or transaction contemplated thereby (whether or not Centerview or any other Indemnified Person is a named party or witness, and whether or not any liability to any person results therefrom), including in connection with enforcing the terms hereof.

3. Notwithstanding the foregoing, the Company shall have no obligation to indemnify and hold harmless any Indemnified Person under this letter agreement in respect of any Losses to the extent that such Losses are finally judicially determined to have resulted from the bad faith, willful misconduct or gross negligence of such Indemnified Person.

4. The Company agrees that it will not, without Centerview's prior written consent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any pending or threatened action, claim, suit, investigation or proceeding in respect of which indemnification or contribution is or may be sought hereunder (whether or not Centerview or any other Indemnified Person is an actual or potential party thereto) unless such settlement, compromise, consent or termination includes an unconditional release of

each Indemnified Person from all liability arising out of such action, claim, suit, investigation or proceeding and does not impose any monetary or financial obligation on any Indemnified Person or contain any admission of culpability or liability on the part of any Indemnified Person. No Indemnified Person seeking indemnification, reimbursement or contribution under this letter agreement will, without the Company's prior written consent (which consent shall not be unreasonably withheld or delayed), settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit, investigation or proceeding referred to herein.

5. If the foregoing indemnification provided for herein is determined to be unavailable to an Indemnified Person for any reason or is insufficient to hold it harmless in respect of any Losses referred to herein, then, in lieu of indemnifying such Indemnified Person hereunder, the Company shall contribute to the amount paid or payable by such Indemnified Person as a result of such Losses (and expenses related thereto) (i) in such proportion as is appropriate to reflect the relative benefits to the Company, on the one hand, and to Centerview, on the other hand, with respect to the Engagement or (ii) if the allocation provided by clause (i) of this paragraph is not available, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of each of the Company, together with its officers, directors, employees, stockholders, affiliates and other advisors, on the one hand, and Centerview, on the other hand, and any other relevant and equitable considerations; provided, however, except with respect to any Losses that are finally judicially determined to have resulted from the willful misconduct or gross negligence of any Indemnified Person, that in no event shall the aggregate contribution of the Indemnified Persons to the amounts so paid or payable exceed the aggregate amount of all fees actually received by Centerview from the Company in connection with the Engagement (excluding any amounts received by Centerview as reimbursement of expenses pursuant to the Engagement Agreement), including in respect of any separate engagement letter in respect of any fairness or valuation opinion. For purposes of this letter agreement, the relative benefit to the Company and Centerview of the Engagement shall be deemed to be in the same proportion as (a) the total value paid or contemplated to be paid or received or contemplated to be received by the Company in the transaction or transactions that are the subject of the Engagement, whether or not such transaction is proposed or completed, bears to (b) the fees paid or to be paid to Centerview under the Engagement Agreement, including in respect of any separate engagement letter in respect of any fairness or valuation opinion..

6. The Company agrees that neither Centerview nor any other Indemnified Person shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Company or any person asserting claims on behalf of or in right of the Company for or in connection with the Engagement or any transactions or conduct in connection therewith, except to the extent that any losses, claims, damages or liabilities incurred by the Company are finally judicially determined to have resulted from the bad faith, willful misconduct or gross negligence of such Indemnified Person.

7. This letter agreement shall be deemed made in New York. This letter agreement and all controversies arising from or relating to performance hereunder shall be governed by, and

construed in accordance with, the laws of the State of New York applicable to agreements made and to be performed entirely in such State, without giving effect to such State's rules concerning conflicts of laws that might provide for any other choice of law. Each of the Company and Centerview agrees that any action or proceeding based on, arising out of or resulting from any matter referred to in this letter agreement, shall be brought and maintained exclusively in the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York. The Company and Centerview each hereby irrevocably submits to the jurisdiction of the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York for the purpose of any such action or proceeding as set forth above, and irrevocably agrees to be bound by any judgment rendered thereby in connection with such action or proceeding. Each of the Company and Centerview hereby irrevocably waives, to the fullest extent permitted by law, any objection which it may have or hereafter may have to the laying of venue of any such action or proceeding brought in any such court referred to above and any claim that any such action or proceeding has been brought in an inconvenient forum, and agree not to plead or claim the same. ANY RIGHTS OF TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING OUT OF THIS LETTER AGREEMENT OR THE ENGAGEMENT ARE HEREBY WAIVED.

8. The indemnity, contribution, reimbursement and other obligations of the Company hereunder shall be in addition to any liability that the Company may have, at common law or otherwise, and shall be binding on its successors and permitted assigns. The obligations of the Company hereunder cannot be assigned without the prior written consent of Centerview.

9. The terms of this letter agreement shall apply to all services provided by Centerview to the Company in connection with the matters contemplated by the Engagement, including those provided prior to the date of this letter agreement. The provisions of this letter agreement shall apply to any subsequent amendment to or modification of the Engagement Agreement, and shall survive the termination or completion of the Engagement. For the avoidance of doubt, the term "Engagement" shall include any services provided by Centerview to the Company prior to the execution of an Engagement Agreement with the Company, whether or not such services are described in such Engagement Agreement.

Very truly yours

PERFORMANCE SPORTS GROUP LTD.

By: ______________________
Matthew Mannelly, on behalf of the Special
Committee of its Board of Directors

Accepted:

CENTERVIEW PARTNERS LLC

By:______________________
Marc Puntus
Partner

9. The terms of this letter agreement shall apply to all services provided by Centerview to the Company in connection with the matters contemplated by the Engagement, including those provided prior to the date of this letter agreement. The provisions of this letter agreement shall apply to any subsequent amendment to or modification of the Engagement Agreement, and shall survive the termination or completion of the Engagement. For the avoidance of doubt, the term "Engagement" shall include any services provided by Centerview to the Company prior to the execution of an Engagement Agreement with the Company, whether or not such services are described in such Engagement Agreement.

Very truly yours

PERFORMANCE SPORTS GROUP LTD.

By: ______________________________
Matthew Mannelly, on behalf of the Special Committee of its Board of Directors

Accepted:

CENTERVIEW PARTNERS LLC

By: ______________________________
Marc Puntus
Partner

Exhibit "C" to the Affidavit

Of Brian J. Fox, sworn

November 21, 2016

Commissioner for taking affidavits

SARAH L. JENSEN
Notary Public, State of New York
Qualified in King County
No. 02JE6316369
My Commission Expires Dec. 15, 20 18

EXECUTION COPY

SUPERPRIORITY DEBTOR-IN-POSSESSION
TERM LOAN CREDIT AGREEMENT

dated as of October 31, 2016,

among

PERFORMANCE SPORTS GROUP LTD.,
a debtor and a debtor-in-possession, as Borrower,

the **SUBSIDIARY GUARANTORS** from time to time party hereto,

the **LENDERS** from time to time party hereto,

and

9938982 CANADA INC.,
as Administrative Agent and Collateral Agent

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This SUPERPRIORITY DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT, dated as of October 31, 2016, among PERFORMANCE SPORTS GROUP LTD., a British Columbia corporation ("**PSG**") and debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code and under the Companies' Creditors Arrangement Act (Canada) (the "**Borrower**"), the Subsidiaries of the Borrower, which are or become debtors and debtors-in-possession, which are now or which hereafter become a party hereto as Subsidiary Guarantors, the financial institutions which are now or which hereafter become a party hereto (collectively, the "**Lenders**", and each a "**Lender**"), and 9938982 Canada Inc., as the Administrative Agent and Collateral Agent for the Lenders. All capitalized terms used herein and defined in Article 1 are used herein as therein defined.

W I T N E S S E T H:

WHEREAS, on October 31, 2016 (the "**Petition Date**"), the Borrower and each of the other U.S. Debtors filed a voluntary petition for relief (collectively, the "**U.S. Cases**") under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "**U.S. Bankruptcy Court**").

WHEREAS, on October 31, 2016, the Borrower and each of the other Canadian Debtors brought an application (collectively, the "**Canadian Cases**", and together with the U.S. Cases, the "**Cases**") under the Companies' Creditors Arrangement Act (Canada) (the "**CCAA**" with the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Bankruptcy Court**", and together with the U.S. Bankruptcy Court, the "**Bankruptcy Courts**", and each, a "**Bankruptcy Court**").

WHEREAS, the Debtors are continuing in the possession of their assets and continuing to operate their respective businesses and manage their respective properties as debtors and debtors in possession under Section 1107(a) and 1108 of the Bankruptcy Code, and the CCAA, as applicable.

WHEREAS, the Borrower has requested the Lenders provide a new money term loan facility, consisting of (a) Refinancing Term Loans, to be funded in cash on the Closing Date in an aggregate principal amount of up to $331,300,000, and (b) Delayed Draw Term Loans, to be funded in cash in one or more drawings occurring after the Closing Date in an aggregate principal amount of up to $30,000,000, in each case, for the purposes set forth in Section 7.08; and

WHEREAS, the Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein and in the Financing Orders.

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

ARTICLE 1
DEFINITIONS AND ACCOUNTING TERMS

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

"**ABL Charge**" shall have the meaning ascribed to the term "ABL DIP Charge" as defined in the Initial CCAA Order.

"**ABL DIP Agent**" has the meaning assigned to the term "Administrative Agent" as such term is defined in the ABL DIP Credit Agreement.

"**ABL DIP Credit Agreement**" means that certain Super-Priority Debtor-In-Possession ABL Credit Agreement, dated as of October 31, 2016, by and among the Borrower, each of the other borrowers party thereto, and Bank of America, N.A., as administrative agent.

"**ABL DIP Facility**" means the commitments under the ABL DIP Credit Agreement utilized in making loans thereunder.

"**ABL Facilities**" means collectively, the Prepetition ABL Facility and the ABL DIP Facility.

"**ABL Priority Collateral**" shall have the meaning assigned to the term "ABL Priority Collateral" in the Post-Petition Intercreditor Agreement.

"**Account**" shall mean any "account" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Acquiror**" means 9938982 Canada Inc., a Canadian corporation.

"**Acquiror Sale Transaction**" shall have the meaning provided in Section 8.14(a).

"**Additional Security Documents**" shall have the meaning provided in Section 8.11(a).

"**Administrative Agent**" shall mean 9938982 Canada Inc., a Canadian corporation, in its capacity as Administrative Agent for the Lenders hereunder, and shall include any successor to the Administrative Agent appointed pursuant to Section 11.01.

"**Administration Charge**" shall have the meaning given to such term in the Initial CCAA Order.

"**Administrative Questionnaire**" shall have the meaning provided in Section 12.01(a)(ii).

"**Advisors**" means Kirkland & Ellis LLP, Blake, Cassels & Graydon LLP, BDT & Company and Rothschild & Co. and their respective affiliates (and such other advisors, representatives and agents acting on behalf of the Administrative Agent that have been appointed by the Administrative Agent from time to time).

"**Affiliate**" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; *provided, however*, that neither the Administrative Agent nor any Lender (nor any Affiliate thereof) shall be considered an Affiliate of the Borrower or any Subsidiary thereof as a result of this Agreement, the extensions of credit hereunder or its actions in connection therewith.

"**Agents**" shall mean the Administrative Agent and the Collateral Agent, and any other agent with respect to the Credit Documents serving as an agent or similar capacity.

"**Agreement**" shall mean this Superpriority Debtor-In-Possession Credit Agreement, as modified, supplemented, amended, restated (including any amendment and restatement hereof), extended or renewed from time to time.

"**Applicable Rate**" means 8.00% per annum.

"**Approved Fund**" shall mean any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"**Asset Sale**" shall mean any sale, transfer or other disposition by the Borrower or any of its Subsidiaries to any Person (including by way of redemption by such Person) other than to (x) the Borrower or (y) a Wholly-Owned Subsidiary of the Borrower that is a Credit Party, of any asset (including, without limitation, any capital stock or other securities of, or Equity Interests in, another Person) pursuant to Section 9.02(iii)(y), (v), (xii) (solely for this clause (xii), to the extent the Net Sale Proceeds thereof exceed $1,500,000 in the aggregate) and (xiii) and/or any Sale Transaction.

"**Assignment and Assumption Agreement**" shall mean an Assignment and Assumption Agreement substantially in the form of Exhibit K (appropriately completed) or such other form as shall be acceptable to the Administrative Agent.

"**Availability Period**" shall mean the period commencing on the Closing Date and ending on the Maturity Date.

"**Avoidance Actions**" shall have the meaning provided in Section 2.14(a).

"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Bank Product**" shall mean any of the following products, services or facilities extended to the Borrower or any Credit Parties: (a) Cash Management Services; (b) products under Swap Contracts; (c) commercial credit card and merchant card services; and (d) other banking products or services as may be requested by the Borrower or any Credit Parties.

"**Bank Product Debt**" shall mean the Indebtedness and other obligations of the Borrower or any of its Subsidiaries relating to Bank Products.

"**Bankruptcy Code**" shall mean the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, *et seq.*), as amended.

"**Bankruptcy Courts**" has the meaning set forth in the recitals hereto.

"**Bid Procedures Order**" shall have the meaning provided in Section 8.14(c).

"**Bidding Procedures Motion**" shall have the meaning provided in Section 8.14(a).

"**Bid Protections**" shall have the meaning provided in Section 8.14(a).

"**Biscuit Acquisition Agreement**" shall mean that certain Asset Purchase Agreement, dated as of October 31, 2016, by and among PSG, the other entities identified therein as sellers and the Acquiror in connection with the Acquiror Sale Transaction, with the same terms and conditions (including the Bid Protections) as the acquisition agreement filed in connection with the Bidding Procedures Motion.

"**Borrower**" shall have the meaning provided in the first paragraph of this Agreement.

"**Borrower Materials**" shall have the meaning provided in Section 8.01.

"**Borrowing**" shall mean the borrowing of Term Loans made by the Lenders to the Borrower on a Borrowing Date.

"**Borrowing Base**" shall mean the "Borrowing Base" as such term is defined in the ABL DIP Credit Agreement as in effect as of the date hereof.

"**Borrowing Date**" shall mean the Closing Date or any Delayed Draw Borrowing Date, as the context may require.

"**Budget**" means (a) initially, the Initial Budget and (b) following the delivery of any budget pursuant to Section 8.01(h), the budget in effect from time to time after the Signing Date pursuant to Section 8.01(h).

"**Business Day**" shall mean any day except Saturday, Sunday and (i) any day that shall be in New York City a legal holiday or a day on which banking institutions in New York City are authorized or required by law or other government action to close and (ii) any day that shall be in Toronto, Ontario a legal holiday or a day on which banking institutions in Toronto, Ontario are authorized or required by law or other government action to close.

"**Canadian AML Acts**" shall mean applicable Canadian law regarding anti-money laundering, anti-terrorist financing, government sanctions and "know your client" matters, including the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).

"**Canadian Bankruptcy Court**" shall have the meaning provided in the recitals hereto.

"**Canadian Cases**" has the meaning set forth in the recitals hereto.

"**Canadian Debtors**" means the Borrower, the Canadian Subsidiaries and each other Domestic Subsidiary of the Borrower that are debtors under the Canadian Cases.

"**Canadian Defined Benefit Plan**" shall mean a Canadian Pension Plan that contains a "defined benefit provision" as defined in subsection 147.1(1) of the ITA.

"**Canadian Dollars**" and the sign "**Can$**" shall each mean freely transferable lawful money (expressed in Canadian Dollars) of Canada.

"**Canadian Employee Plan**" shall mean a Canadian Pension Plan, a Canadian Welfare Plan or both.

"**Canadian Pension Plan**" shall mean a pension plan or plan that is subject to the Pension Benefits Act (Ontario) or any other similar legislation in any other jurisdiction of Canada for employees in Canada and former employees in Canada of the Borrower or any Subsidiary of the Borrower.

"**Canadian Securities Laws**" means, collectively, the securities laws of each province and territory of Canada and the respective regulations, rules, blanket rulings, orders and notices made thereunder and the national, multilateral and local instruments and published policies adopted by the Canadian Securities Regulators.

"**Canadian Securities Regulators**" means, collectively, the securities commission or securities regulatory authority in each of the provinces and territories of Canada.

"**Canadian Security Agreements**" shall mean, collectively, the security agreement and hypothec, delivered pursuant to the terms of this Agreement substantially in the form of Exhibits F and G, respectively, as amended, amended and restated or otherwise modified or supplemented from time to time in accordance with the terms hereof.

"**Canadian Statutory Plan**" shall mean any benefit plan that the Borrower or any Subsidiary of the Borrower is required by statute to participate in or contribute to in respect of any current or former employee, director, officer, consultant or independent contractor in Canada of that Person, or any dependent of any of them, including the Canada Pension Plan, the Quebec Pension Plan and plans administered pursuant to applicable legislation regarding healthcare, workers' compensation insurance and employment insurance.

"**Canadian Welfare Plan**" shall mean any deferred compensation, bonus, share option or purchase, savings, retirement savings, retirement benefit, profit sharing, medical, health, hospitalization, insurance or any other benefit, program, agreement or arrangement, funded or unfunded, formal or informal, written or unwritten, that is applicable to any current or former employee, director, officer, consultant or independent contractor in Canada of the Borrower or any Subsidiary of the Borrower, or any dependent of any of them, other than a Canadian Pension Plan or a Canadian Statutory Plan.

"**Capitalized Lease Obligations**" shall mean, with respect to any Person, all rental obligations of such Person which, under GAAP are or will be required to be capitalized on the books of such Person, in each case taken at the amount thereof accounted for as indebtedness in accordance with GAAP.

"**Carve-Out**" has the meaning specified in the Financing Orders and includes the Administration Charge created pursuant to Section 11.52 of the CCAA, which in any case, for the period after a carve-out trigger event specified in the Financing Orders, shall not exceed $7,500,000 in the aggregate.

"**Cases**" has the meaning set forth in the recitals hereto.

"**Cash Collateral Account**" shall mean a non-interest bearing cash collateral account maintained with, and in the sole dominion and control of, the Collateral Agent for the benefit of the Secured Parties.

"**Cash Disbursements**" means disbursements made in cash by or on behalf of the Borrower and its Subsidiaries, including, without limitation, for investments, capital expenditures and repayments of Indebtedness, but excluding any checks (or similar instruments) outstanding on the Petition Date that are reissued in accordance with an order of the Bankruptcy Court.

"**Cash Equivalents**" shall mean:

(i) U.S. Dollars, Canadian Dollars, pounds sterling, euros, the national currency of any participating member state of the European Union or, in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business;

(ii) readily marketable direct obligations of any member of the European Economic Area, Switzerland, or Japan, or any agency or instrumentality thereof or obligations unconditionally guaranteed by the full faith and credit of such country, and, at the time of acquisition thereof, having a credit rating of at least AA- (or the equivalent grade) by Moody's or Aa3 by S&P;

(iii) marketable general obligations issued by any state of the United States or any province or territory of Canada or any political subdivision thereof or any instrumentality thereof that are guaranteed by the full faith and credit of such state, province or territory and, at the time of acquisition thereof, having a credit rating of at least AA- (or the equivalent grade) by Moody's or Aa3 by S&P;

(iv) securities or any other evidence of Indebtedness or readily marketable direct obligations issued or directly and fully guaranteed or insured by the United States or Canadian government or any agency or instrumentality of the United States or Canadian government (*provided* that the full faith and credit of the United States or Canada is pledged in support of those securities), in such case having maturities of not more than twelve months from the date of acquisition;

(v) certificates of deposit and eurodollar time deposits with maturities of twelve months or less from the date of acquisition, bankers' acceptances with maturities not exceeding twelve months and overnight bank deposits, in each case, with any Lender party to this Agreement or any commercial bank or trust company having, or which is the principal banking subsidiary of a bank holding company having, a long-term unsecured debt rating of at least "A" or the equivalent thereof from S&P or "A2" or the equivalent thereof from Moody's and a combined capital and surplus greater than $500,000,000;

(vi) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clauses (iv) and (v) above entered into with any financial institution meeting the qualifications specified in clause (v) above;

(vii) commercial paper having one of the two highest ratings obtainable from Moody's or S&P and, in each case, maturing within twelve months after the date of acquisition; and

(viii) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (i) through (vii) of this definition.

"**Cash Management Services**" shall mean any services provided from time to time to the Borrower or any of its Subsidiaries in connection with 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.

"**Cash Receipts**" means receipts of cash by or on behalf of the Borrower and its Subsidiaries from third parties, excluding, except to the extent forecasted in the Budget, tax refunds, proceeds from non-ordinary course asset sales (including the sale of the "Inaria" division), or other extraordinary or non-ordinary course cash receipts.

"**CCAA**" shall mean the Companies' Creditors Arrangement Act (Canada).

"**CERCLA**" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as the same has been amended and may hereafter be amended from time to time, 42 U.S.C. § 9601 *et seq*.

"**CFC**" shall mean a Subsidiary of a U.S. Subsidiary that is a "controlled foreign corporation" for purposes of Section 957 of the Code.

"**Change in Law**" shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States, Canadian or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued but only to the extent a Lender is imposing applicable increased costs or costs in connection with capital adequacy requirements similar to those described in clauses (a) and (b) of Section 2.10 generally on other borrowers of loans under United States cash flow term loan credit facilities.

"**Chattel Paper**" shall mean "chattel paper" as such term is defined in the PPSA or in the UCC as in effect on the date hereof in the State of New York. Without limiting the foregoing, the term "Chattel Paper" shall in any event include all Tangible Chattel Paper and all Electronic Chattel Paper.

"**Closing Date**" shall mean the first Business Day on or after the Final Financing Order Date on which all of the conditions precedent set forth in Section 5.02 are satisfied or waived pursuant to the terms hereof and the funding of the Refinancing Term Loans occur.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"**Collateral**" shall have the meaning provided in Section 14.01.

"**Collateral Agent**" shall mean the party acting as collateral agent for the Secured Parties pursuant this Agreement or to the Security Documents.

"**Commercial Tort Claims**" shall mean "commercial tort claims" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Commitment**" means, with respect to any Lender, such Lender's (x) Refinancing Term Loan Commitment and/or (y) Delayed Draw Term Loan Commitment, as the context shall require.

“**Compliance Certificate**” shall mean a certificate of the Responsible Officer of the Borrower substantially in the form of Exhibit J hereto, or otherwise in form and substance reasonably satisfactory to the Administrative Agent.

“**Connection Income Taxes**” shall mean Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Contingent Obligation**” shall mean, as to any Person, any obligation of such Person as a result of such Person being a general partner of any other Person, unless the underlying obligation is expressly made non-recourse as to such general partner, and any obligation of such Person guaranteeing or intended to guarantee any Indebtedness (“**primary obligations**”) of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly, including, without limitation, any such obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (x) for the purchase or payment of any such primary obligation or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided*, *however*, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

“**Contract Rights**” shall mean all rights of any Credit Party under each Contract, including, without limitation, (i) any and all rights to receive and demand payments under any or all Contracts, (ii) any and all rights to receive and compel performance under any or all Contracts and (iii) any and all other rights, interests and claims now existing or in the future arising in connection with any or all Contracts.

“**Contracts**” shall mean all contracts between any Credit Party and one or more additional parties (including, without limitation, any Swap Contracts, contracts for Bank Products, licensing agreements and any partnership agreements, joint venture agreements and limited liability company agreements, and settlement agreements).

“**Copyrights**” shall mean all: (a) copyrights (whether statutory or common law, whether registered or unregistered and whether published or unpublished), and all copyright registrations and applications therefor, including, without limitation, the copyright registrations and applications in the United States Copyright Office and the Canadian Intellectual Property Office; (b) rights and privileges arising under applicable law with respect to such copyrights; and (c) renewals and extensions thereof and amendments thereto.

“**Credit Documents**” shall mean this Agreement and, after the execution and delivery thereof pursuant to the terms of this Agreement, each Note and each Security Document and the Post-Petition Intercreditor Agreement.

“**Credit Event**” shall mean the making of any Term Loan.

“**Credit Parties**” shall mean the collective reference to the Borrower and each Subsidiary Guarantor.

“**Cumulative Net Cash Flow**” means, with respect to any Variance Period, an amount (which amount may be negative) equal to (a) cumulative Cash Receipts (excluding the proceeds of any Term Loans and proceeds of the ABL DIP Facility) attributable to the Borrower and its consolidated Subsidiaries in such Variance Period less (b) cumulative Cash Disbursements (other than interest on and the repayment of Term Loans and amounts outstanding under the ABL Facilities and excluding professional fees actually paid during the Variance Period) attributable to the Borrower and its consolidated Subsidiaries in such Variance Period.

“**Debtors**” means the Canadian Debtors and the U.S. Debtors, collectively.

“**Debtor Credit Parties**” means the Borrower and each other Credit Party that is a Debtor.

“**Debtor Relief Laws**” shall mean the Bankruptcy Code, the Bankruptcy and Insolvency Act (Canada), the Companies’ Creditors Arrangement Act (Canada), the Winding-Up and Restructuring Act (Canada) and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors or debt security holders, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States, Canada or other applicable jurisdictions from time to time in effect.

“**Default**” shall mean any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

“**Defaulting Lender**” shall mean any Lender that (a) has failed to (i) fund all or any portion of its Term Loans within two Business Days of the date such Term Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Term Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) becomes subject to a Bail-In Action or (iii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation, the Canada Deposit Insurance Corporation or any other state, provincial or federal regulatory authority acting in such a capacity; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or Canada or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and as of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each other Lender promptly following such determination.

“**Delayed Draw Borrowing Date**” means any Business Day on which the conditions set forth in Section 5.03 and Article 6 are satisfied or waived in accordance with the terms hereof and the Delayed Draw Term Loans are made by the Delayed Draw Lenders pursuant to Section 2.01(b).

“**Delayed Draw Lender**” means those Lenders with a Delayed Draw Term Loan Commitment or holding Delayed Draw Term Loans.

“**Delayed Draw Term Loan Commitment**” means, with respect to each Lender, the commitment of such Lender to make Delayed Draw Term Loans hereunder on any Delayed Draw Borrowing Date. The amount of each Lender’s Delayed Draw Term Loan Commitment is set forth on Schedule 2.01(b) or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate amount of the Delayed Draw Term Loan Commitments as of the Closing Date is $30,000,000.

"**Delayed Draw Term Loan Facility**" means Delayed Draw Term Loan Commitments utilized in making Delayed Draw Term Loans hereunder.

"**Delayed Draw Term Loans**" means the term loans made by the Delayed Draw Lenders to the Borrower pursuant to Section 2.01(b).

"**Delayed Draw Termination Date**" means the earliest of the Maturity Date and the Delayed Draw Borrowing Date that results in the Delayed Draw Term Loan Commitment being reduced to $0.00.

"**Deposit Accounts**" shall mean all deposit, demand, time, savings, cash management, passbook or other similar accounts with a bank, credit union, trust company, similar financial institution or other Person and all accounts and sub-accounts relating to any of the foregoing accounts.

"**DIP Cash Collateral**" shall mean "Cash Collateral" as defined in the Final Financing Orders.

"**DIP Superpriority Claim**" has the meaning set forth in Section 2.14.

"**D&O Charge**" shall have the meaning given to such term in the Initial CCAA Order.

"**Disqualified Stock**" shall mean any preferred Equity Interests of the Borrower.

"**Dividend**" shall mean, with respect to any Person, that such Person has declared or paid a dividend, distribution or returned any equity capital to its stockholders, partners or members or authorized or made any other distribution, payment or delivery of property (other than common equity of such Person) or cash to its stockholders, partners or members as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for a consideration any shares of any class of its Equity Interests outstanding on or after the Signing Date (or any options or warrants issued by such Person with respect to its Equity Interests), or set aside any funds for any of the foregoing purposes.

"**Documents**" shall mean "documents" as such term is defined in the UCC as in effect on the date hereof in the State of New York or, as applicable, Documents of Title as such term is defined in the PPSA as in effect on the date hereof in the Province of Ontario.

"**Dollars**," "**U.S.$**" and "**$**" shall mean the lawful money of the United States.

"**Domestic Subsidiary**" shall mean, as to any Person, any Subsidiary of such Person incorporated or organized under the laws of (i) the United States, any state thereof or the District of Columbia (a "**U.S. Subsidiary**") or (ii) Canada or any province or territory thereof (a "**Canadian Subsidiary**").

"**EEA Financial Institution**" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Electronic Chattel Paper**" shall mean "electronic chattel paper" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

“**EMU Legislation**” shall mean the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

“**Environment**” shall mean ambient air, indoor air, surface water, groundwater, drinking water, land surface and sub- surface strata and natural resources such as wetlands, flora and fauna.

“**Environmental Claims**” shall mean any and all administrative, regulatory or judicial actions, suits, demands, demand letters, orders, directives, claims, liens, notices of liability, noncompliance or violation, penalties, investigations and/or proceedings relating in any way to any Environmental Law or any permit or license issued, or any approval given, under any such Environmental Law (hereafter, “**Claims**”), including, without limitation, (a) any and all Claims by governmental or regulatory authorities for enforcement, investigation, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation, injunctive or other equitable relief or other actions arising out of or relating to any Environmental Law or an alleged injury or threat of injury to human health, safety or the Environment due to the presence of Hazardous Materials, including any Release or threat of Release of any Hazardous Materials.

“**Environmental Law**” shall mean any Federal, state, provincial, foreign or local statute, law, rule, regulation, by-law, restriction, ordinance, code, permit, binding guideline, agreement and rule of common law, now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order or direction, consent decree or judgment, relating to the Environment, human health and safety or Hazardous Materials, including, without limitation, in the United States: CERCLA; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*; the Emergency Planning and the Community Right-to-Know Act of 1986, 42 U.S.C. § 11001 *et seq.*; the Hazardous Material Transportation Act, 49 U.S.C. § 5101 *et seq.*; the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; in Canada: the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C., 1985, c. F-14; *Species at Risk Act*, S.C. 2002, c. 29; *Transportation of Dangerous Goods Act*, 1992, S.C. 1992, c. 34, and any state, provincial and local or foreign counterparts or equivalents, in each case as amended from time to time.

“**Equipment**” shall mean any “equipment” as such term is defined in the UCC as in effect on the date hereof in the State of New York and in the PPSA, as applicable, and in any event, shall include, but shall not be limited to, all machinery, equipment, furnishings, fixtures and vehicles now or hereafter owned by any Credit Party and any and all additions, substitutions and replacements of any of the foregoing and all accessions thereto, wherever located, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

“**Equity Interests**” of any Person shall mean any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and, unless the context indicates otherwise, the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Agreement and any successor section thereof.

“**ERISA Affiliate**” shall mean each person (as defined in Section 3(9) of ERISA) which together with the Borrower or a Subsidiary of the Borrower would be deemed to be a “single employer” within the meaning of Section 414(b) or (c) of the Code and solely with respect to Section 412 of the Code, Sections 414(b), (c), (m) or (o) of the Code.

“**ERISA Event**” shall mean (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder, but excluding any event for which the 30-day notice period is waived with respect to a Plan, (b) any failure to make a required contribution to any Plan that would result in the imposition of a Lien or other encumbrance or the failure to satisfy the minimum funding standards set forth in Sections 412 or 430 of the

Code or Sections 302 or 303 of ERISA, or the arising of such a Lien or encumbrance, with respect to a Plan, (c) the incurrence by the Borrower, a Subsidiary of the Borrower, or an ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or the withdrawal or partial withdrawal (including under Section 4062(e) of ERISA) of any of the Borrower, a Subsidiary of the Borrower, or an ERISA Affiliate from any Plan or Multiemployer Plan, (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 of ERISA, or the receipt by the Borrower, a Subsidiary of the Borrower, or an ERISA Affiliate from the PBGC or a plan administrator of any notice of intent to terminate any Plan or Multiemployer Plan or to appoint a trustee to administer any Plan, (e) the adoption of any amendment to a Plan that would require the provision of security pursuant to the Code, ERISA or other applicable law, (f) the receipt by the Borrower, a Subsidiary of the Borrower, or an ERISA Affiliate of any notice concerning statutory liability arising from the withdrawal or partial withdrawal of the Borrower, a Subsidiary of the Borrower, or an ERISA Affiliate from a Multiemployer Plan or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA, (g) the occurrence of any non-exempt "prohibited transaction" (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to which the Borrower or any Subsidiary is a "disqualified person" (within the meaning of Section 4975 of the Code) or with respect to which the Borrower or any Subsidiary could reasonably be expected to have liability, (h) the occurrence of any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of any Plan or the appointment of a trustee to administer any Plan, (i) the filing of any request for or receipt of a minimum funding waiver under Section 412(c) of the Code with respect to any Plan or Multiemployer Plan, (j) a determination that any Plan is in "at-risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code), (k) the receipt by the Borrower, a Subsidiary of the Borrower or any ERISA Affiliate of any notice, that a Multiemployer Plan is, or is expected to be, in endangered or critical status under Section 305 of ERISA or, (l) any other extraordinary event or condition with respect to a Plan or Multiemployer Plan which could reasonably be expected to result in a Lien or any acceleration of any statutory requirement to fund all or a substantial portion of the unfunded accrued benefit liabilities of such plan.

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Event of Default**" shall have the meaning provided in Article 10.

"**Excluded Agreements**" shall have the meaning provided in "Excluded Property".

"**Excluded Property**" shall mean:

(a) any leases, licenses, Instruments, Contracts, Chattel Paper, Intangibles, Permits, governmental licenses, provincial, territorial or local franchises, charters or authorizations or other contracts or agreements (other than an Account or Chattel Paper) with or issued by Persons other than the Borrower or Subsidiaries of the Borrower or an Affiliate thereof (collectively, "**Excluded Agreements**") that would otherwise be included in the Collateral (and such Excluded Agreements shall not be deemed to constitute a part of the Collateral) for so long as, and to the extent that, the granting of such a security interest or hypothec pursuant hereto would invalidate or result in a violation, breach, default or termination of such Excluded Agreements or create a right of termination in favour of, or require the consent of, any party thereto (in each case other than the Borrower or a Subsidiary Guarantor) (in each case, except to the extent any such violation, breach, default, termination, right or consent would be rendered ineffective under the Bankruptcy Code, the UCC, the PPSA or other applicable law); provided, however, that a security interest or hypothec in an Excluded Agreement in favour of the Secured Parties shall attach immediately (i) at such time as Credit Party's grant of a security interest or hypothec in such Excluded Agreement no longer results in a violation, breach, default or termination thereof or thereunder or no longer creates such right of termination or such right has been waived or requires such consent or such consent has been obtained, (ii) to the extent severable, to any portion of such Excluded Agreement that does not result in a respective violation, breach, default, termination or right or consent thereof or thereunder and (iii) to any proceeds or receivables of such Excluded Agreement that are not Excluded Property;

(b) any intent-to-use trademark application prior to the filing and acceptance of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest or hypothec therein would impair the validity or enforceability of such intent-to-use trademark application under applicable United States federal law;

(c) any Margin Stock;

(d) cash that is segregated for utility deposits under any order of the Bankruptcy Court or that secures any letters of credit outstanding and permitted to be outstanding and secured pursuant to the terms of this Agreement;

(e) those assets as to which the Administrative Agent and the Lead Borrower reasonably agree in a writing to the Collateral Agent that the cost of obtaining a security interest therein is excessive in relation to the value of the security to be afforded thereby;

(f) any Avoidance Actions; and

(g) any of the following:

(i) any Intangibles, Instruments, Investment Property, Chattel Paper, Documents, Money or Goods that would otherwise be included in the Collateral (and such Intangibles, Instruments, Investment Property, Chattel Paper, Documents, Money or Goods shall not be deemed to constitute a part of the Collateral) if such Intangibles, Instruments, Investment Property, Chattel Paper, Documents, Money or Goods have been sold or otherwise transferred in connection with a sale-leaseback transaction permitted under Section 9.02(xi), or are subject to any Liens permitted under Section 9.01(vii), or constitute the Proceeds or products of any Intangibles, Instruments, Investment Property, Chattel Paper, Documents, Money or Goods that have been so sold or otherwise transferred, in each case in accordance with the terms of this Agreement, so long as such Proceeds or products remain subject to the Liens referenced above in this clause (i); and

(ii) any property or asset that would otherwise be included in the Collateral (and such property or asset shall not be deemed to constitute a part of the Collateral) if such property or assets is subject to a Lien permitted by Section 9.01(xiv);

in each case pursuant to preceding clauses (g)(i) through (ii), for so long as, and to the extent that, the granting or existence of such a security interest or hypothec pursuant hereto would result in a breach, default or termination of any agreement relating to the respective Lien or obligations secured thereby (in each case, except to the extent any such breach, default or termination would be rendered ineffective under the UCC, the PPSA or other applicable law); provided that immediately upon repayment of the Indebtedness and/or other monetary obligation secured by a Lien referenced in clauses (g)(i) through (ii), the relevant Credit Party shall be deemed to have granted a security interest or hypothecin all of its rights, title and interests under or in such Intangibles, Instruments, Investment Property, Chattel Paper, Documents, Money or Goods that are the subject of such Lien; provided, however, that Excluded Property shall not include any Proceeds, substitutions or replacements of any Excluded Property referred to in any of clauses (a) through (g) (unless such Proceeds, substitutions or replacements would constitute Excluded Property referred to in any of clauses (a) through (f)).

"**Excluded Subsidiary**" shall mean any Subsidiary of the Borrower that is (a) a Foreign Subsidiary that is (i) a direct or indirect Subsidiary of a U.S. Subsidiary and (ii) a CFC, (b) a FSHCO, (c) a U.S. Subsidiary of a Foreign Subsidiary, (d) prohibited by applicable Law from guaranteeing the Facilities and (e) any other Subsidiary where the Borrower and Administrative Agent reasonably agree (in writing by the Administrative Agent and confirmed by the Borrower), that the cost or other consequences (including any adverse tax consequences) of guaranteeing the Obligations shall be excessive in view of the value to be afforded thereby; *provided* that, notwithstanding the above, (x) if a Subsidiary executes a joinder hereto to become a "Subsidiary Guarantor" then it shall not constitute an "Excluded Subsidiary" (unless released from its obligations under Article 13 as a "Subsidiary Guarantor" in accordance with the terms hereof), (y) if a Subsidiary serves as a guarantor under the ABL Facilities and/or the Prepetition Term Loan Credit Agreement, then it shall not constitute an "Excluded Subsidiary" (unless released from its obligations under Article 13 as a "Subsidiary Guarantor" in accordance with the terms hereof and thereof) and (z) no U.S. Subsidiary or Canadian Subsidiary of the Borrower existing on the Signing Date will be an Excluded Subsidiary.

"**Excluded Taxes**" shall mean, with respect to any Recipient of any payment to be made by or on account of any obligation of any Credit Party under any Credit Document, (a) Taxes imposed on (or measured by) its net income and franchise (and similar) Taxes imposed on it in lieu of income Taxes, in each case, either pursuant to the laws of the jurisdiction in which such Recipient is organized or in which the principal office or applicable lending office of such Recipient is located (or any political subdivision thereof) or that are Other Connection Taxes, (b) any branch profits Taxes under Section 884(a) of the Code, Section 219 of the ITA or any similar Tax imposed by any jurisdiction described in clause (a) above, (c) in the case of a Lender (other than an assignee pursuant to a request by the Borrower under Section 2.13), any U.S. federal or Canadian withholding Tax that (i) is imposed on amounts payable to such Lender pursuant to a Law in effect at the time such Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that such Recipient (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Credit Parties with respect to such withholding tax pursuant to Section 4.04(a) or (ii) is attributable to such Recipient's failure to comply with Section 4.04(b) or Section 4.04(c), (d) any U.S. federal withholding Taxes under FATCA, (e) any Taxes imposed on a payment by or on account of any obligation of a Credit Party under any Credit Document: (A) (i) to a Person with which the Credit Party does not deal at arm's length (for the purposes of the ITA) at the time of making such payment or (ii) in respect of a debt or other obligation to pay an amount to a Person with whom the payer is not dealing at arm's length (for the purposes of the ITA) at the time of such payment and (B) on which the Tax is imposed by reason of such non-arm's length relationship and (f) any Taxes imposed on a Recipient by reason of such Recipient: (i) being a "specified shareholder" (as defined in subsection 18(5) of the ITA) of any Credit Party, or (ii) not dealing at arm's length (for the purposes of the ITA) with a "specified shareholder" (as defined in subsection 18(5) of the ITA) of any Credit Party.

"**FATCA**" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations thereunder or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code as of the date of this Agreement (or any such amended or successor version), any intergovernmental agreement entered into in connection with the foregoing or any fiscal or regulatory legislation or rules adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

"**FCPA**" shall have the meaning provided in Section 7.15(d).

"**Federal Funds Rate**" shall mean, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to members of the Federal Reserve System and other financial institutions on such day on such transactions as determined by the Administrative Agent.

"**Fees**" shall mean all amounts payable pursuant to or referred to in Section 3.01.

"**Final Financing Orders**" shall mean collectively a final order of the U.S. Bankruptcy Court approving the Term Loan Facilities, with a similar order being rendered by the Canadian Bankruptcy Court as part of any "comeback hearing", both of which shall be in form and substance acceptable to the Required Lenders in their sole discretion (as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof in form and substance acceptable to the Required Lenders in their sole discretion).

"**Final Financing Order Date**" shall mean the latest of the dates upon which entry of a Final Financing Order is made.

"**Financing Orders**" shall mean the Interim Financing Order, the Final Financing Orders and any other order of the Bankruptcy Courts in relation to the ABL DIP Facility.

"**Fixtures**" shall mean "fixtures" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Flood Insurance Laws**" shall mean, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

"**Foreign Asset Sale**" shall have the meaning provided in Section 4.02(g).

"**Foreign Pension Plan**" shall mean any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States or Canada by the Borrower or any one or more of its Subsidiaries primarily for the benefit of employees of the Borrower or such Subsidiaries residing outside the United States or Canada, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

"**Foreign Recovery Event**" shall have the meaning provided in Section 4.02(g).

"**Foreign Subsidiaries**" shall mean each Subsidiary of the Borrower that is not a Domestic Subsidiary.

"**FSHCO**" shall mean any U.S. Subsidiary that has no material assets other than the Equity Interests in one or more CFCs.

"**Fund**" shall mean any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"**GAAP**" shall mean generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession) which are applicable to the circumstances as of the date of determination.

"**General Intangibles**" shall mean "general intangibles" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Goods**" shall mean "goods" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

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

"**Guaranteed Obligations**" shall have the meaning provided in Section 13.01.

"**Guaranty**" shall have the meaning provided in Section 13.01.

"**Guaranty Supplement**" shall have the meaning provided in Section 13.05.

"**Hazardous Materials**" shall mean (a) any petroleum or petroleum products or byproducts, hydrocarbons, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, polychlorinated biphenyls, and radon gas; (b) any chemicals, materials, substances or wastes defined as or included in the definition of "hazardous substances," "hazardous waste," "hazardous materials," "extremely hazardous substances," "restricted hazardous waste," "toxic substances," "toxic pollutants," "contaminants," or "pollutants," or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material, substance or waste regulated or for which liability may arise under any Environmental Law.

"**Indebtedness**" shall mean, as to any Person, without duplication, (i) all indebtedness (including principal, interest, fees and charges) of such Person (A) for borrowed money or (B) for the deferred purchase price of property or services, (ii) the maximum amount available to be drawn under all letters of credit, bankers' acceptances and similar obligations issued for the account of such Person and all unpaid drawings in respect of such letters of credit, bankers' acceptances and similar obligations, (iii) all Indebtedness of the types described in clause (i), (ii), (iv), (v), (vi), (vii) or (viii) of this definition secured by any Lien on any property owned by such Person, whether or not such Indebtedness has been assumed by such Person (*provided* that, if the Person has not assumed or otherwise become liable in respect of such Indebtedness, such Indebtedness shall be deemed to be in an amount equal to the lesser of (x) the aggregate unpaid amount of Indebtedness secured by such Lien and (y) the fair market value of the property to which such Lien relates as determined in good faith by such Person), (iv) the aggregate amount of all Capitalized Lease Obligations of such Person, (v) all Contingent Obligations of such Person, (vi) all net obligations under any Swap Contracts and any Bank Product Debt or under any similar type of agreement, (vii) all Off-Balance Sheet Liabilities of such Person and (viii) all obligations in respect of Disqualified Stock. Notwithstanding the foregoing, Indebtedness shall not include (a) trade payables and accrued expenses incurred by any Person in accordance with customary practices and in the ordinary course of business of such Person or (b) earn-outs and other contingent payments in respect of acquisitions except to the extent that the liability on account of any such earn-outs or contingent payment becomes fixed and is required by GAAP to be reflected as a liability on the consolidated balance sheet of the Borrower and its Subsidiaries.

"**Indemnified Person**" shall have the meaning provided in Section 12.01.

"**Indemnified Taxes**" shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Credit Parties under any Credit Document and (b) to the extent not otherwise described in (a), Other Taxes.

"**Ineligible Transferee**" shall mean (i) certain Persons identified as "Ineligible Transferees" in writing to the Administrative Agent by the Borrower on or prior to the date of this Agreement and (ii) operating companies which are bona fide competitors of the Borrower and such competitors' subsidiaries and controlling equity holders (other than bona fide debt funds) as may be identified by name in writing to the Administrative Agent prior to the date of this Agreement (but only with the consent of the Administrative Agent, not to be unreasonably withheld, by delivery of notice to the Administrative Agent setting forth such person or persons.

"**Initial Budget**" has the meaning specified in Section 5.01(g).

"**Initial CCAA Order**" means the Order of the Canadian Court in the Canadian Case, granting the Canadian Debtors the protection of the CCAA, and shall be acceptable in form and substance reasonably acceptable to the Required Lenders.

"**Instrument**" shall mean "instruments" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Inventory**" shall mean merchandise, inventory and goods, and all additions, substitutions and replacements thereof and all Accessions thereto, wherever located, together with all goods, supplies, incidentals, packaging materials, labels, materials and any other items used or usable in manufacturing, processing, packaging or shipping same, in all stages of production from raw materials through work in process to finished goods, and all products and proceeds of whatever sort and wherever located any portion thereof which may be returned, rejected, reclaimed or repossessed by the Collateral Agent from any Credit Party's customers, and shall specifically include all "inventory" as such term is defined in the PPSA or in the UCC as in effect on the date hereof in the State of New York, as applicable.

"**Intellectual Property**" shall mean all: (a) intellectual property of every kind and nature in any jurisdiction throughout the world, including designs, Patents, Copyrights, Trademarks, Software, Trade Secrets, rights under Licenses, and all additions, improvements and accessions to, and books and records describing or used in connection with, any of the foregoing; (b) rights, priorities and privileges corresponding to any of the foregoing throughout the world, including as provided by international treaties or conventions, and all other rights of any kind whatsoever accruing thereunder or pertaining thereto; (c) Proceeds, income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect to any of the foregoing, including damages and payments for past and future infringements, misappropriations, or other violations thereof; and (d) rights to sue for past, present, and future infringements, misappropriations, or other violations of any of the foregoing, including the right to settle suits involving claims and demands for royalties owing.

"**Intercompany Charge**" shall have the meaning given to such term in the Initial CCAA Order.

"**Interim Financing Order**" has the meaning specified in Section 5.01(j) and for purposes hereof shall be deemed to include the Initial CCAA Order.

"**Interim Financing Order Date**" shall mean the date of entry of the Interim Financing Order.

"**Interim Order Intercreditor Arrangements**" has the meaning specified in Section 5.01(j).

"**Investment Property**" shall mean "investment property" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Investments**" shall have the meaning provided in Section 9.05.

"**ITA**" shall mean the Income Tax Act (Canada), as amended from time to time.

"**Joint Venture**" shall mean any Person other than an individual or a Subsidiary of the Borrower (i) in which the Borrower or any of its Subsidiaries holds or acquires an ownership interest (by way of ownership of Equity Interests or other evidence of ownership) and (ii) which is engaged in a business permitted by Section 9.09.

"KEIP / KERP Charge" means the charge provided for in the Final Financing Order or subsequent Order under the Canadian Cases which charge shall not exceed the amount set forth in the Final Financing Order of the Canadian Bankruptcy Court to secure the obligations of the Credit Parties pursuant to payments to be made to key employees under a key employee retention plan subject to and in accordance with the terms of the Final Financing Order or subsequent Order under the Canadian Cases.

"Laws" shall mean any and all federal, state, provincial, local, foreign and supranational treaties, statutes, laws, judicial decisions, regulations, guidances, guidelines, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, governmental agreements and governmental restrictions, whether now or hereafter in effect.

"**Lender**" means (a) the Refinancing Term Lenders (other than any such Person that has ceased to be a party hereto by assignment of all of its Refinancing Term Loans and Refinancing Term Loan Commitments), (b) the Delayed Draw Lenders (other than any such Person that has ceased to be a party hereto by assignment of all of its Delayed Draw Term Loans and Delayed Draw Term Loan Commitments) and (c) any Person that becomes a "Lender" hereunder pursuant to Section 12.04(b).

"**Licenses**" means any and all licenses, agreements and similar arrangements in respect of the licensing or use of any Intellectual Property.

"**Lien**" shall mean any mortgage, pledge, hypothecation, collateral assignment, security deposit arrangement, encumbrance, hypothec, deemed or statutory trust, security conveyance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, and any lease having substantially the same effect as any of the foregoing).

"**Liquidity**" shall mean the sum of (a) unrestricted cash on the balance sheet of the Borrower and the other Credit Parties which are subject to a perfected first-priority lien of the ABL DIP Agent (or, after the payment in full of the ABL DIP Facility, the Administrative Agent), subject to the Carve-Out and the Administration Charge plus (b) the amount of "Availability" as such term is defined in the ABL DIP Credit Agreement as in effect as of the date hereof plus (c) after the Final Financing Order Date, the aggregate amount of undrawn Delayed Draw Term Loan Commitments then in effect.

"**Margin Stock**" shall have the meaning provided in Regulation U.

"**Material Adverse Effect**" shall mean a material adverse effect on (a) the condition (financial or otherwise), results of operations, business or properties of a Credit Party, (b) the ability of a Credit Party to duly and punctually pay or perform their obligations under this Agreement and/or any other Credit Document in accordance with the terms thereof, or (c) the practical realization of the benefits of the Agent's and each Lender's rights and remedies under this Agreement, the Credit Documents or any of the Financing Orders in each case, excluding the commencement, continuation and prosecution of the Cases and the consequences that would reasonably be expected to occur as a direct result thereof.

"**Maturity Date**" shall mean the earliest to occur of (i) the Scheduled Maturity Date, (ii) the consummation of a Sale Transaction, (iii) the acceleration of the Term Loans and the termination of all Commitments in accordance with this Agreement, (iv) three (3) Business Days from the Petition Date if the Interim Financing Order from each Bankruptcy Court, in form and substance acceptable to the Required Lenders in their reasonable discretion, is not entered into and/or (v) 30 days from the Interim Financing Order Date if the Final Financing Order from the U.S. Bankruptcy Court, in form and substance acceptable to the Required Lenders in their reasonable discretion, is not entered into (or, in each case of the foregoing, a later date that is agreed to in writing by the Lenders in their reasonable discretion).

"**Milestones**" shall have the meaning provided in Section 8.14.

"**Minimum Borrowing Amount**" shall mean $1,000,000.

"**Monitor**" means Ernst & Young LLP, the monitor appointed by the Canadian Bankruptcy Court in the Canadian Cases.

"**Moody's**" shall mean Moody's Investors Service, Inc.

"**Multiemployer Plan**" shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA under which the Borrower or a Subsidiary of the Borrower has any obligation or liability, including on account of an ERISA Affiliate, or any Canadian Pension Plan that is a Multiemployer Plan as defined under applicable Canadian Law.

"**Net Debt Proceeds**" shall mean, with respect to any incurrence of Indebtedness for borrowed money, the gross cash proceeds (net of underwriting discounts and commissions and other reasonable costs associated therewith) received by the respective Person from such incurrence.

"**Net Equity Proceeds**" shall mean, with respect to any issuance of Equity Interests of the Borrower, the gross cash proceeds (net of underwriting discounts and commissions and other reasonable costs associated therewith) received by the Borrower from such issuance.

"**Net Recovery Event Proceeds**" shall mean, with respect to any Recovery Event, an amount in cash equal to the gross cash proceeds (net of reasonable costs and any taxes incurred in connection with such Recovery Event) received by the respective Person in connection with such Recovery Event.

"**Net Sale Proceeds**" shall mean, with respect to any Asset Sale, an amount in cash equal to the gross cash proceeds (including any cash received by way of deferred payment pursuant to a promissory note, receivable or otherwise, but only as and when received) received from such sale of assets, net of the reasonable costs of, and expenses associated with, such sale (including fees and commissions, payments of unassumed liabilities relating to the assets sold and required payments of any Indebtedness or other obligations (other than Indebtedness secured pursuant to this Agreement or the Security Documents) which is secured by the assets which were sold), and the incremental taxes paid or payable as a result of such Asset Sale.

"**Non-Consenting Lender**" shall have the meaning provided in Section 12.11(b).

"**Non-Defaulting Lender**" shall mean and include each Lender other than a Defaulting Lender.

"**Note**" shall have the meaning provided in Section 2.05.

"**Notice of Borrowing**" shall have the meaning provided in Section 2.03.

"**Notice Office**" shall mean the address for notices set forth on Schedule 2.03.

"**Obligations**" shall mean all now existing or hereafter arising debts, obligations, covenants, and duties of payment or performance of every kind, matured or unmatured, direct or contingent, owing, arising, due, or payable to any Lender, Agent or Indemnified Person by any Credit Party arising out of this Agreement or any other Credit Document, including, without limitation, all obligations to repay principal or interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Term Loans, and to pay interest, fees, costs, charges, expenses, professional fees, and all sums chargeable to the Borrower or for which the Borrower is liable as indemnitor under the Credit Documents, whether or not evidenced by any note or other instrument.

"**OFAC**" shall have the meaning provided in Section 7.15(b).

"**Off-Balance Sheet Liabilities**" of any Person shall mean (i) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (ii) any liability of such Person under any Sale-Leaseback Transactions that do not create a liability on the balance sheet of such Person, (iii) any obligation under a Synthetic Lease or (iv) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person.

"**Officers' Certificate**" shall mean, as applied to any Person, a certificate executed on behalf of such Person by a Responsible Officer of such Person.

"**Order**" shall mean an issued and entered order of the U.S. Bankruptcy Court or the Canadian Court.

"**OSC Investigation**" shall mean the continuous disclosure review commenced by the Ontario Securities Commission on April 1, 2016.

"**Other Connection Taxes**" shall mean, with respect to any Recipient, Taxes that are imposed as a result of any present or former connection between such Recipient and the jurisdiction imposing such Tax (other than a connection arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Credit Document, or sold or assigned an interest in any Term Loan or Credit Document).

“**Other Taxes**” shall mean any and all present or future stamp, court or documentary, intangible, recording, filing or property Taxes or similar Taxes arising from any payment made under, from the execution, delivery, registration, performance or enforcement of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.13).

“**Patents**” shall mean all: (a) industrial designs, letters patent, certificates of inventions, all registrations and recordings thereof, and all applications for letters patent, including registrations, recordings and pending applications in the United States Patent and Trademark Office or the Canadian Intellectual Property Office, and (b) reissues, continuations, divisions, continuations-in-part, renewals or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein and all improvements thereto.

“**Participant**” shall have the meaning provided in Section 12.04(d).

“**Participant Register**” shall have the meaning provided in Section 12.04(d).

“**Patriot Act**” shall have the meaning provided in Section 12.15.

“**Payment in Full**” or “**Paid in Full**” means, with respect to the Obligations, (i) the termination of the Commitments of all of the Lenders and (ii) indefeasible payment in full in Dollars of all Obligations (other (x) than contingent indemnification obligations and other obligations not then payable which expressly survive termination and (y), as to which no claim has been asserted and, in the case of clause (y), to the extent arrangements satisfactory to the applicable Lender shall have been made in respect of any such Obligations).

“**Payment Office**” shall mean the office of the Administrative Agent specified on Schedule 1.01 or such other office as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

“**PBGC**” shall mean the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

“**Permits**” shall mean, to the extent permitted to be assigned by the terms thereof or by applicable law, all licenses, permits, rights, orders, variances, franchises or authorizations of or from any governmental authority or agency.

“**Permitted Cash Flow Test**” means, for the Borrower and its Subsidiaries, actual Cumulative Net Cash Flow falling below (a) \$(18,502,000), with respect to the Variance Period ending November 25, 2016, (b) \$(12,664,000), with respect to the Variance Period ending December 23, 2016, (c) \$(7,953,000), with respect to the Variance Period ending January 20, 2017 and (b) \$(6,923,000), with respect to the Variance Period ending February 17, 2017.

“**Permitted Liquidity Variance**” means, for the Borrower and its Subsidiaries, a negative variance in Liquidity compared to the forecasted Liquidity for the applicable week as set forth in the Initial Budget calculated with (a) a \$7,500,000 cushion for each week, applicable during the period commencing from the Petition Date through week ending November 25, 2016, (b) a \$10,000,000 cushion for each week, applicable during the period commencing from the week ending November 25, 2016 through week ending December 23, 2016 and (c) a \$12,500,000 cushion for each week, applicable thereafter.

“**Permitted Encumbrance**” shall mean, with respect to any Real Estate of the Borrower or any of its Subsidiaries that is encumbered by a mortgage securing the Indebtedness under the Prepetition Term Loan Credit Agreement, such exceptions to title as are set forth in the mortgage title insurance policy delivered with respect thereto.

“**Permitted Liens**” shall have the meaning provided in Section 9.01.

“**Person**” shall mean any individual, partnership, joint venture, firm, corporation, association, limited liability company, trust or other enterprise or any government or political subdivision or any agency, department or instrumentality thereof.

“**Petition Date**” has the meaning set forth in the recitals hereto.

“**Plan**” shall mean any pension plan as defined in Section 3(2) of ERISA other than a Foreign Pension Plan, a Canadian Employee Plan, a Canadian Statutory Plan or a Multiemployer Plan, which is maintained or contributed to by (or to which there is an obligation to contribute of) the Borrower or a Subsidiary of the Borrower or with respect to which the Borrower, a Subsidiary of the Borrower has, or may have, any liability.

“**Platform**” shall have the meaning provided in Section 8.01.

“**Post-Petition Intercreditor Agreement**” means that certain Intercreditor Agreement, dated as of the date hereof and effective as of the Final Financing Order Date, by and among the Administrative Agent, as the initial fixed asset administrative agent and Bank of America, N.A., as the ABL administrative agent.

“**Post-Petition Intercreditor Arrangements**” means the intercreditor arrangements contemplated by the Financing Orders and the Post-Petition Intercreditor Agreement.

“**PPSA**” shall mean the Personal Property Security Act (Ontario) or the Civil Code of Quebec; *provided* that, if perfection or the effect of perfection or non-perfection or the priority of any security interest or hypothec in any Collateral is governed by the PPSA as in effect in a Canadian jurisdiction other than Ontario, or the Civil Code of Quebec, “PPSA” shall mean the Personal Property Security Act as in effect from time to time in such other jurisdiction or the Civil Code of Quebec, as applicable, for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“**Prepayment Premium**” has the meaning set forth in Section 3.01(a).

“**Prepetition ABL Credit Agreement**” shall mean that certain ABL Credit Agreement dated as of April 15, 2014, as heretofore modified, supplemented, amended, restated (including any amendment and restatement thereof), extended or renewed and, to the extent permitted hereunder, by and among, *inter alios*, the Borrower, each of the other borrowers thereto, the lenders party thereto from time to time and Bank of America, N.A., as the administrative agent and collateral agent.

“**Prepetition ABL Facility**” shall mean the commitments under the Prepetition ABL Credit Agreement utilized in making loans thereunder.

“**Prepetition Term Loan Credit Agreement**” shall mean that certain Term Loan Credit Agreement dated as of April 15, 2014, as heretofore, modified, supplemented, amended, restated (including any amendment and restatement thereof), extended or renewed and, to the extent permitted hereunder, by and among the Borrower, the lenders party thereto from time to time and Bank of America, N.A., as the administrative agent and collateral agent.

“**Proceeds**” shall mean all “proceeds” as such term is defined in the PPSA or in the UCC as in effect in the State of New York on the date hereof, as applicable, and, in any event, shall also include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Collateral Agent or any Credit Party from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to any Credit Party from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental authority (or any person acting under color of governmental authority) and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

“**Professionals**” has the meaning specified in the definition of the term “Carve-Out” in the Financing Orders or, under the Canadian Cases, the persons who benefit from the Administration Charge.

"**Projections**" shall mean the detailed projected consolidated financial statements of the Borrower and its Subsidiaries (after giving effect to the Transaction) delivered to the Administrative Agent on or prior to the Signing Date.

"**PSG**" shall have the meanings assigned to such term in the preamble hereto.

"**Public Lender**" shall have the meaning provided in Section 8.01.

"**Real Property**" of any Person shall mean, collectively, the right, title and interest of such Person (including any leasehold, mineral or other estate) in and to any and all land, improvements and fixtures owned, leased or operated by such Person, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

"**Recipient**" shall mean (a) the Administrative Agent and (b) any Lender, as applicable.

"**Recordable Intellectual Property**" means (i) any Patent issued by or applied for issuance with the United States Patent and Trademark Office or the Canadian Intellectual Property Office, (ii) any Trademark registered or applied for registration with the United States Patent and Trademark Office or the Canadian Intellectual Property Office, and (iii) any Copyright registered or applied for registration with the United States Copyright Office or the Canadian Intellectual Property Office.

"**Recovery Event**" shall mean the receipt by the Borrower or any of its Subsidiaries of any cash insurance proceeds or condemnation awards payable (i) by reason of theft, loss, physical destruction, damage, taking or any other similar event with respect to any property or assets constituting Collateral of the Borrower or any of its Subsidiaries (but not by reason of any loss of revenues or interruption of business or operations caused thereby) and (ii) under any policy of insurance required to be maintained under Section 8.03 in respect of Collateral, in each case to the extent such proceeds or awards do not constitute reimbursement or compensation for amounts previously paid by the Borrower or any of its Subsidiaries in respect of any such event.

"**Refinancing**" shall have the meaning provided in Section 5.02(c).

"**Refinancing Term Lender**" means any Lender with a Refinancing Term Loan Commitment or holding Refinancing Term Loans.

"**Refinancing Term Loan Commitment**" means, with respect to each Lender, the commitment of such Lender to make Refinancing Term Loans hereunder on the Closing Date. The amount of each Lender's Refinancing Term Loan Commitment as of the Signing Date (immediately prior to the funding of any Refinancing Term Loans) is the amount equal to the lesser of (A) the amount necessary to consummate the Refinancing and (B) $331,300,000,which is the amount set forth on Schedule 2.01(a).

"**Refinancing Term Loan Facility**" means Refinancing Term Loan Commitments utilized in making Refinancing Term Loans hereunder.

"**Refinancing Term Loans**" means the term loans made by the Lenders to the Borrower pursuant to Section 2.01(a).

"**Register**" shall have the meaning provided in Section 12.04(c).

"**Regulation T**" shall mean Regulation T of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"**Regulation U**" shall mean Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"**Regulation X**" shall mean Regulation X of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"**Related Indemnified Person**" of an Indemnified Person shall mean (1) any controlling Person or controlled Affiliate of such Indemnified Person, (2) the respective directors, officers, or employees of such Indemnified Person or any of its controlling Persons or controlled Affiliates and (3) the respective agents of such Indemnified Person or any of its controlling Persons or controlled Affiliates, in the case of this clause (3), acting at the instructions of such Indemnified Person, controlling Person or such controlled Affiliate; *provided* that each reference to a controlled Affiliate or controlling Person in this definition pertains to a controlled Affiliate or controlling Person involved in the negotiation or administration of this Agreement or the syndication of the Term Loans. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"**Related Parties**" shall mean, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person's Affiliates.

"**Release**" shall mean actively or passively disposing, discharging, injecting, spilling, pumping, leaking, leaching, dumping, emitting, escaping, emptying, pouring, seeping, migrating or the like, into, through or upon the Environment or within, from or into any building, structure, facility or fixture.

"**Required Lenders**" shall mean Non-Defaulting Lenders, the sum of whose outstanding principal of Term Loans as of any date of determination represent greater than 50% of the sum of all outstanding principal of Term Loans of Non-Defaulting Lenders at such time; *provided* that to the extent that there are only two (2) Lenders, each Lender shall be a Required Lender.

"**Requirement of Law**" shall mean, with respect to any Person, (i) the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person and (ii) any statute, law, treaty, rule, regulation, order, decree, writ, injunction or determination of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Responsible Officer**" shall mean, with respect to any Person, its chief executive officer, president, or any vice president, managing director, treasurer, controller or other officer of such Person having substantially the same authority and responsibility; *provided* that, with respect to compliance with financial covenants, "Responsible Officer" shall mean the chief financial officer, treasurer or controller of the Borrower, or any other officer of the Borrower having substantially the same authority and responsibility.

"**Returns**" shall have the meaning provided in Section 7.09.

"**RPMRR**" shall mean the Register of Personal and Movable Real Rights (Quebec).

"**S&P**" shall mean Standard & Poor's Ratings Services, a division of the McGraw Hill Company, Inc., and any successor owner of such division.

"**Sale Transaction**" shall have the meaning provided in Section 8.14(a).

"**Sale Transaction Restructuring**" shall mean the transactions expressly contemplated by Schedule 5.18 of the Biscuit Acquisition Agreement as in effect as of the date hereof or as otherwise agreed to in writing by the Required Lenders.

"**Sale-Leaseback Transaction**" shall mean any arrangements with any Person providing for the leasing by the Borrower or any of its Subsidiaries of real or personal property which has been or is to be sold or transferred by the Borrower or such Subsidiary to such Person or to any other Person to whom funds have been or are to be advanced by such Person in connection therewith.

"**Scheduled Maturity Date**" shall mean the date that is 120 days after the Petition Date.

"**SEC**" shall mean the Securities and Exchange Commission or any successor thereto.

"**Section 8.01 Financials**" shall mean the quarterly and monthly financial statements required to be delivered pursuant to Sections 8.01(a) and (b).

"**Secured Parties**" means, collectively, the Administrative Agent, the Collateral Agent, the Lenders and each other agent or representative of the Lenders hereunder.

"**Securities Act**" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Securities Commission**" shall mean a securities commission or any other securities regulatory authority in Canada.

"**Security Document**" shall mean and include this Agreement, the Canadian Security Agreements and, after the execution and delivery thereof, each Additional Security Document and the Financing Orders.

"**Signing Date**" shall mean the first Business Day on which all of the conditions precedent set forth in Section 5.01 are satisfied or waived pursuant to the terms hereof.

"**Software**" shall mean all computer software, programs and databases (including, without limitation, source code, object code and all related applications and data files), firmware and documentation and materials relating thereto, together with any and all rights related thereto and any substitutions, replacements, improvements, error corrections, updates and new versions of any of the foregoing.

"**Subsidiary**" shall mean, as to any Person, (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more Subsidiaries of such Person and (ii) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a 50% Equity Interest at the time.

"**Subsidiary Guarantor**" shall mean each of the Subsidiaries listed on the signature page hereto and each Domestic Subsidiary of the Borrower established, created or acquired after the date hereof which becomes a party to this Agreement in accordance with the requirements of this Agreement.

"**Swap Contract**" shall mean (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"**Synthetic Lease**" shall mean a lease transaction under which the parties intend that (i) the lease will be treated as an "operating lease" by the lessee and (ii) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

"**Tangible Chattel Paper**" shall mean "tangible chattel paper" as such term is defined in the UCC as in effect on the date hereof in the State of New York.

"**Taxes**" shall mean any and all present or future taxes, levies, imposts, duties, deductions (including, without limitation, payroll deductions), charges, fees, assessments, liabilities or withholdings (including backup withholding) imposed by any Governmental Authority in the nature of a tax, including interest, penalties and additions to tax with respect thereto.

"**Term Loan Commitments**" shall mean with respect to any Lender, such Lender's Refinancing Term Loan Commitment and/or Delayed Draw Term Loan Commitment.

"**Term Loan Exposure**" means, with respect to any Lender, as of any date of determination, (i) prior to the initial funding of the Refinancing Term Loans on the Closing Date, that Lender's Commitment, and (ii) after the initial funding of the Refinancing Term Loans on the Closing Date, the sum of (a) the aggregate outstanding principal amount of the Term Loans of that Lender and (b) the remaining Commitment of that Lender (to the extent such Commitments have not terminated or expired as of such date).

"**Term Loan Facilities**" means the Refinancing Term Loan Facility and the Delayed Draw Term Loan Facility.

"**Term Loans**" means the Refinancing Term Loans and the Delayed Draw Term Loans.

"**Term Priority Collateral**" shall have the meaning assigned to the term "Fixed Asset Priority Collateral" in the Post-Petition Intercreditor Arrangements as in effect as of the Closing Date.

"**Threshold Amount**" shall mean $500,000.

"**Trade Secrets**" shall mean all confidential and proprietary information, including, without limitation, know-how, show-how, trade secrets, manufacturing and production processes and techniques, inventions, research and development information, databases and data, including, without limitation, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information.

"**Trademarks**" shall mean all: (a) trademarks, service marks, certification marks, domain names and associated URLs, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, slogans, other source or business identifiers, all registrations and recordings thereof, and all registrations and applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office and the Canadian Intellectual Property Office that are disclosed as such in the Biscuit Acquisition Agreement as in effect as of the date hereof, (b) all extensions or renewals of any of the foregoing, (c) goodwill associated therewith or symbolized thereby, and (d) rights and privileges arising under applicable law with respect to the use of any of the foregoing.

"**Transaction**" shall mean (i) the execution, delivery and performance by the Credit Parties of each of the Credit Documents to which any of them is an intended party and the transactions contemplated hereby and thereby and (ii) the filing of the Cases and the related Financing Orders.

"**Transaction Costs**" shall mean the fees, premiums and expenses payable by the Borrower and its Subsidiaries in connection with the transactions described in clauses (i) and (ii) of the definition of "Transaction."

"**UCC**" shall mean the Uniform Commercial Code as from time to time in effect in the relevant jurisdiction.

"**Unfunded Pension Liability**" of any Plan shall mean the amount, if any, by which the value of the accumulated plan benefits under the Plan determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all plan assets of such Plan.

"**United States**" and "**U.S.**" shall each mean the United States of America.

"**U.S. Bankruptcy Court**" shall have the meaning provided in the recitals hereto.

"**U.S. Cases**" has the meaning set forth in the recitals hereto.

"**U.S. Debtors**" shall mean, collectively, the Borrower and each Domestic Subsidiary that is a debtor under the U.S. Cases.

"**U.S. Dollars**" and the sign "**$**" shall each mean freely transferable lawful money (expressed in dollars) of the United States.

"**U.S. Tax Compliance Certificate**" shall have the meaning provided in Section 4.04(c).

"**U.S. Trustee**" shall mean the Office of the United States Trustee for the District of Delaware.

"**Variance**" shall mean a difference in the amount contained in the Initial Budget with respect to disbursements, cash requirements, unrestricted and restricted cash balance, the outstanding amount of loans under the ABL Facilities and the Delayed Draw Term Loans, net cash flow, Availability, Liquidity, the Borrowing Base or other data therein compared to the actual disbursements, cash requirements, unrestricted and restricted cash balance, the outstanding amount of loans under the ABL Facilities and the Delayed Draw Term Loans, net cash flow, Availability, Liquidity, the Borrowing Base and other data, in each case, determined on a cumulative basis from the Petition Date.

"**Variance Period**" means the period commencing with the week in which the Petition Date occurred through and including the most recently ended four-week period thereafter (excluding, for the avoidance of doubt, the week in which the applicable Variance Report for such Variance Period is delivered).

"**Variance Report**" has the meaning specified in Section 8.01(i).

"**Wholly-Owned Domestic Subsidiary**" shall mean, as to any Person, any Wholly-Owned Subsidiary of such Person that is a Domestic Subsidiary of such person.

"**Wholly-Owned Foreign Subsidiary**" shall mean, as to any Person, any Wholly-Owned Subsidiary of such Person that is a Foreign Subsidiary of such Person.

"**Wholly-Owned Subsidiary**" shall mean, as to any Person, (i) any corporation 100% of whose capital stock is at the time owned by such Person and/or one or more Wholly-Owned Subsidiaries of such Person and (ii) any partnership, association, joint venture or other entity in which such Person and/or one or more Wholly-Owned Subsidiaries of such Person owns 100% of the Equity Interests at such time (other than, in the case of a Foreign Subsidiary with respect to preceding clauses (i) or (ii), director's qualifying shares and/or other nominal amounts of shares required to be held by Persons other than the Borrower and its Subsidiaries under applicable law).

"**Work Fee**" means the fees paid by PSG to the Acquiror pursuant to the Work Fee Letter, which fees shall not be subject to reimbursement, set-off or counterclaim except as expressly contemplated by the terms of the Work Fee Letter and this Agreement.

"**Work Fee Letter**" means that certain Work Fee Letter, dated as of October 27, 2016, by and between PSG and the Acquiror.

"**Write-Down and Conversion Powers**" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.02 *Terms Generally*. The definitions in Section 1.01 shall apply equally to both 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"; and the words "asset" and "property" shall be construed as having 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. 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 of this Agreement unless the context shall otherwise require. All references herein to Articles, Sections, paragraphs, clauses, subclauses, Exhibits and Schedules shall be deemed references to Articles, Sections, paragraphs, clauses and subclauses of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Unless otherwise expressly provided herein, (a) all references to documents, instruments and other agreements (including the Credit Documents and organizational documents) shall be deemed to include all subsequent amendments, restatements, amendments and restatements, supplements and other modifications thereto, but only to the extent that such amendments, restatements, amendments and restatements, supplements and other modifications are not prohibited by this Agreement and (b) references to any law, statute, rule or regulation shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). In addition to the definitions in Section 1.01, the following terms shall have the meanings set forth in the PPSA: Accessions, Certificated Security, Consumer Goods, Financial Asset, Futures Account, Futures Contract, Money, Security, Securities Account, Security Entitlement, Security Certificate, and Uncertificated Security.

Section 1.03 *Quebec Interpretation Matters*. For purposes of any assets, liabilities or entities located in the Province of Quebec (Canada) and for all other purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Quebec, (i) "personal property" shall include "movable property", (ii) "real property" or "real estate" shall include "immovable property", (iii) "tangible property" shall include "corporeal property", (iv) "intangible property" shall include "incorporeal property", (v) "security interest", "mortgage" and "lien" shall include a "hypothec", "right of retention", "prior claim" and a resolutory clause, (vi) all references to filing, perfection, priority, remedies, registering or recording under the PPSA shall include publication under the Civil Code of Quebec, (vii) all references to "perfection" of or "perfected" liens or security interest shall include a reference to an "opposable" or "set up" lien or hypothec as against third parties, (viii) any "right of offset", "right of setoff" or similar expression shall include a "right of compensation", (ix) "goods" shall include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (x) an "agent" shall include a "mandatary", (xi) "construction liens" shall include "legal hypothecs", (xii) "joint and several" shall include "solidary", (xiii) "gross negligence or wilful misconduct" shall be deemed to be "intentional or gross fault", (xiv) "beneficial ownership" shall include "ownership on behalf of another as mandatary", (xv) "easement" shall include "servitude", (xvi) "priority" shall include "prior claim", (xvii) "survey" shall include "certificate of location and plan", (xviii) "fee simple title" shall include "absolute ownership", (xix) "accounts" shall include "claims", and (xx) "guarantee" or "guarantor" shall include "suretyship" or "surety". The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only.

ARTICLE 2
AMOUNT AND TERMS OF CREDIT

Section 2.01 *The Commitments*.

(a) Subject to the terms and applicable conditions set forth herein, each Refinancing Term Lender severally agrees to make Refinancing Term Loans in Dollars to the Borrower on the Closing Date in a single drawing and in an aggregate principal amount not to exceed its Refinancing Term Loan Commitment; *provided* that, if for any reason the full amount of any Refinancing Term Lender's Refinancing Term Loan Commitment is not fully drawn on the Closing Date, the undrawn portion thereof shall automatically expire and be terminated and cancelled upon giving effect to the funding of the drawn Refinancing Term Loans on the Closing Date. Each Refinancing Term Lender's Refinancing Term Loan Commitment shall expire and be terminated immediately and without further action on the Closing Date after giving effect to the funding of such Refinancing Term Lender's Refinancing Term Loan Commitment on the Closing Date.

(b) Subject to the terms and applicable conditions set forth herein, each Delayed Draw Lender having a Delayed Draw Term Loan Commitment severally agrees to make one or more Delayed Draw Term Loans in Dollars to the Borrower on any Delayed Draw Borrowing Date in an aggregate principal amount specified in the applicable Notice of Borrowing not to exceed its then outstanding Delayed Draw Term Loan Commitment as of such Delayed Draw Borrowing Date; *provided* that, if for any reason the full amount of any Delayed Draw Lender's Delayed Draw Term Loan Commitment is not fully drawn on or prior to the Delayed Draw Termination Date, the undrawn portion thereof shall automatically expire and be terminated and cancelled upon the Delayed Draw Termination Date; *provided further* that, (x) there shall only be one Delayed Draw Borrowing Date during any five (5) Business Day period and (y) notwithstanding the occurrence of an Event of Default hereunder or a "termination date" as defined in the Final Financing Order, the Lenders shall make available a Delayed Draw Term Loan available to the Borrower to fund the Carve-Out in the lesser of (x) the Lenders' portion of the post-carve out amount (as defined in the Final Financing Order) or (y) the balance of any remaining undrawn Delayed Draw Commitments immediately prior to such default or termination. Each Delayed Draw Lender's Delayed Draw Term Loan Commitment shall expire and be terminated immediately and without further action on the Delayed Draw Termination Date after giving effect to the funding of such Delayed Draw Lender's Delayed Draw Term Loan Commitment on any Delayed Draw Borrowing Date that has occurred on or prior to such date.

(c) The obligations of the Lenders hereunder to make Term Loans or any other payments are several and not joint. The failure of any Lender to make any Term Loan or to make any other payment on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Term Loans or payment.

(d) Amounts of Term Loans borrowed from time to time under this Section 2.01 that are repaid or prepaid may not be reborrowed. The Delayed Draw Term Loans and the Refinancing Term Loans shall constitute a single class of Term Loans for all purposes of this Agreement and the other Credit Documents.

Section 2.02 *Minimum Amount of Each Borrowing*. The aggregate principal amount of each Borrowing of Term Loans shall not be less than the Minimum Borrowing Amount and integral multiples of $500,000 in excess of that amount.

Section 2.03 *Notice of Borrowing*. Whenever the Borrower desires to make a Borrowing of Term Loans hereunder, the Borrower shall give the Administrative Agent at its Notice Office at least three (3) Business Days' prior written notice before 11:00 a.m. (New York City time) on such day (or such later time as the Administrative Agent shall agree in it its reasonable discretion). Each such notice (each, a "**Notice of Borrowing**"), shall be irrevocable and shall be in writing in the form of Exhibit A, appropriately completed to specify: (a) the aggregate principal amount of the Term Loans to be made pursuant to such Borrowing and (b) the date of such Borrowing (which shall be a Business Day). The Administrative Agent shall promptly give each Lender notice of such proposed Borrowing, of such Lender's proportionate share thereof (determined in accordance with Section 2.07) and of the other matters required by the immediately preceding sentence to be specified in the Notice of Borrowing.

Section 2.04 *Disbursement of Funds*. No later than 11:00 A.M. (New York City time) on the date specified in each Notice of Borrowing, each Lender will make available its pro rata portion (determined in accordance with Section 2.07) of each such Borrowing requested to be made on such date. All such amounts will be made available in U.S. Dollars and in immediately available funds at the Payment Office, and the Administrative Agent will make available to the Borrower at the Payment Office the aggregate of the amounts so made available by the Lenders by no later than 2:00 P.M. (New York City time). Unless the Administrative Agent shall have been notified by any Lender prior to the date of any Borrowing that such Lender does not intend to make available to the

Administrative Agent such Lender's portion of any Borrowing to be made on such date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date of Borrowing and the Administrative Agent may (but shall not be obligated to), in reliance upon such assumption, make available to the Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount to the Administrative Agent. The Administrative Agent also shall be entitled to recover on demand from such Lender or the Borrower interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower until the date such corresponding amount is recovered by the Administrative Agent, at a rate per annum equal to (a) if recovered from such Lender, the overnight Federal Funds Rate for the first three days and at the interest rate otherwise applicable to such Term Loans for each day thereafter and (b) if recovered from the Borrower, the rate of interest applicable to the relevant Borrowing, as determined pursuant to Section 2.08. Nothing in this Section 2.04 shall be deemed to relieve any Lender from its obligation to make Term Loans hereunder or to prejudice any rights which the Borrower may have against any Lender as a result of any failure by such Lender to make Term Loans hereunder.

Section 2.05 *Notes.*

(a) The Borrower's obligation to pay the principal of, and interest on, the Term Loans made by each Lender shall be evidenced in the Register maintained by the Administrative Agent pursuant to Section 12.04(c), and shall, if requested by such Lender, also be evidenced by a promissory note duly executed and delivered by the Borrower substantially in the form of Exhibit B, with blanks appropriately completed in conformity herewith (each, a "**Note**" and, collectively, the "**Notes**").

(b) The Note issued to each requesting Lender with outstanding Term Loans shall (i) be executed by the Borrower, (ii) be payable to such Lender or its registered assigns and be dated the Closing Date (or, if issued after the Closing Date, be dated the date of issuance thereof), (iii) be in a stated principal amount equal to the Term Loans made by such Lender on the Closing Date (or, if issued after the Closing Date, be in a stated principal amount equal to the outstanding Term Loans of such Lender at such time) and be payable in the outstanding principal amount of Term Loans evidenced thereby, (iv) mature on the Maturity Date, (v) bear interest as provided in Section 2.08, (vi) be subject to voluntary prepayment as provided in Section 4.01, and mandatory repayment as provided in Section 4.02, and (vii) be entitled to the benefits of this Agreement and the other Credit Documents.

(c) *[Reserved].*

(d) Each Lender will note on its internal records the amount of each Term Loan made by it and each payment in respect thereof and prior to any transfer of any of its Notes will endorse on the reverse side thereof the outstanding principal amount of Term Loans evidenced thereby. Failure to make any such notation or any error in such notation shall not affect the Borrower's obligations in respect of such Term Loans.

(e) Notwithstanding anything to the contrary contained above in this Section 2.05 or elsewhere in this Agreement, Notes shall only be delivered to Lenders which at any time specifically request the delivery of such Notes. No failure of any Lender to request or obtain a Note evidencing its Term Loans to the Borrower shall affect or in any manner impair the obligation of the Borrower to pay the Term Loans (and all related Obligations) incurred by the Borrower that would otherwise be evidenced thereby in accordance with the requirements of this Agreement, and shall not in any way affect the security or guaranties therefor provided pursuant to the various Credit Documents. Any Lender that does not have a Note evidencing its outstanding Term Loans shall in no event be required to make the notations otherwise described in the preceding clause (b). At any time when any Lender requests the delivery of a Note to evidence any of its Term Loans, the Borrower shall promptly execute and deliver to the respective Lender the requested Note in the appropriate amount or amounts to evidence such Term Loans.

Section 2.06 *[Reserved].*

Section 2.07 *Pro Rata Borrowings*. All Borrowings of Term Loans under this Agreement shall be incurred from the Lenders pro rata on the basis of such Lenders' Commitments. No Lender shall be responsible for any default by any other Lender of its obligation to make Term Loans hereunder, and each Lender shall be obligated to make the Term Loans provided to be made by it hereunder, regardless of the failure of any other Lender to make its Term Loans hereunder.

Section 2.08 *Interest.*

(a) The Borrower agrees to pay interest in respect of the unpaid principal amount of each Term Loan made to the Borrower hereunder from the date of Borrowing thereof until paid in full, at a rate per annum which shall be equal to the Applicable Rate.

(b) During the occurrence of an Event of Default and (other than with respect to amounts that are due and not paid, including overdue principal and interest, in respect of each of which Default Rate Interest will accrue automatically upon the occurrence and continuance of an Event of Default) after delivery of notice by the Administrative Agent, all Obligations (including any interest, fees or premiums) shall, in each case, accrue at a rate per annum equal to 2.00% per annum in excess of the relevant rate for such Obligations (the "**Default Rate Interest**"), with all such amounts to be payable on demand.

(c) Accrued (and theretofore unpaid) interest shall be calculated daily and payable monthly in arrears on (i) the first day of each month, (ii) the date of any prepayment or repayment thereof (on the amount prepaid or repaid), (iii) at maturity (whether by acceleration or otherwise) and (iv) after such maturity, on demand.

(d) For the purposes of the *Interest Act* (Canada), the yearly rate of interest to which any rate calculated on the basis of a period of time different from the actual number of days in the year (three hundred sixty (360) days, for example) is equivalent to the stated rate multiplied by the actual number of days in the year (three hundred sixty-five (365) or three hundred sixty-six (366), as applicable) and divided by the number of days in the shorter period (three hundred sixty (360) days, in the example), and the parties hereto acknowledge that there is a material distinction between the nominal and effective rates of interest and that they are capable of making the calculations necessary to compare such rates and that the calculations herein are to be made using the nominal rate method and not on any basis that gives effect to the principle of deemed reinvestment of interest.

Section 2.09 *[Reserved]*.

Section 2.10 *Increased Costs*.

(a) <u>Increased Costs Generally</u>. If any Change in Law shall:

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

(ii) subject any Recipient to any Taxes (other than (x) Indemnified Taxes, (y) Taxes described in <u>clauses (b)</u> through <u>(f)</u> of the definition of Excluded Taxes and (z) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Term Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Term Loan or of maintaining its obligation to make any such Term Loan, or to increase the cost to such Lender or such other Recipient, or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or other Recipient, the Borrower will pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

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

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

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than one hundred eighty (180) days prior to the date that such Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the one hundred eighty (180)-day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.11 *[Reserved].*

Section 2.12 *[Reserved].*

Section 2.13 *Change of Lending Office and Replacement of Lenders*.

(a) If any Lender requests compensation under Section 2.10, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.04, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Term Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.10 or Section 4.04, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.10, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.04 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.13(a), the Borrower may replace such Lender in accordance with Section 12.20.

Section 2.14 *Security and Priority*. Upon, and subject to, the entry of the Final Financing Orders and the terms of the Post-Petition Intercreditor Arrangements, all of the Obligations of each Debtor Credit Party shall, subject to the Carve-Out, at the times noted above:

(a) Pursuant to Section 364(c)(1) of the Bankruptcy Code and after entry of the Final Financing Order, constitute allowed superpriority administrative expense claims against the Debtor Credit Parties (without the need to file any proof of claim) with priority over any and all claims against the Debtor Credit Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 363, 365, 503(a), 503(b), 506(c) (upon entry of the Final Financing Order by the U.S. Bankruptcy Court, to the extent therein approved), 507(a), 507(b) (other than allowed 507(b) claims of the lenders under the Prepetition ABL Credit Agreement and Prepetition Term Loan Credit Agreement as provided under the Interim Financing Order by the U.S. Bankruptcy Court or the Final Financing Order by the U.S. Bankruptcy Court, as applicable, including adequate protection obligations), 726, 1113 or 1114 of the Bankruptcy Code (including any adequate protection obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the "**DIP Superpriority Claims**") shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property, whether existing on the Petition Date or thereafter acquired, of the Debtor Credit Parties and all proceeds thereof (excluding Avoidance Actions, but including, subject to the entry of the Final Financing Order by the U.S. Bankruptcy Court, the proceeds thereof), subject only to (1) Permitted Liens that are valid, binding, enforceable, perfected and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and that are not impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable) and/or that have priority after the Petition Date by operation of Law and (2) the Carve-out and the Administration Charge. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Financing Order by the U.S. Bankruptcy Court (or, after entry thereof, the Final Financing Order by the U.S. Bankruptcy Court) or any provision thereof is vacated, reversed, amended or otherwise modified, on appeal or otherwise. Pursuant to Section 364(c)(2) of the Bankruptcy Code, the Financing Orders and the Security Documents and Post-Petition Intercreditor Arrangements be secured by a valid, binding, perfected, continuing, enforceable, non-avoidable first priority security interest and Lien on the Collateral of each Debtor Credit Party (i) to the extent such Collateral is not subject to valid, enforceable, perfected and non-avoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and that are not impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable) and/or that have priority after the Petition Date by operation of Law, with all other Permitted Liens on such Collateral being junior in ranking except as expressly provided in Section 9.01 hereof and (ii) excluding claims and causes of action under sections 502(d), 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code (collectively "**Avoidance Actions**") but including, subject to the entry of the Final Financing Order by the U.S. Bankruptcy Court, the proceeds thereof.

(b) Pursuant to Section 364(d)(1) of the Bankruptcy Code, the Security Documents, the Financing Orders and the Post-Petition Intercreditor Arrangements and subject to the terms thereof, be secured by a first lien, senior, valid, binding, perfected, continuing, enforceable, non-avoidable security interest and Lien on all Term Priority Collateral of each Debtor Credit Party (excluding Avoidance Actions, but including, subject to the entry of the Final Financing Order by the U.S. Bankruptcy Court, the proceeds thereof), which security interests and Liens on such Collateral shall in each case be subject only to (1) Permitted Liens that are valid, binding, enforceable, perfected and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and that are not impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable)and/or that have priority after the Petition Date by operation of Law and (2) the Carve-out and the Administration Charge, with all other Permitted Liens on the Term Priority Collateral being junior in ranking except as expressly provided in Section 9.01 hereof.

(c) Pursuant to Section 364(c)(3) of the Bankruptcy Code, the Security Documents, the Financing Orders and the Post-Petition Intercreditor Arrangements and subject to the terms thereof, be secured by a valid, binding, perfected, continuing, enforceable, non-avoidable security interest and Lien on all ABL Priority Collateral of each Debtor Credit Party (excluding Avoidance Actions, but including, subject to the entry of the Final Financing Order by the U.S. Bankruptcy Court, the proceeds thereof), which security interests and Liens on such Collateral shall in each case be subject only to (1) Permitted Liens that are valid, binding, enforceable, perfected and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and that are not impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable) and/or that have priority after the Petition Date by operation of Law, (2) the Permitted Liens of the ABL

Facilities and (3) the Carve-out and the Administration Charge, with all other Permitted Liens on the Term Priority Collateral being junior in ranking except as expressly provided in Section 9.01 hereof.

(d) Following the Final Financing Order Date, pursuant to Section 11.2 of the CCAA, the Security Documents and the Post-Petition Intercreditor Arrangements, be secured by a super-priority charge which shall rank in priority to all other security interests, trusts, Liens, hypothecs, charges and encumbrances, claims of secured creditors, statutory or otherwise, in favor of any Person, on the Collateral of each Canadian Debtor Credit Party, subject only to (1) Permitted Liens that are valid, binding, enforceable, perfected and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date the priority of which has not been adversely impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable) and/or that have priority after the Petition Date by operation of Law, (2) with respect to the ABL Priority Collateral, the Permitted Liens securing the ABL Facilities, and (3) the Carve-out and the Administration Charge; with all other Permitted Liens on the Collateral being junior in ranking except as expressly provided in Section 9.01 hereof.

Section 2.15 *Collateral Security Perfection.* Following the Final Financing Order Date, the Borrower agrees to take, and cause each of its Subsidiaries to take, all actions that the Administrative Agent or the Required Lenders may reasonably request as a matter of nonbankruptcy law to perfect and protect the security interests and Liens granted by the Credit Parties for the benefit of the Secured Parties upon the Collateral and for such security interests and Liens to obtain the priority therefor contemplated hereby, including, without limitation, executing and delivering such documents and instruments, financing statements and providing such other instruments and documents in recordable form as the Administrative Agent or the Required Lenders may reasonably request, subject to any applicable limitations set forth in the Credit Documents. Following the Final Financing Order Date, the Borrower hereby irrevocably authorizes the Administrative Agent at any time and from time to time to file in any filing office in any UCC or PPSA jurisdiction (including the Province of Quebec) any initial financing statements and amendments thereto naming such Credit Party as "debtor" that (a) indicate the Collateral (i) as all assets of such Credit Party or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC or the PPSA, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by part 5 of Article 9 of the UCC or similar provisions of the PPSA, for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether such Credit Party is an organization, the type of organization and any organization identification number issued to such Credit Party and (ii) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. Each Credit Party agrees to furnish any such information to the Administrative Agent and the Advisors promptly upon request. Notwithstanding the provisions of this Section 2.15, the Administrative Agent and the Lenders shall have the benefits of the Final Financing Order.

Section 2.16 *Payment of Obligations; No Discharge; Survival of Claims.*

(a) Subject to the provisions of Section 10.02, upon the maturity (whether by acceleration or otherwise) of any of the Obligations of the Credit Parties under this Agreement or any of the other Credit Documents, the Lenders and the other Secured Parties shall be entitled to immediate payment of such Obligations and to exercise of any and all remedies under, but subject to, the Financing Orders.

(b) The Borrower agrees that, to the extent that the Obligations have not been Paid in Full, (i) its Obligations arising hereunder shall not be discharged by the entry of any order of the Bankruptcy Courts, including but not limited to an order confirming any chapter 11 plan or plans filed in any or all of the Cases (and the Borrower, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the DIP Superpriority Claim granted to the Administrative Agent and the Lenders pursuant to the Financing Orders and described in Section 2.14 and the Liens on any assets of any Debtor Credit Parties granted to the Administrative Agent pursuant to the Financing Orders and described in Section 2.14 shall not be affected in any manner by the entry of any order of the Bankruptcy Courts confirming any such plan.

Section 2.17 *Canadian Interest Considerations.* The parties hereto intend to comply with applicable law relating to usury. Notwithstanding any other provision of this Agreement or any other Credit Document, in no event shall any Credit Document require the payment or permit the collection of interest or other amounts in an amount or at a rate in excess of the amount or rate that is permitted by applicable law or in an amount or at a rate that would result in the receipt by the Lender or the Agents of interest at a criminal rate, as the terms "interest" and "criminal rate" are defined under the *Criminal Code* (Canada). Where more than one applicable law applies to the Credit Parties, the Credit Parties shall not be obliged to make payment in an amount or at a rate higher than the lowest permitted amount or rate. If from any circumstance whatever, fulfilment of any provision of any Credit Document would result in exceeding the highest rate or amount permitted by applicable law for the collection or charging of interest, the obligation to be fulfilled shall be reduced to reflect the highest permitted rate or amount. If from any circumstance the Agents or the Lenders shall ever receive anything of value as interest or deemed interest under any Credit Document that would result in exceeding the highest lawful rate or amount of interest permitted by applicable law, the amount that would be excessive interest shall be applied to the reduction of the principal amount of the relevant Term Loan, and not to the payment of interest, or if the excessive interest exceeds the unpaid principal balance of the relevant Term Loan, the amount exceeding the unpaid balance shall be refunded to the Credit Parties. In determining whether or not the interest paid or payable under any specified contingency exceeds the highest lawful rate, the Credit Parties, the Agents and the Lenders shall, to the maximum extent permitted by applicable law, (i) characterize any non-principal payment as an expense, fee or premium rather than as interest, (ii) exclude voluntary prepayments and their effects, (iii) amortize, prorate, allocate and spread the total amount of interest throughout the term of the applicable Term Loan so that interest does not exceed the maximum amount permitted by applicable law, and/or (iv) allocate interest between portions of the Obligations to the end that no portion shall bear interest at a rate greater than that permitted by applicable law. For the purposes of the *Criminal Code* (Canada), if there is any dispute as to the calculation of the effective annual rate of interest, the determination of a Fellow of the Canadian Institute of Actuaries appointed by the Agents shall be conclusive.

ARTICLE 3
FEES; REDUCTIONS OF COMMITMENT

Section 3.01 *Fees.*

(a) *Unused Term Loan Commitment Fee*. From and after the entry of the Final Financing Order, the Borrower agrees to pay to each applicable Lender (other than any Defaulting Lender), through the Administrative Agent, on or before the date that is two (2) Business Days after the last Business Day of each month, on any Delayed Draw Borrowing Date (with respect to Delayed Draw Term Loan Commitments terminating on such date), and on the Maturity Date, in cash in Dollars, a commitment fee (the "**Unused Term Loan Commitment Fee**") on the daily average undrawn amount of the Delayed Draw Term Loan Commitment (whether or not then available) of such Lender during the preceding thirty (30) days or ending with, as applicable, the date on which the last of the Delayed Draw Term Loan Commitments of such Lender shall be terminated) at the rate per annum equal to 1.00% *per annum* which Unused Term Loan Commitment Fee shall not be subject to any set-off, withholding or deduction. All Unused Term Loan Commitment Fees shall be computed on the basis of the actual number of days elapsed in a year of three hundred sixty (360) days. The Unused Term Loan Commitment Fee due to each Lender shall commence to accrue on the date on which the Final Financing Order is entered and shall cease to accrue on the date on which the Delayed Draw Term Loan Commitments have been drawn or terminated pursuant to this Agreement.

(b) *Prepayment Premium*. In the event that, on or prior to the Scheduled Maturity Date, the Borrower pays, prepays, refinances, substitutes or replaces and/or otherwise makes a repayment in whole or in part of any Term Loans pursuant to Section 4.01(a) or pursuant to Section 4.02(a) or an Event of Default shall be in existence and the Obligations shall have been accelerated and become due and payable prior to the Scheduled Maturity Date, Borrower shall pay to the Administrative Agent, for the ratable account of each applicable Term Lender (including any Non-Consenting Lender whose Term Loans are repaid or replaced pursuant to Section 12.11(b)), a premium (the "**Prepayment Premium**") equal to (i) 1.00% of the aggregate principal amount of the Term Loans so paid, prepaid, repaid, refinanced, substituted or replaced that are Refinancing Term Loans and (ii) 2.50% of the amount of the Delayed Draw Term Loans so paid, prepaid, refinanced, substituted or replaced and/or otherwise repaid in whole or in part; provided that, the Prepayment Premium (x) may be credited against any Work Fee and (y) shall in each case be reduced to 0.00% upon the execution by the parties thereto of, and approval by the Bankruptcy Courts of, the Bidding Procedures Motion, and the entry by the Bankruptcy Courts of the corresponding orders. All such amounts shall be due and payable in full in cash on the date of the relevant prepayment.

(c) *Agent Fee*. The Borrower agrees to pay to the Administrative Agent an agency fee of $100,000 per annum, which shall be earned in full on the Signing Date and payable on the Closing Date. Such fee will be in all respects fully earned, due and payable on the applicable dates specified herein and be non-refundable.

(d) *Commitment Fee*. The Borrower agrees to pay to the Administrative Agent, for the account of each applicable Lender, a commitment fee (the "**Commitment Fees**") (x) in an amount equal to 1.00% of the aggregate principal amount of such Lender's Refinancing Term Loans made on the Closing Date, such fee to be accrued and earned on the Signing Date and due and payable on the Closing Date and (y) in an amount equal to 3.00% of the aggregate principal amount of such Lender's Delayed Draw Term Loan Commitments, such fee to be accrued and earned on the Signing Date and due and payable on the Closing Date. Such Commitment Fees will be in all respects fully earned, due and payable on the applicable dates specified herein and be non-refundable. The Commitment Fees for any Term Loans shall be paid out of the proceeds of such Term Loans made by the Term Lenders and not subject to any set-off, withholding or deduction.

(e) *Survival*. The obligations of the Borrower to the Administrative Agent pursuant to this Section shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments or this Agreement, repayment of the Term Loans and the repayment, satisfaction or discharge of all other Obligations.

Section 3.02 *Mandatory Reduction of Commitments*. (a) In addition to any other mandatory commitment reductions pursuant to this Section 3.02, the Refinancing Term Loan Commitment shall terminate in its entirety on the Closing Date (after giving effect to the incurrence of Refinancing Term Loans on such date).

(b) In addition to any other mandatory commitment reductions pursuant to this Section 3.02, the Delayed Term Loan Commitment shall terminate (x) on each Delayed Draw Borrowing Date in an amount equal to any Delayed Draw Term Loans funded on such Delayed Draw Borrowing Date and (y) in its entirety on the Delayed Draw Termination Date (and, to the extent such date is also a Delayed Draw Borrowing Date, after giving effect to the incurrence of the relevant Delayed Draw Term Loans on such date).

(c) Each reduction to the Refinancing Term Loan Commitment and the Delayed Draw Term Loan Commitment pursuant to this Section 3.02 as provided above (or pursuant to Section 4.02) shall be applied proportionately to reduce the Refinancing Term Loan Commitment or the Delayed Draw Term Loan Commitment, as the case may be, of each Lender with such a Commitment.

ARTICLE 4
PREPAYMENTS; PAYMENTS; TAXES

Section 4.01 *Voluntary Prepayments*.

(a) The Borrower shall have the right to prepay the Term Loans, without premium or penalty (other than with respect to the Prepayment Premium pursuant to Section 3.01(b)), in whole or in part at any time and from time to time on the following terms and conditions: (i) the Borrower shall give the Administrative Agent at its Notice Office written notice of its intent to prepay the Term Loans and the amount of the Term Loans to be prepaid, which notice shall be given by the Borrower prior to 11:00 a.m.(New York City time) at least three (3) Business Days prior to the date of such prepayment (or, such shorter period as the Administrative Agent shall agree in its reasonable discretion), and be promptly transmitted by the Administrative Agent to each of the Lenders; (ii) each partial prepayment of Term Loans pursuant to this Section 4.01(a) shall be in an aggregate principal amount of at least $1,000,000 and integral multiples of $500,000 in excess of that amount, or such lesser amount as is acceptable to the Administrative Agent in its reasonable discretion; (iii) each prepayment pursuant to this Section 4.01(a) in respect of any Term Loans made pursuant to a Borrowing shall be applied pro rata among such Term Loans; and (iv) each prepayment of principal of Term Loans pursuant to this Section 4.01(a) shall be applied as directed by the Borrower in the applicable notice of prepayment delivered pursuant to this Section 4.01(a).

(b) In the event (i) of a refusal by a Lender to consent to certain proposed changes, amendments, waivers, discharges or terminations with respect to this Agreement which have been approved by the

Required Lenders as (and to the extent) provided in Section 12.11(b), or (ii) any Lender becomes a Defaulting Lender, the Borrower may, upon one (1) Business Days' prior written notice to the Administrative Agent at the Notice Office (which notice the Administrative Agent shall promptly transmit to each of the Lenders) repay all Term Loans, together with accrued and unpaid interest, Fees and other amounts owing to such Lender in accordance with, and subject to the requirements of said Section 12.11(b), so long as the consents, if any, required under Section 12.11(b) in connection with the repayment pursuant to clause (b) have been obtained.

Section 4.02 *Mandatory Repayments.*

(a) Subject to the Post-Petition Intercreditor Arrangements, in addition to any other mandatory repayments pursuant to this Section 4.02, within five (5) Business Days following each date on or after the Closing Date upon which the Borrower or any of its Subsidiaries receives any cash proceeds from any issuance or incurrence of Indebtedness (other than Indebtedness permitted to be incurred pursuant to Section 9.04), an amount equal to 100% of the Net Debt Proceeds therefrom shall be applied as a mandatory repayment in accordance with the requirements of Section 4.02(e).

(b) Subject to the Post-Petition Intercreditor Arrangements, in addition to any other mandatory repayments pursuant to this Section 4.02, (i) within five (5) Business Days following each date on or after the Closing Date upon which the Borrower or any of its Subsidiaries receives any cash proceeds from any Asset Sale of Collateral (other than a Sale Transaction), an amount equal to 100% of the Net Sale Proceeds therefrom shall be applied as a mandatory repayment in accordance with the requirements of Section 4.02(fe) and (ii) upon consummation of any Sale Transaction, an amount equal to the lesser of (A) the Net Sale Proceeds thereof or (B) the outstanding amount of all Obligations (including any interest, fees or premiums).

(c) Subject to the Post-Petition Intercreditor Arrangements, in addition to any other mandatory repayments pursuant to this Section 4.02, within five (5) Business Days following each date on or after the Closing Date upon which the Borrower or any of its Subsidiaries receives any cash proceeds from any issuances of Equity Interests by the Borrower, 100% of the Net Equity Proceeds therefrom shall be applied as a mandatory repayment in accordance with the requirements of Section 4.02(e).

(d) Subject to the Post-Petition Intercreditor Arrangements, in addition to any other mandatory repayments pursuant to this Section 4.02, within five (5) Business Days following each date on or after the Closing Date upon which the Borrower or any of its Subsidiaries receives any cash proceeds from any Recovery Event, an amount equal to 100% of the Net Recovery Event Proceeds from such Recovery Event shall be applied as a mandatory repayment in accordance with the requirements of Section 4.02(f); provided that, notwithstanding the foregoing provisions of this clause (d), the Borrower may deliver within 5 Business Days of receipt of such Net Recovery Event Proceeds a certificate to the Administrative Agent setting forth that portion of such Net Recovery Event Proceeds that the Borrower and/or its Subsidiaries, as the case may be, intends to reinvest in the purchase of assets to replace such assets subject to the relevant Recovery Event, in each case to be used in the business of the Borrower and its Subsidiaries within 60 days following the date of receipt of such proceeds (and, in connection therewith, shall thereafter promptly provide such other information with respect to such reinvestment as the Administrative Agent may from time to time reasonably request); provided further that, (x) any such Net Recover Event Proceeds in excess of $2,500,000 shall be required to be deposited in escrow with the Administrative Agent pursuant to arrangements reasonably satisfactory to it and (y) if within 60 days after the date of receipt by the Borrower or any of its Subsidiaries of such Net Recovery Event Proceeds, the Borrower or any of its Subsidiaries have not so used all or a portion of such Net Recovery Event Proceeds otherwise required to be applied as a mandatory repayment pursuant to this sentence, the remaining portion of such Net Recovery Event Proceeds shall be applied as a mandatory repayment in accordance with the requirements of Section 4.02(e) on the last day of 60 day period.

(e) Each amount required to be applied pursuant to this Section shall be applied to repay the outstanding principal amount of Term Loans.

(f) In addition to any other mandatory repayments pursuant to this Section 4.02, all then outstanding Term Loans shall be Paid in Full on the Maturity Date for such Term Loans.

(g) Notwithstanding any other provisions of this Section 4.02, (i) to the extent that any or all of the Net Sale Proceeds of any Asset Sale by a Foreign Subsidiary (a "**Foreign Asset Sale**"), the Net Recovery Event Proceeds of any Recovery Event incurred by a Foreign Subsidiary (a "**Foreign Recovery Event**") are prohibited or delayed by applicable local law or applicable organizational documents of such Foreign Subsidiary from being repatriated to Canada, the portion of such Net Sale Proceeds or Net Recovery Event Proceeds so affected will not be required to be applied to repay Term Loans at the times provided in this Section 4.02 but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law or applicable organizational documents of such Foreign Subsidiary will not permit repatriation to Canada (the Borrower hereby agreeing to use all commercially reasonable efforts to overcome or eliminate any such restrictions on repatriation and/or minimize any such costs of prepayment and/or use the other cash sources of the Borrower and its Subsidiaries to make the relevant prepayment), and on the Maturity Date, such repatriation will be immediately effected and such repatriated Net Sale Proceeds or Net Recovery Event Proceeds will be promptly (and in any event not later than two Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof and additional costs relating to such repatriation) to the repayment of the Term Loans pursuant to this Section 4.02 and (ii) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Sale Proceeds of any Foreign Asset Sale or Net Recovery Event Proceeds of any Foreign Recovery Event would have adverse tax cost consequences with respect to such Net Sale Proceeds or Net Recovery Event Proceeds, such Net Sale Proceeds or Net Recovery Event Proceeds so affected may be retained by the applicable Foreign Subsidiary.

(h) Notwithstanding any other provisions of this Section 4.02, except in the case of a mandatory prepayment of the type described in Section 4.02(d), each Lender shall have the right to reject its pro rata share of any mandatory prepayments described above, in which case the amounts so rejected may be retained by the Borrower.

(i) Each prepayment of the Term Loans under this Section shall be accompanied by any accrued interest to the date of such prepayment on the amount prepaid and all other amounts (including any accrued and unpaid fees and premiums (including any Prepayment Premium due as a result thereof)) in respect therewith then due and payable under this Agreement.

Section 4.03 *Method and Place of Payment*. All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for or any counterclaim, withholding recoupment or setoff. Except as otherwise specifically provided herein, all payments under this Agreement and under any Note shall be made to the Administrative Agent or the account of the Lender or Lenders entitled thereto not later than 11:00 a.m. (New York City time) on the date when due and shall be made in U.S. Dollars in immediately available funds at the Payment Office of the Administrative Agent. Whenever any payment to be made hereunder or under any Note shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable at the applicable rate during such extension.

Section 4.04 *Net Payments.*

(a) All payments made by or on account of any Credit Party under any Credit Document shall be made free and clear of, and without deduction or withholding for, any Taxes, except as required by applicable law (as determined in the good-faith discretion of the withholding agent). If any Indemnified Taxes or Other Taxes are required to be withheld or deducted from such payments, then the Credit Parties jointly and severally agree that (i) to the extent such deduction or withholding is on account of an Indemnified Tax or Other Tax, the sum payable by the Credit Parties shall be increased as necessary so that after making all required deductions or withholding (including deduction or withholdings applicable to additional sums payable under this Section 4.04), the Administrative Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the applicable withholding agent will make such deductions or withholdings and (iii) the applicable withholding agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law. In addition, the Credit Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law. As soon as practicable after any payment of Indemnified Taxes or Other Taxes to a Governmental Authority, the Credit Parties will furnish to the Administrative Agent certified copies of tax receipts evidencing such payment by the applicable Credit Party, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent. The Credit Parties jointly and severally agree to indemnify and hold harmless the Administrative Agent and each Lender, and reimburse the Administrative Agent and each Lender, within ten (10) days of written request therefor, for the amount of any Indemnified Taxes (including any Indemnified Taxes imposed on amounts payable under this Section 4.04) payable or paid by the Administrative Agent or such Lender or required to be withheld or deducted from a payment to the Administrative Agent or such Lender, and any Other Taxes, and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(b) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent, certifying as to any entitlement of such Lender to an exemption from, or a reduce rate of, withholding Tax. In addition, each Lender shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether such Lender is subject to backup withholding or information reporting requirements. Each Lender shall, whenever a lapse in time or change in circumstances renders such documentation (including any specific documents required below in Section 4.04(c)) expired, obsolete or inaccurate in any respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and the Administrative Agent in writing of its inability to do so.

(c) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Borrower: (x) Each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or prior to the Closing Date or, in the case of a Lender that is a Lender to the Borrower and that is an assignee or transferee of an interest under this Agreement pursuant to Section 12.04 (unless the relevant Lender was already a Lender hereunder immediately prior to such assignment or transfer), on the date of such assignment or transfer to such Lender, (d) two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or successor form) claiming eligibility for benefits of an income tax treaty to which the United States is a party or Form W-8ECI (or successor form), or (e) in the case of a Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest," "a certificate substantially in the form of Exhibit C (any such certificate, a "**U.S. Tax Compliance Certificate**") and two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or successor form) certifying to such Lender's entitlement as of such date to a complete exemption from U.S. withholding tax with respect to payments of interest to be made under this Agreement and under any Note; or (f) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership or a participating Lender), two accurate and complete original signed copies of Internal Revenue Service Form W- 8IMY (or successor form) of the Lender, accompanied by Form W-8ECI, Form W-8BEN or W-8BEN-E, U.S. Tax Compliance Certificate, Form W-8IMY, and/or any other required information (or successor or other applicable form) from each beneficial owner that would be required under this Section 4.04(c) if such beneficial owner were a Lender (*provided* that, if the Lender is a partnership for U.S. federal income Tax purposes (and not a participating Lender), and one or more beneficial owners are claiming the portfolio interest exemption), the U.S. Tax Compliance Certificate may be provided by such Lender on behalf of such beneficial owners); (y) Each Lender that is a United States person, as defined in Section 7701(a)(30) of the Code, shall deliver to the Borrower and the Administrative Agent, at the times specified in Section 4.04(b), two accurate and complete original signed copies of Internal Revenue Service Form W-9, or any successor form that such Person is entitled to provide at such time, in order to qualify for an exemption from U.S. federal backup withholding requirements; and (z) if any payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) and/or Section 1472(b) of the Code), such Lender shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by applicable law and at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower or the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender's obligations under FATCA or to determine, if necessary, the amount to deduct and withhold from such payment. Solely for purposes of this Section 4.04(c)(z), "**FATCA**" shall include any amendment made to FATCA after the Signing Date.

Notwithstanding any other provision of this Section 4.04, a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(d) If the Administrative Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Credit Parties or with respect to which a Credit Party has paid additional amounts pursuant to Section 4.04(a), it shall pay to the relevant Credit Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Credit Party under Section 4.04(a) with respect to Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses, including any Taxes, of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the relevant Credit Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Credit Party (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this 4.04(d), in no event will the Administrative Agent or any Lender be required to pay any amount to any Credit Party pursuant to this Section 4.04(d) the payment of which would place the Administrative Agent or any Lender in a less favorable net after-Tax position than such party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 4.04 shall not be construed to require any Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Credit Party or any other Person.

(e) Each party's obligations under this Section 4.04 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

ARTICLE 5
CONDITIONS PRECEDENT TO CREDIT EVENTS

Section 5.01 *Conditions to Commitments*. The effectiveness of the Commitments hereunder is subject to the satisfaction or waiver of the following conditions:

(a) *Signing Date; Credit Documents; Notes*. On or prior to the Signing Date, the Borrower, each Guarantor, the Administrative Agent and each of the Lenders on the date hereof shall have signed a counterpart of this Agreement in form and substance satisfactory to each Lender and the Administrative Agent (whether the same or different counterparts) and shall have delivered (by electronic transmission or otherwise) the same to the Administrative Agent.

(b) *Officer's Certificate*. On the Signing Date, the Administrative Agent shall have received an Officer's Certificate, dated the Signing Date and signed on behalf of the Borrower (and not in any individual capacity) by a Responsible Officer of the Borrower, certifying on behalf of the Borrower that the conditions in Section 6.03 have been satisfied on such date.

(c) *[Reserved]*.

(d) *Corporate Documents; Proceedings, etc.*

(i) On the Signing Date, the Administrative Agent shall have received a certificate from each Credit Party, dated the Signing Date, signed by a Responsible Officer of such Credit Party, and attested to by the Secretary or any Assistant Secretary of such Credit Party, in the form of Exhibit E with appropriate insertions, together with copies of the certificate or articles of incorporation and by-laws (or equivalent organizational documents), as applicable, of such Credit Party and the resolutions of such Credit Party referred to in such Officer's Certificate, and each of the foregoing shall be in form and substance reasonably satisfactory to the Administrative Agent.

(ii) On the Signing Date, the Administrative Agent shall have received good standing certificates and bring-down telegrams or facsimiles, if any, or equivalents, for the Credit Parties which the Administrative Agent reasonably may have requested, certified by proper governmental authorities.

(e) *Lien Searches*. On the Signing Date, each Credit Party shall have duly delivered:

(i) certified copies, each of a recent date, of (x) requests for information or copies (Form UCC-1), or equivalent reports as of a recent date, listing all effective financing statements that name the Borrower or any other Credit Party as debtor and that are filed in the jurisdictions referred to in Section 5.02(m)(ii), together with copies of such other financing statements that name the Borrower or any other Credit Party as debtor (none of which shall cover any of the Collateral except to the extent evidencing Permitted Liens), (y) United States Patent and Trademark Office and the United States Copyright Office searches reasonably requested by the Administrative Agent and (z) reports as of a recent date listing all effective tax and judgment liens with respect to the Borrower or any other Credit Party in each jurisdiction as the Agents may reasonably require; and

(ii) certified copies, each of a recent date, of (x) RPMRR, PPSA, Bank Act (Canada), or equivalent reports as of a recent date, listing all effective financing statements or other registrations that name the Borrower or any other Credit Party as debtor and that are filed in the jurisdictions referred to in clause (iii) above, together with copies of such other financing statements or other registrations that name the Borrower or any other Credit Party as debtor (none of which shall cover any of the Collateral except to the extent evidencing Permitted Liens), (y) Canadian Intellectual Property Office searches reasonably requested by the Administrative Agent and (z) reports as of a recent date listing all effective executions, writs and judgment liens with respect to the Borrower or any other Credit Party in each jurisdiction as the Agents may reasonably require.

(f) *Financial Statements; Pro Forma Balance Sheets; Projections*. On or prior to the Signing Date, the Agents and the Lenders shall have received (i) the audited consolidated balance sheets and related consolidated statements of operations, cash flows and shareholders' equity for the Borrower for the fiscal year ending May 31, 2016 or in lieu thereof, a draft of the consolidated financial statements in form and substance acceptable to the Lenders; (ii) the unaudited consolidated balance sheets and related statements of operations and cash flows of the Borrower the four-week period and fiscal quarter ending May 31, 2016 and for each subsequent four-week period and quarterly period of the Borrower, ended at least forty-five (45) days before the Signing Date and (iii) pro forma consolidated balance sheet and related statement of operations of the Borrower and its Subsidiaries as of and for the twelve-month period ending with the latest quarterly period of the Borrower covered by the financial statements referred to in clause (ii), all of which shall be prepared in accordance with GAAP.

(g) *Budget*. The Administrative Agent and the Lenders shall have received a cash flow forecast in form and substance reasonably satisfactory to the Lenders depicting on a weekly basis receipts and disbursements, unrestricted and restricted cash balance, the outstanding amount of loans under the ABL Facilities and the Delayed Draw Term Loans, net cash flow, Availability, Liquidity and the Borrowing Base for each weekly period through the Scheduled Maturity Date (including the week in which the Petition Date occurred) dated as of the Petition Date and delivered to the Administrative Agent as the "Final Budget" prior to the Signing Date (the "**Initial Budget**"), together with a good faith estimate of all borrowings of Term Loans to be made within the first week following the Closing Date.

(h) *Fees, etc*. On the Signing Date, the Borrower shall have paid to the Agents and each Lender all costs, fees and expenses (including, without limitation, legal fees and expenses to the extent invoiced at least two (2) Business Days prior the Signing Date) and other compensation payable to the Agents or such Lender hereunder or otherwise payable in respect of the Transaction to the extent then due.

(i) *Commencement of Cases; First Day Financing Orders.* On or prior to the Signing Date, the Debtor Credit Parties shall have commenced the Cases, and the Borrower and each of its Subsidiaries identified on Schedule 5.01(i) to be a Debtor shall be a debtor and a debtor-in-possession. All of the "first day orders" or "second day orders" entered by the Bankruptcy Courts on or about the time of commencement of the Cases (and, if any such orders shall not have been entered by the Bankruptcy Courts, the form of such orders submitted to the Bankruptcy Courts for approval) and all payments approved by the Bankruptcy Courts in any such orders, including the Interim Financing Order or otherwise shall be in form and substance reasonably satisfactory to the Lenders.

(j) *Entry of Interim Financing Order.* The Administrative Agent and the Lenders shall have received a signed copy of an order of the Bankruptcy Courts, in form and substance reasonably satisfactory to the Lenders (it being understood and agreed that an order in the form of the orders attached as Exhibit L shall, if entered by the Bankruptcy Courts, be deemed satisfactory to the Lenders) and such order shall have been entered not later than three (3) Business Days following the Petition Date (or such later date as the Lenders may agree in writing) (as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof, the "**Interim Financing Order**"), which Interim Financing Order shall, among other things, (i) authorize the Credit Documents and the Commitments in the amounts and on the terms set forth herein, (ii) set forth certain intercreditor arrangements (the "**Interim Order Intercreditor Arrangements**") with respect to the Liens securing the Prepetition Term Loan Credit Agreement and the Liens securing the obligations under the ABL Facilities, including (except in the case of the Canadian Cases) adequate protection (unless waived by the Lenders to be determined at the final hearing), (iii) approve the ABL DIP Facility and (iv) grant the DIP Superpriority Claims and other Liens on the assets of the Debtor Credit Parties referred to herein and in the other Credit Documents and which Interim Financing Order shall be in full force and effect and shall not have been amended, modified, stayed, vacated, terminated or reversed; *provided* that (x) if such Interim Financing Order is the subject of a pending appeal in any respect, none of such Interim Financing Order, the initial extensions of credit, or the performance by the Borrower of any of the Obligations shall be the subject of a presently effective stay pending appeal, (y) the Borrower, the Administrative Agent and the Lenders shall be entitled to rely in good faith upon such Interim Financing Order, notwithstanding objection thereto or appeal therefrom by any interested party and (z) the Borrower, the Administrative Agent and the Lenders shall be permitted and required to perform their respective obligations in compliance with this Agreement notwithstanding any such objection or appeal unless the relevant order has been stayed by a court of competent jurisdiction. The Debtors shall be in compliance in all respects with the Interim Financing Order.

(k) *No Appointment of Trustee.* No trustee or responsible officer or examiner (other than a fee examiner) having expanded powers (beyond those set forth under Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1104 of the Bankruptcy Code shall have been appointed or elected, with respect to any of the Credit Parties, any of their Subsidiaries or their respective properties.

(l) *No Unstayed Actions.* There shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of the Borrower) threatened in any court or before any arbitrator or governmental instrumentality against any Debtor Credit Party, except for (i) the Cases or the consequences that would normally result from the commencement, continuation and prosecution of the Cases, (ii) any objections or pleadings that may have been filed in the Cases relating to authorization to enter into the Credit Documents and incur the Obligations, (iii) as could not reasonably be expected to have a Material Adverse Effect and (iv) the OSC Investigation and the SEC Investigation.

(m) *ABL DIP Facility*. The ABL DIP Facility shall have been entered into and be in full force and effect.

Section 5.02 *Conditions to Refinancing Term Loans*. The obligation of each Lender to make Refinancing Term Loans is subject at the time of the making of such Refinancing Term Loans to the satisfaction or waiver of the following conditions:

(a) *Signing Date*. The Signing Date shall have occurred.

(b) *Officer's Certificate*. On the Closing Date, the Administrative Agent shall have received an Officer's Certificate, dated the Closing Date and signed on behalf of the Borrower (and not in any individual capacity) by a Responsible Officer of the Borrower, certifying on behalf of the Borrower that all of the conditions in Article 6 have been satisfied on such date.

(c) *Termination of the Prepetition Term Loan Credit Agreement.* The Borrower and its Subsidiaries shall have repaid in full by applying all of the proceeds of the Refinancing Term Loans, all Indebtedness outstanding under the Prepetition Term Loan Credit Agreement, together with all accrued but unpaid interest, fees and other amounts owing thereunder (other than contingent indemnification obligations not yet due and payable) and (i) all commitments to lend or make other extensions of credit thereunder shall have been terminated and (ii) all security interests and hypothecs in respect of, and Liens securing, the Indebtedness and other obligations thereunder created pursuant to the security documentation relating thereto shall have been terminated and released (or arrangements therefor reasonably satisfactory to the Administrative Agent shall have been made) subject to any post-repayment junior adequate protection liens provided for in the Financing Orders (collectively, the "**Refinancing**"), and the Administrative Agent shall have received all such releases as may have been reasonably requested by the Administrative Agent, which releases shall be in form and substance reasonably satisfactory to Administrative Agent, including, without limiting the foregoing, (x) proper termination statements (Form UCC-3 or the appropriate equivalent) and discharges for filing under the UCC, the PPSA or equivalent statute or regulation of each jurisdiction where a financing statement or application for registration (Form UCC-1 or the appropriate equivalent) was filed with respect to the Borrower or any of its Subsidiaries in connection with the security interests created with respect to the Prepetition Term Loan Credit Agreement and (y) terminations or reassignments of any security interest in, or Lien on, any patents, trademarks, copyrights and other Intellectual Property of the Borrower or any of its Subsidiaries solely to the extent that such security interests or Liens are granted pursuant to the Prepetition Term Loan Credit Agreement.

(d) *Fees, etc*. On the Closing Date, the Borrower shall have paid to the Agents and each Lender all costs, fees and expenses (including, without limitation, legal fees and expenses to the extent invoiced at least eight (8) Business Days prior the Closing Date) and other compensation payable to the Agents or such Lender or otherwise payable in respect of the Transaction to the extent then due.

(e) *Patriot Act and Canadian AML Acts.* The Agent shall have received at least two (2) days prior to the Closing Date from the Credit Parties all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and the Canadian AML Acts, in each case to the extent requested in writing at least ten (10) days prior to the Closing Date.

(f) *No Material Adverse Effect*. Since the Petition Date, there has been no event or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

(g) *Most Recent Budget*. The Administrative Agent shall have received the most recent Budget and Variance Report required to be delivered prior to the applicable Borrowing Date pursuant to Sections 8.01(h) and (i), respectively, and such Variance Report shall confirm that the Credit Parties are in compliance with Section 9.11. The borrowing of the Refinancing Term Loans shall comply with Section 9.11 in a manner reasonably satisfactory to the Required Lenders.

(h) *Post-Closing Obligations*. All post-closing obligations under Section 8.12 required to be completed on or prior to the entry of the Final Financing Order shall have been completed.

(i) *Milestones*. The Borrower shall be in compliance with Section 8.14 in a manner satisfactory to the Required Lenders.

(j) *ABL DIP Facility*. The ABL DIP Facility shall be in full force and effect.

(k) *Final Financing Orders*. The Administrative Agent and the Lenders shall have received a copy of the Final Financing Orders in substantially the form of the Interim Financing Order (or similar order by the Canadian Bankruptcy Court as part of any "comeback hearing"), among other things, (i) approving the Term Loans (including, for the avoidance of doubt, the Post-Petition Intercreditor Arrangements and the Post-Petition Intercreditor Agreement contemplated thereby)), (ii) granting and/or confirming, as applicable, the DIP Superpriority Claims, (iii) reaffirming the Credit Documents and granting the Liens on the assets of the Debtor Credit Parties securing the Obligations with the priorities contemplated by Section 2.14, with only such modifications as are satisfactory to the Required Lenders in their sole discretion, entered by the Bankruptcy Courts with respect to the Borrower and the other Debtor Credit Parties after a final hearing under Bankruptcy Rule 4001(c)(2) and the CCAA, which Final Financing Orders or judgment are in effect and not vacated, reversed or stayed.

(l) *Opinions of Counsel*. On the Closing Date, the Administrative Agent shall have received an opinion addressed to the Administrative Agent and each of the Lenders and dated the Signing Date in form and substance reasonably satisfactory to the Administrative Agent from (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, special U.S. counsel to the Credit Parties, (ii) Stikeman Elliott LLP, special Canadian counsel to the Credit Parties and (iii) local counsel to the Credit Parties reasonably satisfactory to the Administrative Agent practicing in those jurisdictions in which the Credit Parties are organized (if organized other than under the laws of Delaware and New York).

(m) *Security Matters*. On the Closing Date, each Credit Party shall have duly delivered:

(i) the Canadian Security Agreements;

(ii) proper financing statements (Form UCC-1 or the equivalent) authorized for filing under the UCC or other appropriate filing offices of each jurisdiction as may be reasonably necessary or desirable to perfect the security interests purported to be created by the this Agreement and/or any Security Document, including appropriate assignments or notices with the United States Patent and Trademark Office, the United States Copyright Office, or the Canadian Intellectual Property Office, as applicable; and

(iii) RPMRR registrations and PPSA financing statements filed under the PPSA of each jurisdiction or other appropriate filing offices as may be reasonably necessary or desirable to perfect the security interests purported to be created by the this Agreement and/or any Security Document (including any Additional Security Documents).

Section 5.03 *Conditions to Delayed Draw Term Loans*. The obligation of each Lender to make any Delayed Draw Term Loan is subject at the time of the making of such Delayed Draw Term Loans to the satisfaction or waiver of the following conditions:

(a) *Closing Date*. The Closing Date shall have occurred and the Refinancing shall have been consummated.

(b) *Officer's Certificate*. The Administrative Agent shall have received an Officer's Certificate, dated the Closing Date and signed on behalf of the Borrower (and not in any individual capacity) by a Responsible Officer of the Borrower, certifying on behalf of the Borrower that all of the conditions in Article 6 have been satisfied on such date.

(c) *Fees and Expenses*. All reasonable and documented out-of-pocket costs, fees, expenses required to be paid to the Administrative Agent and the Lenders (including, without limitation, the reasonable and documented out-of-pocket costs, fees and expenses of any counsel, financial advisor or consultant to the Administrative Agent and Lenders, but subject in all respects to the limitations on fees and expenses of counsel and other advisors set forth in Section 12.01(a)) on or before any Delayed Draw Borrowing Date, to the extent invoiced at least eight (8) Business Days prior to such Delayed Draw Borrowing Date, shall have been paid, including, without limitation, any fees payable on such Delayed Draw Borrowing Date pursuant to Section 3.01; *provided* that, such amounts may be funded with the proceeds of the Delayed Draw Term Loans requested to be made on such Delayed Draw Borrowing Date.

(d) *Delayed Draw Termination Date*. The Delayed Draw Borrowing Date shall occur no later than the Delayed Draw Termination Date.

(e) *No Material Adverse Effect*. Since the Petition Date, there has been no event or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

(f) *Most Recent Budget; Variance Report*. The Administrative Agent shall have received the most recent Budget and Variance Report required to be delivered prior to the applicable Delayed Draw Borrowing Date pursuant to Sections 8.01(h) and (i), respectively, and such Budget shall have been approved by the Required Lenders and such Variance Report shall confirm that the Credit Parties are in compliance with Section 9.11. The borrowing of the Delayed Draw Term Loans shall comply with Section 9.11 in a manner reasonably satisfactory to the Required Lenders.

(g) *Post-Closing Obligations*. All post-closing obligations under Section 8.12 required to be completed on or prior to the applicable Delayed Draw Borrowing Date shall have been completed.

(h) *Milestones*. The Borrower shall be in compliance with Section 8.14 in a manner satisfactory to the Required Lenders.

(i) *Maximum Free Cash Balance*. After giving effect to any disbursement of Delayed Draw Term Loans, the cash balance of the Borrower and its Subsidiaries, on a consolidated basis, shall not be in an amount greater than $15,000,000, as determined based on the most recent Budget actually approved by the Required Lenders prior to the applicable Delayed Draw Borrowing Date.

(j) *ABL DIP Facility*. The ABL DIP Facility shall be in full force and effect.

Without limiting the generality of the provisions of the last paragraph of Section 11.03, for purposes of determining compliance with the conditions specified in this Article 5, each Lender that has signed and delivered this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to Signing Date and/or proposed Borrowing Date, as applicable, specifying its objection thereto.

ARTICLE 6
CONDITIONS PRECEDENT TO ALL CREDIT EVENTS

The obligation of each Lender to any Credit Event on and after the Signing Date is subject to the satisfaction of the following conditions:

Section 6.01 *Notice of Borrowing*. Prior to the making of each Term Loan on and after the Closing Date, the Administrative Agent shall have received a Notice of Borrowing meeting the requirements of Section 2.03.

Section 6.02 *Representations and Warranties*. The representations and warranties of the Credit Parties set forth in the Credit Documents shall be true and correct in all material respects on and as of the respective Borrowing Date with the same effect as though such representations and warranties had been made on such Borrowing Date (or, with respect to any representation or warranty that is itself modified or qualified by materiality or a "Material Adverse Effect" standard, such representation or warranty shall be true and correct in all respects), except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date (or, with respect to any representation or warranty that is itself modified or qualified by materiality or a "Material Adverse Effect" standard, such representation or warranty shall be true and correct in all respects as of such earlier date)).

Section 6.03 *No Default*. At the time of, and immediately after, such Borrowing, no Event of Default or Default shall have occurred and be continuing or would result therefrom. For the avoidance of doubt, no Borrowing shall be permitted if any Event of Default or Default exists and is continuing, unless waived in accordance with Section 12.11.

Section 6.04 *Approval by Bankruptcy Courts*. The making of such Borrowing shall not result in the aggregate principal amount of the Term Loans made under this Agreement outstanding hereunder exceeding the amount authorized at such time by the Interim Financing Order and the Final Financing Order.

Section 6.05 *Effective Financing Orders*. The Interim Financing Order and the Final Financing Order (which shall be in form and substance reasonably satisfactory to the Required Lenders), shall be in full force and effect and shall not have been (i) vacated, reversed, terminated or stayed or (ii) except as expressly permitted by the Credit Documents, modified or amended in any manner without the prior written consent of the Required Lenders. The Debtors shall be in compliance in all respects with the Interim Financing Order and the Final Financing Order.

ARTICLE 7
REPRESENTATIONS, WARRANTIES AND AGREEMENTS

In order to induce the Lenders to enter into this Agreement, provide the Commitments hereunder and to make the Term Loans, the Borrower makes the following representations, warranties and agreements, in each case after giving effect to the Transaction.

Section 7.01 *Organizational Status*. The Borrower and each of its Subsidiaries (a) is a duly organized and validly existing corporation, partnership, limited liability company or unlimited liability company, as the case may be, in good standing under the laws of the jurisdiction of its organization, (b) has the corporate, partnership, limited liability company or unlimited holding company power and authority, as the case may be, to own its property and assets and to transact the business in which it is engaged and presently proposes to engage and (c) is, to the extent such concepts are applicable under the laws of the relevant jurisdiction, duly qualified and is authorized to do business and is in good standing in each jurisdiction where the ownership, leasing or operation of its property or the conduct of its business requires such qualifications except for failures to be so qualified which, individually and in the aggregate, have not had, and would not reasonably be expected to have, a Material Adverse Effect.

Section 7.02 *Power and Authority*. Subject to the entry of the Financing Orders, each Credit Party has the corporate, partnership, limited liability company or unlimited liability company power and authority, as the case may be, to execute, deliver and perform the terms and provisions of each of the Credit Documents to which it is party and has taken all necessary corporate, partnership, limited liability company or unlimited liability company action, as the case may be, to authorize the execution, delivery and performance by it of each of such Credit Documents. Subject to the entry of the Financing Orders, each Credit Party thereof has duly executed and delivered each of the Credit Documents to which it is party, and each of such Credit Documents constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

Section 7.03 *No Violation*. Subject to the entry of the Financing Orders, the execution, delivery or performance by any Credit Party of the Credit Documents to which it is a party, nor compliance by it with the terms and provisions thereof, (i) will contravene any provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or governmental instrumentality, (ii) will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (except pursuant to the Security Documents) upon any of the property or assets of any Credit Party or any of its respective Subsidiaries pursuant to the terms of, any indenture, mortgage, deed of trust, credit agreement or loan agreement, or any other material agreement, contract or instrument, in each case to which any Credit Party or any of its Subsidiaries is a party or by which it or any of its property or assets is bound or to which it may be subject (except, in the case of preceding clauses (i) and (ii), other than in the case of any contravention, breach, default and/or conflict, that would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect or that was effective immediately prior to the

Petition Date) or (iii) will violate any provision of the certificate or articles of incorporation, certificate of formation, limited liability company agreement or by-laws (or equivalent organizational documents), as applicable, of any Credit Party or any of its respective Subsidiaries.

Section 7.04 *Approvals*. Subject to the entry of the Financing Orders and except to the extent the failure to obtain or make the same would not reasonably be expected to have a Material Adverse Effect, no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except for (x) those that have otherwise been obtained or made on or prior to the Signing Date and which remain in full force and effect on the Signing Date and (y) filings which are necessary to perfect the security interests or hypothecs created under the Security Documents), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to be obtained or made by, or on behalf of, any Credit Party to authorize, or is required to be obtained or made by, or on behalf of, any Credit Party in connection with, the execution, delivery and performance of any Credit Document.

Section 7.05 *Financial Statements; Financial Condition; Projections*.

(a) The unaudited consolidated financial statements of the Borrower as of May 31, 2016 and the consolidated, unaudited financial statements of the Company and its Subsidiaries as of and for the three months ended August 31, 2016 (including all related notes and schedules) (a) fairly presented in all material respects the consolidated financial position of the Borrower and its consolidated Subsidiaries, as at the respective dates thereof, and the consolidated results of their operations, their consolidated cash flows for the respective periods then ended and changes in stockholders' equity for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto, in each case which are not material) and (b) have been prepared in all material respects in conformity with GAAP (except, in the case of the unaudited statements, as permitted by the SEC and Canadian Securities Law) applied on a consistent basis during the periods involved (in each case, except as may be indicated therein or in the notes thereto); provided that The Audit Committee (as defined in the Biscuit Acquisition Agreement as in effect as of the date hereof) has an ongoing investigation in connection with the finalization of the Company's financial statements and the related certification process, so accordingly, the Company's fiscal 2016 annual financial statements have not been audited by KPMG LLP, and Sellers' disclosure with respect to the Company's financial statements is qualified by the information provided to Buyer in respect of such investigation, the lack of an audit in respect of such financial statements and the ongoing investigation.

(b) The Projections and the Initial Budget have been prepared in good faith and are based on assumptions that were believed by the Borrower to be reasonable at the time made and at the time delivered to the Administrative Agent.

(c) After giving effect to the Transaction (but for this purpose assuming that the Transaction and the related financing had occurred prior to May 31, 2016), since May 31, 2016 there has been no Material Adverse Effect, and there has been no change, event or occurrence that would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 7.06 *Litigation*. Except with respect to the OSC Investigation and the SEC Investigation, there are no actions, suits or proceedings pending or, to the knowledge of any Credit Party, threatened (a) with respect to the Transaction or any Credit Document or (b) that either individually or in the aggregate, have had, or would reasonably be expected to have, a Material Adverse Effect.

Section 7.07 *True and Complete Disclosure*.

(a) All written information (taken as a whole) furnished by or on behalf of any Credit Party in writing to the Administrative Agent or any Lender (including, without limitation, all such written information contained in the Credit Documents) for purposes of or in connection with this Agreement, the other Credit Documents or any transaction contemplated herein or therein does not, and all other such written information (taken as a whole) hereafter furnished by or on behalf of any Credit Party in writing to the Administrative Agent or any Lender will not, on the date as of which such written information is dated or certified, contain any material misstatement of fact or omit to state any material fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such written information was provided.

(b) Notwithstanding anything to the contrary in the foregoing clause (a) of this Section 7.07, none of the Credit Parties makes any representation, warranty or covenant with respect to any information consisting of statements, estimates, forecasts and projections regarding the future performance of the Borrower or any of its Subsidiaries, or regarding the future condition of the industries in which they operate other than that such information has been (and in the case of such information furnished after the Signing Date, will be) prepared in good faith based upon assumptions believed to be reasonable at the time of preparation thereof.

Section 7.08 *Use of Proceeds; Margin Regulations*.

(a) The proceeds of all Term Loans are used solely in accordance with the Budget or the Financing Orders. Without limiting the foregoing, the proceeds of (i) the Refinancing Term Loans shall be used solely to consummate the Refinancing and (ii) the Delayed Draw Term Loans shall be used solely (x) to pay administration costs incurred in connection with the Cases and (y) to fund working capital and general corporate purposes of the Credit Parties.

(b) No part of any Credit Event (or the proceeds thereof) will be used to, directly or indirectly, and whether immediately, incidentally, or ultimately, purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock or to refund indebtedness originally incurred for such purpose. Neither the making of any Term Loan nor the use of the proceeds thereof nor the occurrence of any other Credit Event will violate the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

Section 7.09 *Tax Returns and Payments*. Except as would not reasonably be expected to result in a Material Adverse Effect, (a) the Borrower and each of its Subsidiaries has timely filed or caused to be timely filed with the appropriate taxing authority all Tax returns, statements, forms and reports for taxes (the "Returns") required to be filed by, or with respect to the income, properties or operations of, the Borrower and/or any of its Subsidiaries, (b) the Returns accurately reflect in all material respects all liability for Taxes of the Borrower and its Subsidiaries for the periods covered thereby, and *(c)* the Borrower and each of its Subsidiaries have paid all Taxes payable by them, other than those that are being contested in good faith by appropriate proceedings and fully provided for as a reserve on the financial statements of the Borrower and its Subsidiaries in accordance with GAAP. There is no action, suit, proceeding, investigation, audit or claim now pending or, to the knowledge of the Borrower or any of its Subsidiaries, threatened in writing by any authority regarding any material amount of Taxes relating to the Borrower or any of its Subsidiaries.

Section 7.10 *ERISA*. No ERISA Event has occurred or is reasonably expected to occur that would reasonably be expected to result in a Material Adverse Effect. Each Plan is in compliance in form and operation with its terms and with the applicable provisions of ERISA, the Code and other applicable law, except for such non-compliance that would not reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to result in a Material Adverse Effect, each Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service or is in the form of a prototype document that is the subject of a favorable opinion letter.

(a) There exists no Unfunded Pension Liability with respect to any Plan, except as would not reasonably be expected to have a Material Adverse Effect.

(b) If any of the Borrower, Subsidiary of the Borrower or ERISA Affiliate were to withdraw from any Multiemployer Plan in a complete withdrawal as of the date this assurance is given, the withdrawal liability that would be incurred would not reasonably be expected to have a Material Adverse Effect.

(c) There are no actions, suits or claims pending against or involving a Plan (other than routine claims for benefits) or, to the knowledge of the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate, threatened, which would reasonably be expected to be asserted successfully against any Plan and, if so asserted successfully, would reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(d) The Borrower, any Subsidiary of the Borrower and any ERISA Affiliate have made all material contributions to or under each Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, the terms of such Plan or Multiemployer Plan, respectively, or any contract or agreement requiring contributions to a Plan or Multiemployer Plan except where any failure to comply, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect or where a Multiemployer Plan is considered, under applicable Laws, as a defined benefit plan.

(e) Except as would not reasonably be expected to have a Material Adverse Effect: (i) each Foreign Pension Plan and Canadian Employee Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities; (ii) all contributions required to be made with respect to a Foreign Pension Plan, each Canadian Employee Plan and Canadian Statutory Plan have been timely made; and (iii) neither the Borrower nor any of its Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Foreign Pension Plan or Canadian Employee Plan.

(f) Neither the Borrower nor any of its Subsidiaries maintains, contributes to, or has any liability or contingent liability with respect to, any Canadian Defined Benefit Plan as of the Signing Date, and at any time thereafter, neither the Borrower nor any of its Subsidiaries will maintain, participate in, contribute to, or have any liability or contingent liability with respect to, any Canadian Defined Benefit Plan.

(g) The Borrower and its Subsidiaries are in substantial compliance with all applicable Laws pertaining to their employees.

Section 7.11 *The Security Documents*. (a) Article 14 hereof, together with the Financing Orders, is effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable security interest or hypothec (except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law) in all right, title and interest of the Credit Parties in the Collateral, and upon the entry of the Financing Orders, the Collateral Agent, for the benefit of the Secured Parties, has (to the extent provided hereunder and in the Financing Orders) a fully perfected first priority security interest or hypothec in all right, title and interest in all of the Collateral, subject to the Post-Petition Intercreditor Arrangements and subject to no other Liens other than Permitted Liens. Notwithstanding anything herein to the contrary, the Credit Parties shall not be required to take any action to perfect any security interest in any Collateral consisting of Intellectual Property under the laws of any jurisdiction outside of the United States or Canada or any other Collateral under the laws of any jurisdiction outside of the United States and Canada.

(b) The provisions of the Canadian Security Agreements are effective to create in favor of the Collateral Agent for the benefit of the Secured Creditors a legal, valid and enforceable security interest or hypothec (except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law)) in all right, title and interest of the Credit Parties in the Collateral (as described therein), upon the timely and proper filing of financing statements (or other local equivalent) listing each applicable Credit Party, as a debtor, and Collateral Agent, as secured party, with the registry of the applicable governmental entity of the jurisdiction of organization of such Credit Party or where the applicable Collateral is located, as applicable, upon which the security interests or hypothecs created under the Canadian Security Agreements in favor of the Collateral Agent, for the benefit of the Secured Creditors, constitute perfected security interests or hypothecs in the Collateral (as described therein (other than Collateral in which a security interest or hypothec cannot be perfected under the PPSA as in effect at the relevant time in the relevant jurisdiction or by the taking of the foregoing actions) with the priority set forth in the Financing Orders and the Post-Petition Intercreditor Arrangements, subject to no other Liens other than Permitted Liens, in each case, to the extent perfection can be accomplished under applicable law through these actions.

Section 7.12 *Properties*. The Borrower and each of its Subsidiaries has good and marketable title or valid leasehold interest in the case of Real Property, and good and valid title in the case of tangible personal property and intangible property, to all material tangible and intangible properties owned by it, including all material property reflected in the most recent historical balance sheets referred to in Section 7.05(a) (except as sold or otherwise disposed of since the date of such balance sheet in the ordinary course of business or as permitted by the terms of this Agreement (or, to the extent disposed or disposed of prior to the Closing Date, the Prepetition Term Loan Credit Agreement)), free and clear of all Liens, other than Permitted Liens.

Section 7.13 *Capitalization*. All outstanding shares of capital stock of the Borrower have been duly and validly issued and are fully paid and non-assessable (other than any assessment on the shareholders of the Borrower that may be imposed as a matter of law). The Borrower does not have outstanding any capital stock or other securities convertible into or exchangeable for its capital stock or any rights to subscribe for or to purchase, or any options for the purchase of, or any agreement providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to, its capital stock.

Section 7.14 *Subsidiaries*. On and as of the Signing Date and after giving effect to the consummation of the Transaction, the Borrower has no Subsidiaries other than those Subsidiaries listed on Schedule 7.14. Schedule 7.14 correctly sets forth, as of the Signing Date and after giving effect to the Transaction, the percentage ownership (direct and indirect) of the Borrower in each class of capital stock of each of its Subsidiaries and also identifies the direct owner thereof.

Section 7.15 *Compliance with Statutes, OFAC Rules and Regulations; Patriot Act and Canadian AML Acts; FCPA*.

(a) Each of the Borrower and each of its Subsidiaries is in compliance with all applicable statutes, regulations and orders of (including any laws relating to terrorism, money laundering or embargoed persons, the Bank Secrecy Act as amended by Title III of the PATRIOT Act, and the Canadian AML Acts), and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, in respect of the conduct of its business and the ownership of its property (including, without limitation, applicable statutes, regulations, orders, directions and restrictions relating to environmental standards and controls).

(b) None of the Borrower or any Subsidiary is in violation of any of the foreign assets control regulations of the Office of Foreign Assets Control ("**OFAC**") of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or any other relevant sanctions authority applicable in countries where the Borrower or its Subsidiaries do business (collectively, "**Sanctions**"), and none of the Borrower or any Subsidiary or any Affiliate thereof is in violation of and shall not violate any of the country or list based economic and trade sanctions.

(c) None of the Borrower or any Subsidiary will, directly or indirectly, use the proceeds of the Term Loans, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Term Loans, whether as lender, underwriter, advisor, investor, or otherwise).

(d) The Borrower and each Subsidiary is in compliance in all material respects with the Foreign Corrupt Practices Act, 15 U.S.C.§§ 78dd-1, *et seq.,* as amended, and the rules and regulations thereunder ("**FCPA**"), the *Corruption of Foreign Public Officials Act* (Canada) and any foreign counterpart thereto applicable to the Borrower or such Subsidiary, and have instituted and maintain policies and procedures designed to ensure continued compliance therewith. Neither the Borrower nor, to the knowledge of the Borrower, or any Subsidiary, any director, officer, agent, employee, or other person acting on behalf of the Borrower or any of its Subsidiaries, is aware of or has made a payment, offering, or promise to pay, or authorized the payment of, money or anything of value (i) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (ii) to a foreign official, foreign political party or party official or any candidate for foreign political office, and (iii) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to the Borrower or any Subsidiary or to any other Person, in violation of FCPA or the Corruption of Foreign Public Officials Act (Canada). No part of the proceeds of the Term Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity in violation of the FCPA or any other applicable anti-corruption law.

Section 7.16 *Investment Company Act*. None of the Borrower or any of its Subsidiaries is an "investment company" within the meaning of the Investment Company Act of 1940, as amended, required to be registered as such.

Section 7.17 *Environmental Matters*.

(a) The Borrower and each of its Subsidiaries are and have been in compliance with all applicable Environmental Laws and the requirements of any permits or certificates of approval issued under such Environmental Laws. There are no pending or, to the knowledge of any Credit Party, threatened Environmental Claims and no liabilities under any applicable Environmental Laws relating to the Borrower or any of its Subsidiaries or any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries (including any such claim or liability arising out of the ownership, lease or operation by the Borrower or any of its Subsidiaries of any Real Property formerly owned, leased or operated by the Borrower or any of its Subsidiaries but no longer owned, leased or operated by the Borrower or any of its Subsidiaries). There are no facts, circumstances, conditions or occurrences with respect to the business or operations of the Borrower or any of its Subsidiaries, or any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries (including any Real Property formerly owned, leased or operated by the Borrower or any of its Subsidiaries but no longer owned, leased or operated by the Borrower or any of its Subsidiaries) that would be reasonably expected (x) to form the basis of an Environmental Claim against the Borrower or any of its Subsidiaries, (y) to cause any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries to be subject to any restrictions on the ownership, lease, occupancy or transferability of such Real Property by the Borrower or any of its Subsidiaries under any applicable Environmental Law or (z) to give rise to liability under any applicable Environmental Law.

(b) Hazardous Materials have not at any time been generated, used, treated or stored on, or transported to or from, or Released on or from, any Real Property currently or formerly owned, leased or operated by the Borrower or any of its Subsidiaries where such generation, use, treatment, storage, transportation or Release has (i) violated or would be reasonably expected to violate any applicable Environmental Law, (ii) given rise to or would be reasonably expected to give rise to an Environmental Claim or (iii) given rise to or would be reasonably expected to give rise to liability under any applicable Environmental Law.

(c) Notwithstanding anything to the contrary in this Section 7.17, the representations and warranties made in this Section 7.17 shall be untrue only if the effect of any or all conditions, violations, claims, restrictions, failures and noncompliances of the types described above would, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

For purposes of this Section 7.17, the terms **"Borrower"** and "**Subsidiary**" shall include any business or business entity (including a corporation) which is, in whole or in part, a predecessor of the Borrower or any Subsidiary.

Section 7.18 *Labor Relations*. Except to the extent the same has not, either individually or in the aggregate, had and would not reasonably be expected to have a Material Adverse Effect, (i) there are no strikes, lockouts, slowdowns or other labor disputes pending against the Borrower or any of its Subsidiaries or, to the knowledge of each Credit Party, threatened against the Borrower or any of its Subsidiaries, (ii) the hours worked by and payments made to employees of the Borrower or any of its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable federal, state, provincial, local, or foreign law dealing with such matters and (iii) to the knowledge of each Credit Party, no wage and hour department investigation has been made of the Borrower or any of its Subsidiaries.

Section 7.19 *Intellectual Property*.

(a) The Licenses disclosed as such in the Biscuit Acquisition Agreement as in effect as of the date hereof sets forth a complete and accurate list of all material Licenses that each Credit Party owns. Each Grantor represents and warrants that it is the sole owner of all right, title and interest in all Recordable Intellectual Property listed thereto. The Borrower and each of its Subsidiaries owns or has the right to use all the Intellectual Property used in, held for use in, or necessary for the present conduct of its respective business, without any conflict with the Intellectual Property rights of any Person, except for such failures to own or have the right to use and/or conflicts as have not had, and would not reasonably be expected to be material to the operations of the Borrower and its Subsidiaries taken as a whole. Neither the Borrower nor any of its Subsidiaries has infringed, misappropriated or otherwise violated any Intellectual Property rights of any Person and no claim or litigation alleging any of the foregoing is pending or, to the knowledge of the Borrower, threatened, except in each case as would not reasonably be expected to be material to the operations of the Borrower and its Subsidiaries taken as a whole. No Person has contested any right, title or interest of any the Borrower or any of its Subsidiaries in, or relating to, any Intellectual Property except as would not reasonably be expected to be material to the operations of the Borrower and its Subsidiaries taken as a whole. No Person is infringing, misappropriating or otherwise violating any Intellectual Property rights of the Borrower or any of its Subsidiaries and no claim or litigation alleging any of the foregoing is pending, except in each case as would not reasonably be expected to be material to the operations of the Borrower and its Subsidiaries taken as a whole. The Borrower and each of its Subsidiaries has taken all commercially reasonable actions to maintain and protect all of its Intellectual Property, as deemed necessary in its reasonable business judgment, including making timely filings and payments except as would not reasonably be expected to be material to the operations of the Borrower and its Subsidiaries taken as a whole. The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates. Notwithstanding the foregoing, the Borrower and its Subsidiaries may self-insure with respect to such risks with respect to which companies of established reputation engaged in similar businesses in the same general area usually self-insure.

(b) Each Credit Party represents and warrants that all such Recordable Intellectual Property is subsisting and has not been abandoned and, to such Grantor's knowledge, valid and enforceable, and there are no pending or, to such Grantor's knowledge, threatened, third-party claims that (i) any of said registrations of Recordable Intellectual Property are invalid or unenforceable or (ii) seeks to limit the Credit Party's ownership interest in any Recordable Intellectual Property, and such Credit Party is not aware that there is any reason that any of said registrations of Recordable Intellectual Property are invalid or unenforceable, and is not aware that there is any reason that any of said applications of Recordable Intellectual Property will not mature into registrations, other than would not reasonably be expected to be material to the operations of the Credit Parties taken as a whole. To knowledge of each Credit Party, none of the Trade Secrets of any Credit Party has been used, divulged, disclosed or appropriated to the detriment of such Credit Party for the benefit of any other Person other than other Credit Parties, other than would not reasonably be expected to be material to the operations of the Credit Parties taken as a whole.

(c) The Intellectual Property disclosed as such in the Biscuit Acquisition Agreement sets forth a complete and accurate list of all Recordable Intellectual Property that each Credit Party owns. Each Grantor represents and warrants that it is the sole owner of all right, title and interest in all Recordable Intellectual Property listed theretosets forth a complete and accurate list of all material Licenses to which any Credit Party is a party. No Credit Party is in breach or default of any License, other than as has not, and would not, reasonably be expected to be material to the operations of the Credit Party taken as a whole.

Section 7.20 *No Default*. No Default has occurred and is continuing, or would result from the consummation of the transactions contemplated by this Agreement or any other Credit Document.

Section 7.21 *Financing Orders*.

(a) The Interim Financing Order or, at all times after its entry by the Bankruptcy Courts, the Final Financing Order, is in full force and effect, and has not been vacated, reversed, terminated, stayed modified or amended in any manner without the reasonable written consent of the Required Lenders.

(b) Upon the occurrence of the Maturity Date (whether by acceleration or otherwise) of any of the Obligations, the Lenders shall, subject to the provisions of Article 10 and the applicable provisions of the applicable Financing Order, be entitled to immediate payment of such Obligations, and to enforce the remedies provided for hereunder in accordance with the terms hereof and such Financing Order, as applicable, without further application to or order by the Bankruptcy Courts.

(c) If either the Interim Financing Order or the Final Financing Order is the subject of a pending appeal in any respect, none of such Financing Order, the making of the Term Loans or the performance by Borrower or any other Credit Party of any of its obligations under any of the Credit Documents shall be the subject of a presently effective stay pending appeal. The Borrower, the Administrative Agent and the Secured Parties shall be entitled to rely in good faith upon the Financing Orders, notwithstanding objection thereto or appeal therefrom by any interested party. The Borrower, the Administrative Agent and the Lenders shall be permitted and required to perform their respective obligations in compliance with this Agreement notwithstanding any such objection or appeal unless the relevant Financing Order has been stayed by a court of competent jurisdiction.

Section 7.22 *Appointment of Trustee or Examiner; Liquidation*. No order has been entered in any of the Cases (i) for the appointment of a Chapter 11 trustee or a trustee in bankruptcy under the Bankruptcy and Insolvency Act (Canada), (ii) for the appointment of a responsible officer or examiner (other than a fee examiner) having expanded powers (beyond those set forth under Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1104 of the Bankruptcy Code or (iii) to convert any of the Cases to a case under Chapter 7 of the Bankruptcy Code or to dismiss any of the Cases.

Section 7.23 *Perfection of Security Interests*. Upon entry of each of the Interim Financing Order and the Final Financing Order, as applicable, each such Financing Order shall be effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid, enforceable and perfected security interest and hypothec in the Collateral of the Debtor Credit Parties and proceeds thereof, as contemplated thereby, as described in Section 2.14.

Section 7.24 *Superpriority Claims; Liens*. Upon the entry of each of the Interim Financing Order and the Final Financing Order, each such Financing Order and the Credit Documents are sufficient to provide the DIP Superpriority Claims and security interests and Liens on the Collateral of the Debtor Credit Parties described in, and with the priority provided in, Section 2.14.

ARTICLE 8
AFFIRMATIVE COVENANTS

The Borrower and each of its Subsidiaries hereby covenants and agrees that on and after the Signing Date and until all Commitments are terminated and the Term Loans and Notes (in each case together with interest thereon), Fees and all other Obligations incurred hereunder and thereunder, are Paid in Full:

Section 8.01 *Information Covenants*. The Borrower will furnish to the Administrative Agent for distribution to each Lender:

(a) *Quarterly Financial Statements*. Within forty-five (45) days after the close of each of the first three quarterly accounting periods in each fiscal year of the Parent, (i) the consolidated balance sheet of the Parent and its Subsidiaries as at the end of such quarterly accounting period and the related consolidated statements of income and retained earnings and statement of cash flows for such quarterly accounting period and for the elapsed portion of the fiscal year ended with the last day of such quarterly accounting period, in each case setting forth comparative figures for the corresponding quarterly accounting period in the prior fiscal year and comparable forecasted figures for such quarterly accounting period based on the corresponding forecasts delivered pursuant to Section 8.01(j), all of which shall be certified by a Responsible Officer of the Parent that they fairly present in all material respects in accordance with GAAP the financial condition of the Parent and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes, and (ii) management’s discussion and analysis of the important operational and financial developments during such quarterly accounting period. If the Parent has filed (within the time period required above) an interim financial report and related management's discussion and analysis with any Securities

Commission pursuant to National Instrument 51-102 adopted by the Canadian Securities Administrators ("**NI 51-102**") for any fiscal quarter described above, then to the extent that such interim financial report and related management's discussion and analysis contains any of the foregoing items, the Lenders shall accept such filings in lieu of such items.

(b) *Monthly Financials*. Within fifteen (15) days after the close of each of the first two monthly accounting periods in each fiscal quarter of the Borrower, (a) the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such monthly accounting period and the related consolidated statements of income and retained earnings and statement of cash flows for such monthly accounting period and for the elapsed portion of the fiscal year ended with the last day of such monthly accounting period, in each case setting forth comparative figures for the corresponding monthly accounting period in the prior fiscal year and comparable forecasted figures for such monthly accounting period based on the corresponding forecasts delivered pursuant to Section 8.01(j), all of which shall be certified by a Responsible Officer of the Borrower that they fairly present in all material respects in accordance with GAAP the financial condition of the Borrower and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes, and (b) management's discussion and analysis of the important operational and financial developments during such monthly accounting period.

(c) *Officer's Certificates*. At the time of the delivery of any Section 8.01 Financials, the delivery of any Budget and the delivery of any Variance Report (and in any case, no less frequently than on a weekly basis), a Compliance Certificate, certifying on behalf of the Borrower that no Default or Event of Default has occurred and is continuing or, if any Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof.

(d) *Notice of Default, Litigation and Material Adverse Effect*. Promptly after any officer of the Borrower or any of its Subsidiaries obtains knowledge thereof, notice of (i) the occurrence of any event which constitutes a Default or an Event of Default or any default or event of default under the Prepetition Term Loan Credit Agreement (until Payment in Full), the ABL Facilities (until Payment in Full) and/or any post-petition debt instrument in excess of the Threshold Amount (including the ABL DIP Facility), (ii) any litigation or governmental investigation or proceeding pending against the Borrower or any of its Subsidiaries (x) which, either individually or in the aggregate, has had, or would reasonably be expected to have, a Material Adverse Effect or (y) with respect to any Credit Document, or (iii) any other event, change or circumstance that has had, or would reasonably be expected to have, a Material Adverse Effect.

(e) *Other Reports and Filings*. Promptly after the filing or delivery thereof, copies of all financial information, proxy materials and reports, if any, which the Borrower or any of its Subsidiaries shall publicly file with a Securities Commission or the SEC and/or the Bankruptcy Courts.

(f) *Environmental Matters*. Promptly after any officer of the Borrower or any of its Subsidiaries obtains knowledge thereof, notice of one or more of the following environmental matters to the extent that such environmental matters, either individually or when aggregated with all other such environmental matters, would reasonably be expected to have a Material Adverse Effect:

(i) any pending or threatened Environmental Claim relating to the Borrower or any of its Subsidiaries or any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries;

(ii) any condition or occurrence on or arising from any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries that (i) results in noncompliance by the Borrower or any of its Subsidiaries with any applicable Environmental Law or (ii) would reasonably be expected to form the basis of an Environmental Claim against or give rise to liability under any applicable Environmental Law of the Borrower or any of its Subsidiaries or any such Real Property;

(iii) any condition or occurrence on any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries that could reasonably be expected to cause such Real Property to be subject to any restrictions on the ownership, lease, occupancy, use or transferability by the Borrower or any of its Subsidiaries of such Real Property under any Environmental Law; and

(iv) the taking of any removal or remedial action in response to the actual or alleged presence of any Hazardous Material on any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries as required by any Environmental Law or any governmental or other administrative agency and all notices received by the Borrower or any of its Subsidiaries from any government or governmental agency under, or pursuant to, Environmental Law which identify the Borrower or any of its Subsidiaries as potentially responsible parties for remediation costs or which otherwise notify the Borrower or any of its Subsidiaries of potential liability under Environmental Law.

All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and the Borrower's or such Subsidiary's response thereto.

(g) *Notices to Holders of Other Material Debt*. Contemporaneously with the sending or filing thereof, the Borrower will provide to the Administrative Agent for distribution to each of the Lenders, any notices provided to, or received from, holders of the ABL Facilities and/or the Prepetition Term Loan Credit Agreement.

(h) *Budget*. (i) on or before the third Business Day of every fourth week (commencing on the third Business Day of the fourth week following the week in which the Petition Date occurs), a proposed budget for the current week and the immediately following consecutive 12 weeks (collectively 13 weeks) depicting on a weekly basis receipts and disbursements, unrestricted and restricted cash balance, the outstanding amount of loans under the ABL Facilities and the Delayed Draw Term Loans, net cash flow, Availability, Liquidity and the Borrowing Base;

(i) *Variance Report*. On or before the fourth Business Day of each week (commencing on the fourth Business Day of the week in which the Signing Date occurs), a Variance Report certified by the Borrower's chief financial officer, chief restructuring officer (or officer with equivalent duties), which shall be in a form reasonably acceptable to the Administrative Agent and the Required Lenders (each, a "**Variance Report**"), for the period commencing with the week in which the Petition Date occurs through the week ending immediately prior to the week in which the Variance Report was delivered (i) showing, for the Borrower and its Subsidiaries, actual results during such period for the following items: (w) Cash Receipts (including detailed line items aggregating thereto), (x) Cash Disbursements (including detailed line items aggregating thereto), (y) Cash Receipts less Cash Disbursements and (z) professional fees, (ii) showing Cumulative Net Cash Flow for such period, (iii) noting therein weekly and cumulative Variances, on a line-item basis (including for Cash Receipts, Cash Disbursements, Cash Receipts less Cash Disbursements, unrestricted and restricted cash balance, the outstanding amount of loans under the ABL Facilities and the Delayed Draw Term Loans, net cash flow, Availability, Liquidity, the Borrowing Base, professional fees and other amounts, line items and data aggregating to Cash Receipts and Cash Disbursements), from amounts set forth for such period in the Initial Budget, in each case, on a weekly and cumulative basis and (iv) providing a reasonably detailed written explanation of all material Variances, including a description of the Variances and whether they are permanent or if temporary, the approximate timing of their remedy;

(j) *Orders; Notices*. (i) as soon as practicable, but in no event later that two (2) Business Days, in advance of filing with either of the Bankruptcy Courts or delivering to any official committee appointed in any of the Cases (or the Professionals to any such committee) or to the U.S. Trustee, as the case may be, any proposed Order, material pleadings related to any of the Term Loans contemplated hereby, authorization for the use of cash collateral, any disposition of Collateral having a value in excess of $250,000 for any such Disposition that is not contemplated by the most recent Budget then in effect, any debtor-in-possession financing other than to the extent such provides for the Payment in Full of the Obligations, any plan of reorganization or liquidation for any of the Cases and/or any disclosure statement related thereto (except that with respect to any emergency pleading or document for which, despite the Debtors' commercially reasonable efforts, such advance notice is impracticable, the Debtors shall be required to furnish such documents no later than concurrently with such filings or deliveries thereof, as applicable) and (ii) substantially simultaneously with the filing with the Bankruptcy Courts or delivering to any official committee appointed in any of the Cases (or the Professionals to any such committee) or the U.S. Trustee, as the case may be, all material written notices, filings, motions, pleadings or other formally communicated written information (not covered by subclause (i) above or Section 8.01(e)) concerning the financial condition of the Borrower or any Subsidiary or other Indebtedness of the Credit Parties;

(k) *Intellectual Property*. In the event that any Guarantor, either itself or through any agent, employee, licensee or designee, files an application for or otherwise acquires any Recordable Intellectual Property following the date hereof, then the provisions of this Agreement shall automatically apply thereto and any such Intellectual Property (other than any Excluded Collateral) shall automatically constitute part of the Collateral and shall be subject to the Collateral Agent's security interest, without further action by any party. Such Guarantor shall, along with the quarterly financial statements required to be delivered pursuant to Section 8.01(a), provide complete and accurate lists of such Recordable Intellectual Property (other than domain names) and execute and deliver any and all appropriate agreements, assignments, notices instruments, documents and papers as necessary or desirable to evidence and perfect the Collateral Agent's security interest in such Recordable Intellectual Property provided that such agreements, instruments, documents and papers (the "**IP Security Documents**").

(l) *Other Information*. From time to time, such other information (financial or otherwise) with respect to the Borrower or any of its Subsidiaries as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request.

The Borrower hereby acknowledges that (a) the Administrative Agent may make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Joint Lead Arrangers, and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided that, to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 12.14); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent and the Joint Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

Section 8.02 *Books, Records and Inspections*. The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and accounts in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities. The Borrower will, and will cause each of its Subsidiaries to, permit officers and designated representatives of the Administrative Agent or any Lender to visit and inspect, under guidance of officers of the Borrower or such Subsidiary, any of the properties of the Borrower or such Subsidiary, and to examine the books of account of the Borrower or such Subsidiary and discuss the affairs, finances and accounts of the Borrower or such Subsidiary with, and be advised as to the same by, its and their officers and independent accountants, all upon reasonable prior notice and at such reasonable times and intervals and to such reasonable extent as the Administrative Agent or any such Lender may reasonably request; *provided* that the Administrative Agent shall give the Borrower an opportunity to participate in any discussions with its accountants; *provided further* that in the absence of the existence of an Event of Default, (a) only the Administrative Agent on behalf of the Lenders may exercise the rights of the Administrative Agent and the Lenders under this Section 8.02 and (b) the Administrative Agent shall not exercise its inspection rights under this Section 8.02 more often than two times during any fiscal year and only one such time shall be at the Borrower's expense; *provided*, *further*, *however*, that when an Event of Default exists, the Administrative Agent or any Lender and their respective designees may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice.

Section 8.03 *Maintenance of Property; Insurance*.

(a) The Borrower will, and will cause each of its Subsidiaries to, (a) keep all tangible property necessary to the business of the Borrower and its Subsidiaries in good working order and condition, ordinary wear and tear, casualty and condemnation excepted, (b) maintain with financially sound and reputable insurance companies insurance on all such property and against all such risks as is consistent and in accordance with industry practice for companies similarly situated owning similar properties and engaged in similar businesses as the Borrower and its Subsidiaries, and (c) furnish to the Administrative Agent, upon its request therefor, full information as to the insurance carried. The provisions of this Section 8.03 shall be deemed supplemental to, but not duplicative of, the provisions of any Security Documents that require the maintenance of insurance.

(b) If at any time the improvements on Real Property constituting Collateral are located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then the Borrower shall, or shall cause the applicable Credit Party to maintain, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and deliver to the Administrative Agent evidence of such insurance in form and substance reasonably acceptable to the Administrative Agent.

(c) The Borrower will, and will cause each of its Subsidiaries to, at all times keep its property insured in favor of the Collateral Agent, and all policies or certificates (or certified copies thereof) with respect to such insurance (and any other insurance maintained by the Borrower and/or such Subsidiaries) (a) shall be endorsed to the Collateral Agent's reasonable satisfaction for the benefit of the Collateral Agent (including, without limitation, by naming the Collateral Agent as loss payee, mortgagee and/or additional insured), (b) if agreed by the insurer (which agreement the Borrower shall use commercially reasonable efforts to obtain), shall state that such insurance policies shall not be canceled without at least thirty (30) days' prior written notice thereof (or, with respect to non-payment of premiums, ten (10) days' prior written notice) by the respective insurer to the Collateral Agent; *provided*, that the requirements of this Section 8.03(c) shall not apply to (x) insurance policies covering (i) directors and officers, fiduciary or other professional liability, (ii) employment practices liability, (iii) workers compensation liability, (iv) automobile and aviation liability, (v) health, medical, dental and life insurance, and (vi) (such other insurance policies and programs as the Collateral Agent may approve; and (y) self-insurance programs and (c) shall be deposited with the Collateral Agent.

(d) If the Borrower or any of its Subsidiaries shall fail to maintain insurance in accordance with this Section 8.03, or the Borrower or any of its Subsidiaries shall fail to so endorse and deposit all policies or certificates with respect thereto, after any applicable grace period, the Administrative Agent shall have the right (but shall be under no obligation) to procure such insurance, and the Credit Parties jointly and severally agree to reimburse the Administrative Agent for all reasonable costs and expenses of procuring such insurance.

Section 8.04 *Existence; Franchises*. The Borrower will, and will cause each of its Subsidiaries to, do or cause to be done, all things necessary to preserve and keep in full force and effect its existence and, in the case of the Borrower and its Subsidiaries, its and their rights, franchises, licenses, permits, and Intellectual Property, in each case to the extent material; *provided*, *however*, that nothing in this Section 8.04 shall prevent (a) sales of assets and other transactions by the Borrower or any of its Subsidiaries in accordance with Section 9.02, (b) the abandonment by the Borrower or any of its Subsidiaries of any rights, franchises, licenses, permits, or Intellectual Property that the Borrower reasonably determines are no longer beneficial to the operations of the Borrower and its Subsidiaries or (c) the withdrawal by the Borrower or any of its Subsidiaries of its qualification as a foreign corporation, partnership, limited liability company or unlimited liability company, as the case may be, in any jurisdiction if such withdrawal would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Borrower will, and will cause each of its Subsidiaries to, conduct its business and affairs without any known infringement, misappropriation or other violation of any Intellectual Property of any other Person except as would not reasonably be expected to be material to the operations of the Borrower and its Subsidiaries taken as a whole.

Section 8.05 *Compliance with Statutes, etc.* The Borrower will, and will cause each of its Subsidiaries to, comply with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, in respect of the conduct of its business and the ownership of its property (including applicable statutes, regulations, orders and restrictions relating to environmental standards and controls), except such noncompliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 8.06 *Compliance with Environmental Laws*.

(a) The Borrower will comply, and will cause each of its Subsidiaries to comply, with all Environmental Laws and certificates of approval and permits applicable to, or required by, the ownership, lease, operation or use of Real Property now or hereafter owned, leased or operated by the Borrower or any of its Subsidiaries, except such noncompliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and will promptly pay or cause to be paid all costs and expenses incurred in connection with such compliance, and will keep or cause to be kept all such Real Property free and clear of any Liens imposed pursuant to such Environmental Laws (other than Liens imposed on leased Real Property resulting from the acts or omissions of the owner of such leased Real Property or of other tenants of such leased Real Property who are not within the control of the Borrower or any of its Subsidiaries). Except as have not had, and would not reasonably be expected to have, a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries will generate, use, treat, store, Release or dispose of, or permit the generation, use, treatment, storage, Release or disposal of, Hazardous Materials on any Real Property now or hereafter owned, leased or operated by the Borrower or any of its Subsidiaries, or transport or permit the transportation of Hazardous Materials to or from any such Real Property, except for Hazardous Materials generated, used, treated, stored, Released or disposed of at any such Real Properties or transported to or from such Real Properties in compliance with all applicable Environmental Laws.

(b) (a) After the receipt by the Administrative Agent or any Lender of any notice of the type described in Section 8.01(f), (b) at any time that the Borrower or any of its Subsidiaries are not in compliance with Section 8.06(a) or (c) at any time when an Event of Default is in existence, the Credit Parties will (in each case) jointly and severally provide, at the written request of the Administrative Agent, an environmental site assessment report, including a phase I and phase II report if required by the Administrative Agent, concerning any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries (in the event of (i) or (ii) that is the subject of or could reasonably be expected to be the subject of such notice or noncompliance), prepared by an environmental consulting firm reasonably approved by the Administrative Agent, indicating the presence or absence of Hazardous Materials, compliance or non-compliance with all Environmental Laws and permits thereunder, and the reasonable worst case cost of any removal or remedial action in connection with any such Hazardous Materials on or non-compliance with Environmental Laws in connection with such Real Property. If the Credit Parties fail to provide the same within thirty (30) days after such request was made, the Administrative Agent may order the same, the reasonable cost of which shall be borne by the Borrower, and the Credit Parties shall grant and hereby grant to the Administrative Agent and the Lenders and their respective agents access to such Real Property and specifically grant the Administrative Agent and the Lenders an irrevocable non-exclusive license to undertake such an environmental assessment at any reasonable time upon reasonable notice to the Borrower, all at the sole expense of the Credit Parties (who shall be jointly and severally liable therefor).

Section 8.07 *ERISA*.

(a) As soon as possible and, in any event, within ten (10) Business Days after the Borrower or any Subsidiary of the Borrower knows of the occurrence of any of the following, the Borrower will deliver to the Administrative Agent a certificate of a Responsible Officer of the Borrower setting forth the full details as to such occurrence and the action, if any, that the Borrower, such Subsidiary or an ERISA Affiliate is required or proposes to take, together with any notices required or proposed to be given or filed by the Borrower, such Subsidiary, the Plan administrator or such ERISA Affiliate to or with the PBGC or any other Governmental Authority, or a Plan participant and any notices received by the Borrower, such Subsidiary or such ERISA Affiliate from the PBGC or any other Governmental Authority, or a Plan participant with respect thereto: that (i) an ERISA Event has occurred that is reasonably expected to result in a Material Adverse Effect; (ii) there has been an increase in Unfunded Pension Liabilities since the date the representations hereunder are given, or from any prior notice, as applicable, in either case, which is reasonably expected to result in a Material Adverse Effect; (iii) there has been an increase in the estimated withdrawal liability under Section 4201 of ERISA, if the Borrower, any Subsidiary of the Borrower and the ERISA Affiliates were to withdraw completely from any and all Multiemployer Plans which is reasonably expected to result in a Material Adverse Effect, (iv) the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate adopts, or commences contributions to, any Plan subject to Section 412 of the Code, or adopts any amendment to a Plan subject to Section 412 of the Code which is reasonably expected to result in a Material Adverse Effect, (mm) that a contribution required to be made with respect to a Foreign Pension Plan has not been timely made which failure is reasonably likely to result in a Material Adverse Effect; or (v) that a Foreign Pension Plan has been or is reasonably expected to be terminated, reorganized, partitioned or declared insolvent and such event is reasonably expected to result in a Material Adverse Effect. The Borrower will also deliver to the Administrative Agent, upon request by the Administrative Agent, a complete copy of the most recent annual report (on Internal Revenue Service Form 5500-series, including, to the extent required, the related financial and actuarial statements and opinions and other supporting statements, certifications, schedules and information) filed with the Internal Revenue Service or other Governmental Authority of each Plan that is maintained or sponsored by the Borrower or a Subsidiary.

(b) As soon as possible and, in any event, within ten (10) Business Days after the Borrower or any Subsidiary of the Borrower knows of the occurrence of any of the following, the Borrower will deliver to the Administrative Agent a certificate of a Responsible Officer of the Borrower setting forth the full details as to such occurrence and the action, if any, that the Borrower or such Subsidiary is required or proposes to take, together with any notices required or proposed to be given or filed by the Borrower, such Subsidiary or the Canadian Pension Plan administrator to or with any Governmental Authority, or a Canadian Pension Plan participant and any notices received by the Borrower or such Subsidiary from any Governmental Authority, or a Canadian Pension Plan participant with respect thereto: (a) that a contribution required to be made with respect to a Canadian Employee Plan or Canadian Statutory Plan has not been timely made which failure is reasonably likely to result in a Material Adverse Effect; or (b) that a Canadian Pension Plan has been or is reasonably expected to be terminated, reorganized, partitioned or declared insolvent and such event is reasonably expected to result in a Material Adverse Effect. The Borrower will also deliver to the Administrative Agent, upon request by the Administrative Agent, a complete copy of the most recent annual report (including, to the extent required, any financial or actuarial statements or reports and opinions and other supporting statements, certifications, schedules and information) filed with each Governmental Authority in respect of each Canadian Pension Plan that is maintained or sponsored by the Borrower or a Subsidiary.

Section 8.08 *Performance of Obligations*. The Borrower will, and will cause each of its Subsidiaries to, perform all of its obligations under the terms of each mortgage, indenture, security agreement, loan agreement or credit agreement and each other agreement, contract or instrument by which it is bound, except such non-performances as, individually and in the aggregate, have not had, and would not reasonably be expected to have, a Material Adverse Effect.

Section 8.09 *Payment of Taxes*. The Borrower will timely pay and fully discharge prior to or when due, and will cause each of its Subsidiaries to pay and discharge, all material amounts of post-petition Taxes (and prepetition Taxes, unless the payment thereof is not authorized by the Bankruptcy Courts, to the extent such Taxes have priority to the DIP Superiority Claims and the payment thereof has been approved by a Financing Order) imposed upon it or upon its income or profits or upon any properties belonging to it, and all material lawful claims which, if unpaid, might become a Lien or charge upon any properties of the Borrower or any of its Subsidiaries not otherwise permitted under Section 9.01(i); *provided* that neither the Borrower nor any of its Subsidiaries shall be required to pay any such Tax which is being contested in good faith and by appropriate proceedings if it has maintained adequate reserves with respect thereto in accordance with GAAP.

Section 8.10 *Use of Proceeds*. The Borrower will use the proceeds of the Term Loans solely in accordance with Section 7.08(a) hereof. In addition, no portion of any Term Loans shall be used to, directly or indirectly, and whether immediately, incidentally, or ultimately, purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock or to refund indebtedness originally incurred for such purpose. Neither the making of any Term Loan nor the use of the proceeds thereof shall violate the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

Section 8.11 *Additional Security; Further Assurances; etc.*

(a) The Borrower will, and will cause each of its Subsidiaries of the Borrower to, grant to the Collateral Agent for the benefit of the Secured Parties security interests in such assets and properties of the Borrower and such Subsidiaries of the Borrower as are not covered by the original Security Documents and as may be reasonably requested from time to time by the Administrative Agent or the Required Lenders (collectively, as may be amended, modified or supplemented from time to time, the "**Additional Security Documents**"); *provided* that security interests shall not be required with respect to any assets or properties to the extent that such security interests would result in a material adverse tax consequence to the Borrower or its Subsidiaries, as reasonably determined by the Borrower and notified in writing to the Administrative Agent. All security interests shall be granted pursuant to documentation reasonably satisfactory in form and substance to the Administrative Agent and (subject to exceptions as are reasonably acceptable to the Administrative Agent) shall constitute, upon taking all necessary perfection action (which the Credit Parties agree to promptly take) valid and enforceable perfected security interests (except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law), subject to the Post-Petition Intercreditor Arrangements, superior to and prior to the rights of all third Persons and subject to no other Liens except for Permitted Liens. The Additional Security Documents or instruments related thereto shall be duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect (subject to exceptions as are reasonably acceptable to the Administrative Agent) the Liens in favor of the Collateral Agent required to be granted pursuant to the Additional Security Documents and all Taxes, fees and other charges payable in connection therewith shall be paid in full. Notwithstanding any other provision in this Agreement or any other Credit Document, no Foreign Subsidiary shall be required to pledge any of its assets to secure any obligations of the Borrower under the Credit Documents or guarantee the obligations of the Borrower under the Credit Documents.

(b) Subject to the terms of the Post-Petition Intercreditor Arrangements, with respect to any person that is or becomes a Subsidiary after the Signing Date, promptly (a) deliver to the Collateral Agent the certificates, if any, representing all (or such lesser amount as is required) of the Equity Interests of such Subsidiary, together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Equity Interests, and all intercompany notes owing from such Subsidiary to any Credit Party together with instruments of transfer executed and delivered in blank by a duly authorized officer of such Credit Party (to the extent required pursuant to this Agreement and/or the Security Documents), (b) cause such new Subsidiary (other than an Excluded Subsidiary) (i) to execute a joinder agreement hereto in a form reasonably acceptable to the Administrative Agent and (ii) to take all actions necessary or advisable in the opinion of the Administrative Agent or the Collateral Agent to cause the Lien created by the applicable Security Document to be duly perfected to the extent required by such agreement in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent and (c) at the request of the Administrative Agent, deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the other Lenders, of counsel to the Credit Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 8.11 as the Administrative Agent may reasonable request.

(c) The Borrower will, and will cause each of the other Credit Parties that are Subsidiaries of the Borrower to, at the expense of the Borrower, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent, promptly, upon the reasonable request of the Administrative Agent or the Collateral Agent, at Borrower's expense, any additional Security Document or document or instrument supplemental to or confirmatory of the Security Documents, including opinions of counsel, or otherwise deemed by the Administrative Agent or the Collateral Agent reasonably necessary for the continued validity, perfection and priority of the Liens on the Collateral covered thereby subject to no other Liens except for Permitted Liens or as otherwise permitted by the applicable Security Document.

(d) If the Administrative Agent reasonably determines that it or the Lenders are required by law or regulation to have appraisals prepared in respect of any Real Property, the Borrower will, at its own expense, provide to such appraisals to the Administrative Agent in form and substance reasonably satisfactory to the Administrative Agent.

(e) The Borrower agrees that each action required by clauses (a) through (d) of this Section 8.11 shall be completed as soon as reasonably practicable, but in no event later than ninety (90) days after such action is required to be taken pursuant to such clauses or requested to be taken by the Administrative Agent or the Required Lenders (or such longer period as the Administrative Agent shall otherwise agree), as the case may be; *provided* that, in no event will the Borrower or any of its Subsidiaries be required to take any action, other than using its commercially reasonable efforts, to obtain consents from third parties with respect to its compliance with this Section 8.11.

Section 8.12 *Post-Closing Actions*. The Borrower agrees that it will, or will cause its relevant Subsidiaries to, complete each of the actions described on Schedule 8.12 as soon as commercially reasonable and by no later than the date set forth in Schedule 8.12 with respect to such action or such later date as the Administrative Agent may reasonably agree.

Section 8.13 *Lenders and Advisor Calls; Meetings with Senior Management*.

(a) Commencing on the second week that commences after the Petition Date, arrange for, once per week, upon reasonable prior notice (unless such notice is waived in writing by the Administrative Agent or the Required Lenders), a conference call with the Administrative Agent, the Advisors, the Lenders (and their respective professional advisors) and their respective professional advisors, discussing and analyzing (i) the financial condition and results of operations of each of the Credit Parties for the prior week, status of the Cases and progress in achieving the milestones set forth in Section 8.14, and (ii) the Budget, any Variance Report and the financial statements for the prior fiscal quarter delivered pursuant to Section 8.01(a).

(b) Arrange for, once a week, a conference call, among the Administrative Agent and senior management of the Borrower, with respect to any matter reasonably requested by the Administrative Agent, the Required Lenders or Advisors.

Section 8.14 *Milestones*. Ensure that each of the milestones set forth below is achieved in accordance with the applicable timing referred to below (or such later dates as approved by the Required Lenders):

(a) on the Petition Date, the Credit Parties shall file a motion to approve bidding procedures and stalking horse protections (including any break-up fee or expense reimbursement, the "**Bid Protections**") for the Acquiror (the "**Bidding Procedures Motion**") in respect of any 363 sale transaction under the U.S. Cases and/or an asset sale transaction under the CCAA Cases (any of the foregoing, a "**Sale Transaction**" and a Sale Transaction with the Acquiror, the "**Acquiror Sale Transaction**"), in form and substance reasonably acceptable to the Required Lenders and as soon as reasonably possible, whether before or as part of the Bid Procedure Order (as defined below), the Credit Parties shall obtain from each Bankruptcy Court approval of cross-border protocols, in form and substance reasonably acceptable to the Required Lenders;

(b) within three (3) business days after the Petition Date, the Credit Parties shall obtain from each Bankruptcy Court, and any other necessary court, entry of the Interim Financing Order, in form and substance reasonably acceptable to the Required Lenders;

(c) within twenty-one (21) days after the Petition Date, the Credit Parties shall obtain, in each case in form and substance reasonably acceptable to the Required Lenders, entry from each Bankruptcy Court of an order approving the Bidding Procedures Motion and the Bid Protections specified therein (the "**Bid Procedures Order**");

(d) within thirty (30) days after the Interim Financing Order Date, the Credit Parties shall obtain, in each case in form and substance reasonably acceptable to the Required Lenders, entry of the Final Financing Order by the U.S. Bankruptcy Court approving the Term Loan Facilities on a final basis;

(e) on or prior to January 4, 2017, the bid deadline set forth in the Bid Procedures Order shall occur;

(f) on or prior to January 9, 2017, if qualifying bids are received in accordance with the Bid Procedures Order, the Credit Parties shall hold an auction with respect to the Sale Transaction;

(g) on or prior to January 16, 2017 the Credit Parties shall obtain entry of court orders of the Bankruptcy Courts authorizing the Sale Transaction to the successful bidder in accordance with the Bid Procedures Order, in each case in form and substance reasonably acceptable to the Required Lenders; and

(h) on or prior to February 16, 2017, the Sale Transaction shall close and all Obligations hereunder shall be Paid in Full; provided that, such February 16 date shall be extended until February 28, 2017 (and in any event no later than one (1) Business Day prior to the Scheduled Maturity Date) to the extent necessary for the Sale Transaction to obtain regulatory approval.

Section 8.15 *Financing Orders*. Comply in all respects, after entry thereof, with all requirements and obligations set forth in the Financing Orders, as each such order is amended and in effect from time to time in accordance with this Agreement.

Section 8.16 *Bankruptcy Pleadings, Etc*. Promptly after the same is available, copies of all pleadings, motions, applications, judicial information, financial information and other documents filed by or on behalf of any of the Credit Parties with the Bankruptcy Courts, or distributed by or on behalf of any of the Credit Parties to any committee or Monitor appointed in the Cases, providing copies of the same to the Lenders and counsel for the Administrative Agent; *provided* that such documents may be made available by posting on a website maintained (x) by the Borrower and identified to the Lenders and the Administrative Agent in connection with the Cases or (y) by the Monitor.

ARTICLE 9
NEGATIVE COVENANTS

The Borrower and each of its Subsidiaries hereby covenant and agree that on and after the Signing Date and until all Commitments are terminated and the Term Loans and Notes (in each case, together with interest thereon), Fees and all other Obligations incurred hereunder and thereunder, are Paid in Full:

Section 9.01 *Liens*. The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien upon or with respect to any property or assets (real or personal, tangible or intangible) of the Borrower or any of its Subsidiaries, whether now owned or hereafter acquired, or sell accounts receivable with recourse to the Borrower or any of its Subsidiaries) or authorize the filing of, any financing statement under the UCC or PPSA with respect to any Lien or any other similar notice of any Lien under any similar recording or notice statute; *provided* that the provisions of this Section 9.01 shall not prevent the creation, incurrence, assumption or existence of, or any filing in respect of, the following (Liens described below are herein referred to as "**Permitted Liens**"):

(i) Liens for Taxes, assessments or governmental charges or levies not overdue or Liens for Taxes being contested in good faith and by appropriate proceedings for which adequate reserves have been established in accordance with GAAP (or, for Foreign Subsidiaries, in conformity with generally accepted accounting principles that are applicable in their respective jurisdiction of organization);

(ii) Liens in respect of property or assets of the Borrower or any of its Subsidiaries imposed by law that were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers', warehousemen's, contractors', materialmen's and mechanics' liens and other similar Liens arising in the ordinary course of business, and which are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property or assets, and for which adequate reserves have been established in accordance with GAAP;

(iii) Liens in existence on the Signing Date, plus modifications, renewals, replacements, refinancings and extensions of such Liens, provided that (x) the aggregate principal amount of the Indebtedness, if any, secured by such Liens does not increase from that amount outstanding at the time of any such renewal, replacement or extension, plus accrued and unpaid interest and cash fees and expenses (including premium) incurred in connection with such renewal, replacement or extension and (y) any such renewal, replacement or extension does not encumber any additional assets or properties of the Borrower or any of its Subsidiaries (other than after-acquired property that is affixed or incorporated into the property encumbered by such Lien on the Signing Date and the proceeds and products thereof) unless such Lien is permitted under the other provisions of this Section 9.01;

(iv) (v) Liens created pursuant to the Credit Documents, (w) Liens securing obligations (as defined in the Prepetition ABL Facility) and the credit documents related thereto and incurred pursuant to Section 9.04(i)(x), (x) Liens securing obligations (as defined in the ABL DIP Facility) and the credit documents related thereto and incurred pursuant to Section 9.04(i)(y), (y) on or prior to the Closing Date, Liens securing obligations (as defined in the Prepetition Term Loan Credit Agreement) and the credit documents related thereto and incurred pursuant to Section 9.04(i)(z) and (z) the Administration Charge, the ABL Charge, the D&O Charge, the KEIP / KERP Charge and the Intercompany Charge; *provided* that, in the case of Liens securing such Indebtedness under the ABL Facilities, such Liens are subject to the Post-Petition Intercreditor Arrangements;

(v) Leases, subleases, licenses or sublicenses (including licenses or sublicenses of Intellectual Property) granted to other Persons in the ordinary course of business and consistent with past practice and not materially interfering with the conduct of the business of the Borrower or any of its Subsidiaries;

(vi) Liens upon assets of the Borrower or any of its Subsidiaries subject to Capitalized Lease Obligations to the extent such Capitalized Lease Obligations are permitted by Section 9.04(iv), *provided* that (x) such Liens serve only to secure the payment of Indebtedness and/or other monetary obligations arising under such Capitalized Lease Obligation and (y) the Lien encumbering the asset or assets giving rise to such Capitalized Lease Obligation does not encumber any asset of the Borrower or any of its Subsidiaries other than the proceeds of the assets giving rise to such Capitalized Lease Obligations;

(vii) Liens placed upon equipment, machinery or other fixed assets acquired or constructed after the Signing Date and used in the ordinary course of business of the Borrower or any of its Subsidiaries and placed at the time of the acquisition or construction thereof by the Borrower or such Subsidiary or within ninety (90) days thereafter to secure Indebtedness incurred to pay all or a portion of the purchase or construction price thereof or to secure Indebtedness incurred solely for the purpose of financing the acquisition or construction of any such equipment, machinery or other fixed assets or extensions, renewals or replacements of any of the foregoing for the same or a lesser amount, provided that (x) the Indebtedness secured by such Liens is permitted by Section 9.04(iv) and (y) in all events, the Lien encumbering the equipment, machinery or other fixed assets so acquired or constructed does not encumber any other asset of the Borrower or such Subsidiary; provided that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender on customary terms;

(viii) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar charges or encumbrances and minor title deficiencies, which individually or in the aggregate do not materially interfere with the conduct of the business of the Borrower or any of its Subsidiaries;

(ix) Liens arising from precautionary UCC, PPSA or other similar financing statement filings regarding operating leases or consignments entered into in the ordinary course of business;

(x) attachment and judgment Liens, to the extent and for so long as the underlying judgments and decrees do not constitute an Event of Default pursuant to Section 10.01(i);

(xi) statutory and common law landlords' liens under leases to which the Borrower or any of its Subsidiaries is a party;

(xii) Liens (other than Liens imposed under ERISA or in respect of any Canadian Pension Plan) incurred in the ordinary course of business in connection with workers' compensation claims, unemployment insurance and social security benefits and Liens securing the performance of bids, tenders, leases and contracts in the ordinary course of business, statutory obligations, surety, stay, customs or appeal bonds, performance bonds and other obligations of a like nature (including (i) those to secure health, safety and environmental obligations and (ii) those required or requested by any Governmental Authority other than letters of credit) incurred in the ordinary course of business;

(xiii) deposits or pledges to secure bids, tenders, contracts (other than contracts for the repayment of borrowed money), leases, statutory obligations, surety, stay, customs and appeal bonds and other obligations of like nature (including (i) those to secure health, safety and environmental obligations and (ii) those required or requested by any Governmental Authority other than letters of credit), and as security for the payment of rent, in each case arising in the ordinary course of business and consistent with past practice;

(xiv) any interest or title of a lessor, sublessor, licensee, sublicensee, licensor or sublicensor under any lease, sublease, or license or sublicense agreement (including software and other technology licenses) in the ordinary course of business and consistent with past practice;

(xv) with respect to any Real Estate, Permitted Encumbrances;

(xvi) Liens on Collateral in favor of any Credit Party securing intercompany Indebtedness permitted by Section 9.04, provided that any Liens securing Indebtedness that is required to be subordinated pursuant to Section 9.05 shall be subordinated to the Liens created pursuant to the Security Documents;

(xvii) Liens on specific items of inventory or other goods (and proceeds thereof) of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods, and pledges or deposits in the ordinary course of business;

(xviii) Liens on insurance policies and the proceeds thereof (whether accrued or not) and rights or claims against an insurer, in each case securing insurance premium financings permitted under Section 9.04(vi);

(xix) Liens that may arise on inventory or equipment of the Borrower or any of its Subsidiaries in the ordinary course of business and consistent with past practice as a result of such inventory or equipment being located on premises owned by Persons other than the Borrower and its Subsidiaries;

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

(xxi) Liens (i) of a collection bank arising under Section 4-210 of the UCC on items in the course of collection and (ii) in favor of a banking or other financial institution arising as a matter of law or under customary general terms and conditions encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(xxii) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the incurrence or issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any

Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Subsidiary or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Subsidiaries in the ordinary course of business and consistent with past practice;

(xxiii) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any Subsidiary in the ordinary course of business;

(xxiv) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business of the Borrower and the Subsidiaries complies, and (ii) any zoning or similar law or right reserved to or vested in, or any development agreement, site plan agreement, subdivision agreement or other similar agreement with any Governmental Authority to control or regulate the use of any real property lease, license, franchise, grant or permit that does not materially interfere with the ordinary conduct of the business of the Borrower or any Subsidiary;

(xxv) any cash deposits securing the Borrower's or any of its Subsidiaries' obligations to any utility providers;

(xxvi) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof;

(xxvii) the right reserved to or vested in any Governmental Authority by any statutory provision or by the terms of any lease, license, franchise, grant or permit of the Borrower or any Subsidiary to terminate any such lease, license, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;

(xxviii) deposits made in the ordinary course of business to secure liability to insurance carriers; and

(xxix) Liens not otherwise permitted by the foregoing clauses (i) through (xvii), to the extent attaching to properties and assets with an aggregate fair market value not in excess of, and securing liabilities not in excess of $500,000 in the aggregate at any time outstanding.

In connection with the granting of Liens of the type described in this Section 9.01 by the Borrower or any of its Subsidiaries, the Administrative Agent and the Collateral Agent shall, and shall be authorized to, take any actions deemed appropriate by it in connection therewith (including, without limitation, by executing appropriate lien releases or lien subordination agreements in favor of the holder or holders of such Liens, in either case solely with respect to the item or items of equipment or other assets subject to such Liens).

Section 9.02 *Consolidation, Merger, or Sale of Assets, etc.* The Borrower will not, and will not permit any of its Subsidiaries to, wind up, liquidate or dissolve its affairs or enter into any partnership, joint venture, or transaction of merger, amalgamation or consolidation, or convey, sell, lease or otherwise dispose of all or any part of its property or assets, or enter into any Sale-Leaseback Transactions of any Person, except that:

(i) each of the Borrower and its Subsidiaries may sell or discount, in each case in the ordinary course of business and consistent with past practice, accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof and not as part of any financing transaction;

(ii) each of the Borrower and its Subsidiaries may grant licenses, sublicenses, leases or subleases to other Persons not materially interfering with the conduct of the business of the Borrower or any of its Subsidiaries, including of Intellectual Property, in each case, in the ordinary course of business and consistent with past practice;

(iii) each of the Borrower and its Subsidiaries may make sales or leases of (x) inventory and goods held for sale, in each case, in the ordinary course of business and consistent with past practice and (y) assets (other than Intellectual Property) with a fair market value, in the case of this clause (y), of less than $1,500,000 in the aggregate;

(iv) each of the Borrower and its Subsidiaries may sell or otherwise dispose of (i) outdated, obsolete, surplus or worn out property and (ii) property no longer used or useful in the conduct of the business of the Borrower and its Subsidiaries, in each case, in the ordinary course of business and consistent with past practice;

(v) each of the Borrower and its Subsidiaries may make transfers of property subject to casualty or condemnation proceedings upon the occurrence of the related Recovery Event;

(vi) each of the Borrower and its Subsidiaries may abandon Intellectual Property rights in the ordinary course of business and consistent with past practice, which in the reasonable good faith determination of the Borrower or a Subsidiary are no longer material to the Borrower or any of its Subsidiaries;

(vii) each of the Borrower and its Subsidiaries may make dispositions resulting from foreclosures by third parties on properties of the Borrower or any of its Subsidiaries and acquisitions by the Borrower or any of its Subsidiaries resulting from foreclosures by such Persons or properties of third parties;

(viii) each of the Borrower and its Subsidiaries may terminate leases and subleases;

(ix) each of the Borrower and its Subsidiaries may use cash and Cash Equivalents to make payments that are otherwise permitted under Sections 9.03 and 9.07;

(x) each of the Borrower or its Subsidiaries may sell or otherwise dispose of property, for reasonably equivalent value, to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such sale or disposition are promptly applied to the purchase price of such replacement property;

(xi) sales, dispositions or contributions of property (x) between Credit Parties, (viii) between Subsidiaries (other than Credit Parties), (y) by Subsidiaries that are not Credit Parties to the Credit Parties or (z) by the Credit Parties to any Subsidiary that is not a Credit Party; *provided* that any such sale, disposition or contribution of property, shall in each case constitute an Investment in such Subsidiary equal to the fair market value so sold, disposed of or contributed;

(xii) the sale of the Credit Parties' assets that the Required Lenders reasonably agree constitute the Credit Parties' "soccer business" pursuant to terms and conditions acceptable to the Required Lenders;

(xiii) transfers of property that have been subject to a casualty to the respective insurer of such real property as part of an insurance settlement; *provided* that the proceeds of such dispositions are applied in accordance with Section 4.02(e); and

(xiv) the Borrower and any of its Subsidiaries may complete transaction steps expressly contemplated as part of a Sale Transaction Restructuring (and if approval of a Bankruptcy Court is required, to the extent so approved by an Order).

To the extent the Required Lenders waive the provisions of this Section 9.02 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 9.02 (other than to the Borrower or a Subsidiary thereof), such Collateral shall be sold free and clear of the Liens created by the Security Documents, and the

Administrative Agent and the Collateral Agent shall, and shall be authorized to, take any actions deemed appropriate in order to effect the foregoing to the extent contemplated by Section 11.10.

Section 9.03 *Dividends*. The Borrower will not, and will not permit any of its Subsidiaries to, authorize, declare or pay any Dividends with respect to the Borrower or any of its Subsidiaries, except that any Subsidiary of the Borrower may pay Dividends or return capital or make distributions and other similar payments with regard to its Equity Interests to the Borrower or to other Subsidiaries of the Borrower which directly or indirectly own equity therein;

Section 9.04 *Indebtedness*. The Borrower will not, and will not permit any of its Subsidiaries to, contract, create, incur, assume or suffer to exist any Indebtedness, except:

(i) (w) Indebtedness incurred pursuant to this Agreement and the other Credit Documents, (x) Indebtedness incurred pursuant to the Prepetition ABL Facility in an aggregate principal amount not to exceed (I) the amount thereunder outstanding as of the Petition Date minus (II) any such amounts in clause (I) prepaid from time to time after the Petition Date, (y) Indebtedness incurred pursuant to the ABL DIP Facility in an aggregate principal amount not to exceed $200,000,000 in the aggregate and (z) on or prior to the Closing Date, Indebtedness incurred pursuant to the Prepetition Term Loan Credit Agreement in an aggregate principal amount not to exceed (I) the amount thereunder outstanding as of the Petition Date minus (II) any such amounts in clause (I) prepaid from time to time after the Petition Date;

(ii) Indebtedness under Swap Contracts entered into with respect to other Indebtedness permitted under this Section 9.04 so long as the entering into of such Swap Contracts are bona fide hedging activities in the ordinary course of business and consistent with past practice and are not for speculative purposes;

(iii) intercompany Indebtedness among the Borrower and its Subsidiaries to the extent permitted by Section 9.05(vi);

(iv) Indebtedness of the Borrower and its Subsidiaries consisting of Capitalized Lease Obligations and purchase money Indebtedness (including obligations in respect of mortgages, industrial revenue bonds, industrial development bonds and similar financings) described in Section 9.01(vi); provided that, in no event shall the aggregate principal amount of Capitalized Lease Obligations and the principal amount of all such Indebtedness incurred or assumed in each case after the Signing Date permitted by this clause (iii) exceed $500,000 in the aggregate;

(v) Indebtedness outstanding on the Signing Date and disclosed as material Indebtedness under the Biscuit Acquisition Agreement as in effect as of the date hereof ("**Existing Indebtedness**");

(vi) Indebtedness incurred in the ordinary course of business to finance insurance premiums or take-or-pay obligations contained in supply arrangements;

(vii) Indebtedness incurred in the ordinary course of business in respect of netting services, overdraft protections, employee credit card programs, automatic clearinghouse arrangements and other similar services in connection with cash management and deposit accounts and Indebtedness in connection with the honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, including, in each case, Bank Product Debt;

(viii) additional Indebtedness of the Borrower and its Subsidiaries not to exceed the $500,000 in aggregate principal amount;

(ix) Contingent Obligations for customs, stay, performance, appeal, judgment, replevin and similar bonds and suretyship arrangements, and completion guarantees and other obligations of a like nature, all in the ordinary course of business;

(x) Contingent Obligations to insurers required in connection with worker's compensation and other insurance coverage incurred in the ordinary course of business;

(xi) guarantees made by the Borrower or any of its Subsidiaries of Indebtedness of the Borrower or any of its Subsidiaries permitted to be outstanding under this Section 9.04; *provided* that such guarantees are permitted by Section 9.05;

(xii) customary Contingent Obligations in connection with sales, other dispositions and leases permitted under Section 9.02 (but not in respect of Indebtedness for borrowed money or Capitalized Lease Obligations) including indemnification obligations with respect to leases, and guarantees of collectability in respect of accounts receivable or notes receivable for up to face value;

(xiii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, *provided* that such Indebtedness is extinguished within two (2) Business Days of its incurrence;

(xiv) (x) severance, pension and health and welfare retirement benefits or the equivalent thereof to current and former employees of the Borrower or its Subsidiaries incurred in the ordinary course of business, (y) Indebtedness representing deferred compensation or stock-based compensation to employees of the Borrower and the Subsidiaries, and (z) Indebtedness consisting of promissory notes issued by any Credit Party to current or former officers, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower permitted by Section 9.03;

(xv) (x) guarantees made by the Borrower or any of its Subsidiaries of obligations (not constituting debt for borrowed money) of the Borrower or any of its Subsidiaries that are Credit Parties owing to vendors, suppliers and other third parties incurred in the ordinary course of business and (y) Indebtedness of any Credit Party as an account party in respect of trade letters of credit issued in the ordinary course of business;

(xvi) guarantees made by a Foreign Subsidiary of Indebtedness of any other Foreign Subsidiary permitted to be outstanding under this Section 9.04;

(xvii) guarantees of Indebtedness of directors, officers and employees of the Borrower or any of its Subsidiaries in respect of expenses of such Persons in connection with relocations and other ordinary course of business purposes not to exceed $1,000,000 at any time outstanding;

(xviii) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (xvii) above.

Section 9.05 *Advances, Investments and Term Loans*. The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, lend money or credit or guaranty the Indebtedness of any Person, or purchase or acquire any stock, obligations or securities of, or any other interest in, or make any capital contribution to, any other Person, or purchase or own a futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, or hold any cash or Cash Equivalents, or make any advances (each of the foregoing, an "**Investment**" and, collectively, "**Investments**" and with the value of each Investment being measured at the fair market value thereof determined as of the time made and without giving effect to subsequent changes in value or any write-ups, write-downs or write-offs thereof but giving effect to any cash return or cash distributions received by the Borrower and its Subsidiaries with respect thereto as of the time made), except that the following shall be permitted:

(i) the Borrower and its Subsidiaries may acquire and hold accounts receivable owing to any of them, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms of the Borrower or such Subsidiary;

(ii) the Borrower and its Subsidiaries may acquire and hold cash and Cash Equivalents; *provided* that, Foreign Subsidiaries may not hold more than $500,000 of any cash or Cash Equivalents at any time;

(iii) the Borrower and its Subsidiaries may hold the Investments held by them on the Signing Date and described on Schedule 9.05(iii), and any modification, replacement, renewal or extension thereof that does not increase the principal amount thereof unless any additional Investments made with respect thereto are permitted under the other provisions of this Section 9.05;

(iv) the Borrower and its Subsidiaries may acquire and hold Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers, and Investments received in good faith settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(v) the Borrower and its Subsidiaries may enter into Swap Contracts to the extent permitted by Section 9.04(ii);

(vi) (v) the Borrower and any Subsidiary may make intercompany loans to and other investments in Credit Parties, (w) any Foreign Subsidiary may make intercompany loans to and other investments in the Borrower or any of its Subsidiaries so long as in the case of such intercompany loans to Credit Parties, all payment obligations of the respective Credit Parties are subordinated to their obligations under the Credit Documents on terms reasonably satisfactory to the Administrative Agent and the Required Lenders, (x) the Credit Parties may make intercompany loans to, guarantees on behalf of, and other investments in Subsidiaries that are not Credit Parties so long as the aggregate amount of outstanding loans, guarantees and other Indebtedness made pursuant to this subclause (vi)(x) does not exceed $500,000, (y) any Subsidiary that is not a Credit Party may make intercompany loans to, and other investments in, any other Subsidiary that is also not a Credit Party and (z) Credit Parties may make intercompany loans to, guarantees on behalf of, and other investments in, Subsidiaries that are not Credit Parties to fund the operating expenses of such Subsidiaries in an amount not to exceed $100,000 during any fiscal year of the Borrower ;

(vii) loans and advances by the Borrower and its Subsidiaries to officers, directors and employees of the Borrower and its Subsidiaries in connection with (i) relocations and other ordinary course of business purposes (including travel and entertainment expenses) shall be permitted and (ii) any such Person's purchase of Equity Interests of the Borrower; *provided* that no cash is actually advanced pursuant to this clause (ii) unless immediately repaid;

(viii) extensions of trade credit may be made in the ordinary course of business and consistent with past practice, Investments received in satisfaction or partial satisfaction of previously extended trade credit from financially troubled account debtors, Investments consisting of prepayments to suppliers made in the ordinary course of business and loans or advances made to distributors in the ordinary course of business;

(ix) Investments in the nature of pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business;

(x) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit;

(xi) the licensing, sublicensing or contribution of Intellectual Property pursuant to arrangements with Persons other than the Borrower and the Subsidiaries in the ordinary course of business and consistent with past practice for fair market value, as determined by the Borrower or such Subsidiary, as the case may be, in good faith;

(xii) to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses or leases of Intellectual Property, in each case, in the ordinary course of business and consistent with past practice;

(xiii) advances of payroll payments to employees of the Borrower and its Subsidiaries in the ordinary course of business consistent with past practice; and

(xiv) the Borrower and any of its Subsidiaries may complete transaction steps expressly contemplated as part of a Sale Transaction Restructuring (and if approval of a Bankruptcy Court is required, to the extent so approved by an order of the Bankruptcy Court).

Section 9.06 *Transactions with Affiliates*. The Borrower will not, and will not permit any of its Subsidiaries to, enter into any transaction or series of related transactions with any Affiliate of the Borrower or any of its Subsidiaries, other than on terms and conditions not less favorable to the Borrower or such Subsidiary as would reasonably be obtained by the Borrower or such Subsidiary at that time in a comparable arm's-length transaction with a Person other than an Affiliate, except:

(i) Dividends may be paid to the extent provided in Section 9.03;

(ii) to the extent not otherwise prohibited by this Agreement, transactions between or among the Borrower and any of its Subsidiaries shall be permitted (including equity issuances); provided that, transactions among Credit Parties, on the one hand and Subsidiaries of the Borrower that are not Credit Parties, on the other, shall be on on terms and conditions not less favorable to the relevant Credit Party as would reasonably be obtained by such Credit Party at that time in a comparable arm's-length transaction with a Person other than an Affiliate; and

(iii) transactions described on Schedule 9.06(iii).

Section 9.07 *Limitations on Payments of Indebtedness; Amendments to the Certificate of Incorporation, By-Laws and Certain Other Agreements, etc.* The Borrower will not, and will not permit any of its Subsidiaries to:

(i) Pay, prepay, redeem, purchase, defease or otherwise satisfy (a) any Indebtedness or other obligation that is subordinated in right of payment to the Obligations or secured by a Lien on any Collateral that is junior to the Liens on such Collateral securing the Obligations or (b) any Indebtedness or other obligation that was incurred prior to the Petition Date, in each case, whether by way of "adequate protection" under the Bankruptcy Code or otherwise, except for (i) payments made pursuant to the Financing Orders or, to the extent not in violation of the Financing Orders, any other order of the Bankruptcy Courts then in effect that is reasonably satisfactory to the Required Lenders or (ii) payments made in accordance with the Budget (subject to the Permitted Cash Flow Test).

(ii) amend, modify or change its certificate or articles of incorporation (including, without limitation, by the filing or modification of any certificate or articles of designation), certificate of formation, limited liability company agreement or by-laws (or the equivalent organizational documents), as applicable, or any agreement entered into by it with respect to its Equity Interests, or enter into any new agreement with respect to its Equity Interests, unless such amendment, modification, change or other action contemplated by this Section 9.07 could not reasonably be expected to be adverse in any material respect to the interests of the Lenders.

(iii) agree, consummate or permit to exist (A) any changes or amendments to the borrowing base of any ABL Facility (or to any underlying definitions or components thereof) that would result in an increase of the extension of credit under such ABL Facility, (B) any increases in the availability for the applicable borrowers thereunder of advances under any ABL Facility, (C) any increase in pricing (whether in the form of interest rates, margins, commissions, fees, original issue discount or otherwise) other than as a result of the application of default rate interest under any ABL Facility, or (D) any repayment or "exit" premiums, fees or other similar costs (it being understood that the foregoing shall not limit the discretionary rights and ability of the Administrative Agent to (x) impose or establish Reserves (as defined in the ABL Facilities as in effect on the date hereof), (y) establish or modify any discretionary component of the eligibility criteria under the borrowing base of any ABL Facility (including any component definitions thereof) that would not result in an increase of the extension of credit under such ABL Facility and/or increase the availability for the applicable borrowers thereunder of advances under any ABL Facility, or (z) decrease advance rates).

Section 9.08 *Limitation on Certain Restrictions on Subsidiaries*. The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any such Subsidiary to (a) pay dividends or make any other distributions on its capital stock or any other interest or participation in its profits owned by the Borrower or any of its Subsidiaries, or pay any Indebtedness owed to the Borrower or any of its Subsidiaries, (b) make loans or advances to the Borrower or any of its Subsidiaries or (c) transfer any of its properties or assets to the Borrower or any of its Subsidiaries, except for such encumbrances or restrictions existing under or by reason of:

(i) applicable law;

(ii) this Agreement and the other Credit Documents or the documents governing the ABL Facilities and on or prior to the Closing Date, the Prepetition Term Loan Credit Agreement;

(iii) customary provisions restricting subletting or assignment of any lease governing any leasehold interest of the Borrower or any of its Subsidiaries;

(iv) customary provisions restricting assignment of any licensing agreement (in which the Borrower or any of its Subsidiaries is the licensee) or other contract entered into by the Borrower or any of its Subsidiaries in the ordinary course of business;

(v) restrictions on the transfer of any asset pending the close of the sale of such asset;

(vi) encumbrances or restrictions on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business;

(vii) any agreement or instrument relating to Indebtedness of a Foreign Subsidiary incurred pursuant to Section 9.04 to the extent such encumbrance or restriction only applies to such Foreign Subsidiary;

(viii) an agreement effecting a refinancing, replacement or substitution of Indebtedness issued, assumed or incurred pursuant to an agreement or instrument referred to in clause (vii) above; *provided* that the provisions relating to such encumbrance or restriction contained in any such refinancing, replacement or substitution agreement are no less favorable to the Borrower or the Lenders in any material respect than the provisions relating to such encumbrance or restriction contained in the agreements or instruments referred to in such clause (vii);

(ix) restrictions on the transfer of any asset subject to a Lien permitted by Section 9.01 (in the case of Liens securing Indebtedness for borrowed money, subject to clause (xii) below);

(x) restrictions and conditions imposed by the terms of the documentation governing any Indebtedness of a Subsidiary of the Borrower that is not a Credit Party, which Indebtedness is permitted by Section 9.04 (but solely as such restrictions and conditions pertain to such Subsidiaries that are not Credit Parties);

(xi) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 9.05 and applicable solely to such joint venture; and

(xii) restrictions imposed by the Financing Orders.

Section 9.09 *Business*. The Borrower will not permit at any time the business activities taken as a whole conducted by the Borrower and its Subsidiaries to be materially different from the business activities taken as a whole conducted by the Borrower and its Subsidiaries on the Signing Date.

Section 9.10 *Negative Pledges*. The Borrower shall not, and shall not permit any of its Subsidiaries to, agree or covenant with any Person to restrict in any way its ability to grant any Lien on its assets in favor of the Lenders, other than pursuant to the Post-Petition Intercreditor Arrangements and other than:

(i) any covenants contained in this Agreement or any other Credit Documents or that exist on the Signing Date;

(ii) covenants existing under (x) the Prepetition ABL Credit Agreement, and, solely on or prior to the Closing Date, the Prepetition Term Loan Credit Agreement as in effect on the Petition Date and the other credit documents pursuant thereto and/or (y) the ABL DIP Credit Agreement and the other credit documents pursuant thereto;

(iii) covenants and agreements permitted under Section 9.08(ix);

(iv) customary provisions in leases, subleases, licenses or sublicenses and other contracts restricting the right of assignment thereof;

(v) covenants and agreements made in connection with any agreement relating to secured Indebtedness permitted by this Agreement but only if such covenant or agreement applies solely to the specific asset or assets to which such Lien relates;

(vi) restrictions imposed by applicable law;

(vii) customary restrictions and conditions contained in agreements relating to any sale of assets or Equity Interests pending such sale, provided such restrictions and conditions apply only to the Person or property that is to be sold;

(viii) contractual obligations binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary, so long as such contractual obligations were not entered into solely in contemplation of such Person becoming a Subsidiary;

(ix) restrictions imposed by the Financing Orders;

(x) restrictions on any Foreign Subsidiary pursuant to the terms of any Indebtedness of such Foreign Subsidiary permitted to be incurred hereunder;

(xi) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business; and

(xii) any restrictions on Liens imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i), (ii), (iii) and (ix) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, no more restrictive with respect to such encumbrance and other restrictions than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 9.11 *Budget Compliance; Borrowing Base Covenant*. The Borrower shall not, and shall not permit any of its Subsidiaries to:

(a) Except as otherwise provided herein or previously and expressly approved by the Required Lenders in writing (including via email or other electronic transmission), permit the proceeds of Term Loans to be used for any use other than a use permitted by Section 8.10, it being understood that (x) neither the Administrative Agent nor the Lenders shall have any duty to monitor such compliance and (y) the line items in the Budget for payment of amortization of principal, interest, expenses and other amounts to the Secured Parties are estimates only, and the Borrower remains obligated to pay any and all Obligations in accordance with the terms of the Credit Documents.

(b) Commencing with the week ending November 25, 2016, permit the actual Cumulative Net Cash Flow as set forth in the Variance Report delivered for such Variance Period pursuant to Section 8.01(i) to be less than the Cumulative Net Cash Flow for such Variance Period as set forth in the Initial Budget by an amount in excess of the Permitted Cash Flow Test.

(c) Without the express written consent of the Required Lenders, make any Cash Disbursements with respect to (x) any Indebtedness or (y) other obligations, in any such case, arising on or before the Petition Date owed by the Borrower or any other Debtor Credit Party, unless such Cash Disbursements (I) are in accordance with the Budget (subject to the Permitted Cash Flow Test) and (II) do not violate Section 9.07(i) or (III) constitute an Event of Default under Section 10.01(m).

(d) To the extent actual Liquidity is less than the Liquidity in the Budget less Permitted Liquidity Variance as of the last day of any week, permit the Borrowing Base as determined as of any applicable date of determination, to be less than 90% of the Borrowing Base for such date as set forth in the Initial Budget.

Section 9.12 *Final Bankruptcy Court Financing Order; Administrative Priority; Lien Priority; Payment of Claims*. The Borrower shall not, and shall not permit any of its Subsidiaries to:

(a) At any time, seek or consent to any reversal, modification, amendment, stay, vacation or termination of (i) any "first day orders" or "second day orders" entered by the Bankruptcy Courts in any of the Cases, if such reversal, modification, amendment, stay or vacation could have an adverse effect on the rights of the Secured Parties under this Agreement, (ii) the Interim Financing Order or (iii) the Final Financing Order.

(b) At any time, seek or consent to a priority for any administrative expense or unsecured claim against the Borrower or any other Debtor Credit Party (now existing or hereafter arising) of any kind or nature whatsoever, including, without limitation, any administrative expenses of the kind specified in, or arising or ordered under, Sections 105(a), 326, 328, 330, 331, 363, 503(a), 503(b), 506(c), 507, 546(c), 726, 1113 and 1114 of the Bankruptcy Code equal or senior to the priority of the Secured Parties in respect of the Obligations, except for the Carve-Out as provided in Section 2.14 or in the Financing Orders.

(c) At any time, seek or consent to a priority of any Liens against the Borrower or any other Debtor Credit Party that is equal or senior to the priority of the Liens granted to the Secured Parties, except as provided in Section 2.14 or the Financing Orders or that constitutes Permitted Liens that are valid, binding, enforceable, perfected and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and that are not adversely impaired, affected or modified by the Interim Financing Order (or the Final Financing Order, when applicable) and/or that have priority after the Petition Date by operation of Law or as expressly provided for in Section 9.01.

(d) Prior to the date on which the Obligations have been Paid in Full (or otherwise satisfied) and the Commitments have been cancelled and terminated, file with the Bankruptcy Courts any alternative debtor-in-possession financing proposal that does not provide for the Obligations to be Paid in Full.

Section 9.13 *Appointment of Chief Restructuring Officer*. Except as otherwise provided herein or approved by the Required Lenders (it being agreed that a chief restructuring officer employed by Alvarez and

Marsal shall be deemed reasonably acceptable to the Required Lenders), the Borrower shall not, and shall not permit any of its Subsidiaries to, appoint a chief restructuring officer with respect to any Debtor.

Section 9.14 *Critical Vendor Payments*. Except as otherwise provided herein or approved by the Required Lenders, the Borrower shall not, and shall not permit any of its Subsidiaries to, make payments to critical vendors or otherwise file any critical vendor motions seeking payments with the Bankruptcy Courts, in each case, in an aggregate amount or, with respect to the Canadian Cases, in excess of the amounts, as applicable, specified in "first day" or "second day" orders that have been confirmed in writing as being reasonably acceptable to the Required Lenders.

Section 9.15 *Actions in Cases*. The Borrower shall not, and shall not permit any of its Subsidiaries to, bring a motion in the Cases that could constitute a Default or an Event of Default pursuant to Article 10 of this Agreement.

ARTICLE 10
EVENTS OF DEFAULT

Section 10.01 *Events of Default*. Any of the following shall constitute an Event of Default:

(a) *Payments*. The Borrower shall (i) default in the payment when due of any principal of any Term Loan or any Note or (ii) default, and such default shall continue unremedied for five (5) or more Business Days, in the payment when due of any interest on any Term Loan or Note, or any Fees or any other amounts owing hereunder or under any other Credit Document; or

(b) *Representations, etc*. Any representation, warranty, certification or statement made or deemed made by any Credit Party herein or in any other Credit Document or in any certificate delivered to the Administrative Agent or any Lender pursuant hereto or thereto shall prove to be untrue in any material respect on the date as of which made or deemed made; or

(c) *Covenants*. The Borrower or any of its Subsidiaries shall (i) default in the due performance or observance by it of any term, covenant or agreement contained in Section 8.01, 8.02, 8.03, 8.04 (as to the Credit Parties), 8.08, 8.09, 8.10, 8.11, 8.12, 8.13, 8.14, 8.15, 8.16 or Article 9 or (ii) default in the due performance or observance by it of any other term, covenant or agreement contained in this Agreement or in any other Credit Document (other than those set forth in Sections 10.01(a) and 10.01(b)), and such default shall continue unremedied for a period of 5 Business Days after the earlier of (A) written notice thereof to the defaulting party by the Administrative Agent or the Required Lenders and (b) knowledge thereof by the Borrower or any Subsidiary; or

(d) *Default Under Other Agreements*. (i) The Borrower or any of its Subsidiaries shall (x) default in any payment of any Indebtedness incurred after the Petition Date (other than the Obligations) beyond the period of grace, if any (but whether or not all required notices have been delivered) (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise), provided in an instrument or agreement under which such Indebtedness was created or (y) default in the observance or performance of any agreement or condition relating to any such Indebtedness (other than the Obligations) (but whether or not all required notices have been delivered) (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such Indebtedness to become due prior to its stated maturity, or (ii) any Indebtedness incurred after the Petition Date (other than the Obligations) of the Borrower or any of its Subsidiaries shall be declared to be (or shall become) due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof, *provided* that (x) it shall not be a Default or an Event of Default under this Section 10.01(d) unless the aggregate principal amount of all Indebtedness as described in preceding clauses (i) and (ii) is at least equal to the Threshold Amount, (y) the preceding clause (ii) shall not apply to Indebtedness that becomes due as a result of a voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is otherwise permitted hereunder and (z) such defaults shall include any such default under the ABL Facilities and/or the Prepetition Term Loan Credit Agreement, without regard to the Threshold Amount (other than any default of event of default that result directly from the filing of the Cases); or

(e) *Bankruptcy, etc*. Except for the commencement of a proceeding for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court or under Debtor Relief Laws in the Canadian Bankruptcy Court that does not or would not constitute an Event of Default under Section 10.01(t) hereunder and that is, within ten (10) days of the filing thereof, jointly administered with the Cases (it being agreed that, during any such ten (10)-day period, any such proceeding shall not constitute a Default), any Subsidiary of the Borrower (other than a Debtor) shall commence a voluntary case or proceeding concerning itself under Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto (the "**Bankruptcy Code**") or under the provisions of the Bankruptcy and Insolvency Act (Canada) or the Companies' Creditors Arrangement Act (Canada) or any other bankruptcy, insolvency or other similar law or makes an assignment in bankruptcy, makes a proposal to its creditors or files notice of its intention to do so, institutes any other proceeding under applicable law seeking to adjudicate it a bankrupt or an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, receivership compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors, composition of it or its debts or any other similar relief; or an involuntary case or proceeding is commenced against such Person, and the petition is not controverted within twenty-one (21) days, or is not dismissed within thirty (30) days, after commencement of the case; or such Person applies for the appointment of, or the taking of possession by a custodian (as defined in the Bankruptcy Code), receiver, receiver- manager, interim receiver, trustee, monitor, liquidator or other similar official, or such official is appointed for, or takes charge of, all or substantially all of the property of such Person, or such Person commences any other proceeding under any reorganization, bankruptcy, insolvency, arrangement, winding-up, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to such Person, or there is commenced against such Person any such proceeding which remains undismissed for a period of thirty (30) days, or such Person is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or such Person suffers any appointment of any custodian, receiver, receiver-manager, interim receiver, trustee, monitor or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of thirty (30) days; or such Person makes a general assignment for the benefit of creditors; or any corporate, limited liability company or similar action is taken by such Person for the purpose of effecting any of the foregoing; or

(f) *ERISA*. (a) An ERISA Event has occurred with respect to a Plan or Multiemployer Plan which has resulted or would reasonably be expected to result in a Material Adverse Effect; (b) there is or arises Unfunded Pension Liability which has resulted or would reasonably be expected to result in a Material Adverse Effect; (c) there is or arises any potential withdrawal liability under Section 4201 of ERISA, if the Borrower, any Subsidiary of the Borrower or the ERISA Affiliates were to withdraw completely from any and all Multiemployer Plans which has resulted or would reasonably be expected to result in a Material Adverse Effect; or (d) a Foreign Pension Plan or Canadian Pension Plan has failed to comply with, or be funded in accordance with, its applicable law which has resulted or would reasonably be expected to result in a Material Adverse Effect; or

(g) *Security Documents*. Any of the Security Documents shall cease to be in full force and effect, or shall cease to give the Collateral Agent for the benefit of the Secured Parties the Liens, rights, powers and privileges purported to be created thereby (including, without limitation (to the extent provided therein), a perfected security interest or hypothec in, and Lien on, all of the Collateral (other than Collateral with an aggregate fair market value not in excess of the Threshold Amount), in favor of the Collateral Agent, superior to and prior to the rights of all third Persons (except as permitted by Section 9.01), and subject to no other Liens (except as permitted by Section 9.01)); or

(h) *Guaranties*. Article 13 or any provision thereof shall cease to be in full force or effect as to any Subsidiary Guarantor, or any Subsidiary Guarantor or any Person acting for or on behalf of such Subsidiary Guarantor shall deny or disaffirm such Subsidiary Guarantor's obligations under Article 13 or any Subsidiary Guarantor shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to Article 13; or

(i) *Judgments*. One or more judgments or decrees shall be entered against the Borrower or any Subsidiary (other than any Excluded Subsidiary) of the Borrower involving in the aggregate for the Borrower and its Subsidiaries a liability or liabilities (not paid or fully covered by a reputable and solvent insurance company with respect to judgments for the payment of money) and such judgments and decrees either shall be final and non-appealable or shall not be vacated, discharged or stayed or bonded pending appeal for any period of 30 consecutive days, and (i) the aggregate amount of all such judgments and decrees (to the extent not paid or fully covered by such insurance company) equals or exceeds the Threshold Amount or (ii) such judgments, individually and in the aggregate, have had, or would reasonably be expected to have, a Material Adverse Effect; or

(j) *[Reserved]*; or

(k) *Actual or Asserted Impairment*. At any time after the execution thereof, (i) any Credit Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof) or shall be declared null and void or (ii) any Credit Party shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability or shall contest in writing the validity or perfection of any Lien in any material portion of the Collateral purported to be covered by the Security Documents.

(l) *Bankruptcy-Related Events*.

(i) A court order shall have been entered dismissing any of the Cases or converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code, or in the case of the Canadian Cases, converted to a liquidation proceeding or bankruptcy under the Bankruptcy and Insolvency Act (Canada), or the Borrower or any other Debtor shall file a motion or other pleading seeking the dismissal or conversion of any of the Cases under Section 1112 of the Bankruptcy Code or otherwise; or

(ii) A trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or a responsible officer or examiner (other than a fee examiner) having expanded powers is appointed or elected in the Cases, the Borrower or any other Debtor applies for or consents to any such appointment, or the U.S. Bankruptcy Court shall have entered an order providing for such appointment, or a receiver, interim receiver, receiver and manager or trustee in bankruptcy is appointed by the Canadian Bankruptcy Court; or

(iii) (A) The Final Financing Order (in form and substance reasonably satisfactory to the Required Lenders) shall not have been entered by the U.S. Bankruptcy Court on or prior to the date occurring thirty (30) days after the Interim Financing Order Date (or such later date as the Required Lenders may approve in their reasonable discretion), (B) either Bankruptcy Court shall have entered an order staying, reversing, vacating or terminating the Interim Financing Order or, after entry thereof, the Final Financing Order or extending, modifying, supplementing or amending the Interim Financing Order or, after entry thereof, the Final Financing Order, in any such case, other than in form and substance reasonably satisfactory to the Required Lenders, (C) subject to the Post-Petition Intercreditor Arrangements and the Financing Orders, an order of the Bankruptcy Courts shall be entered granting a Lien on the Collateral that is senior to or *pari passu* with the Liens on such Collateral securing the Obligations; (D) the Interim Financing Order and/or the Final Financing Order shall cease to create, as applicable, valid and perfected Liens, as provided in Section 2.14, on the Collateral of the Debtors or otherwise cease to be valid and binding and in full force and effect, (E) the Borrower or any other Credit Party shall fail to comply with any provision of the Interim Financing Order or, after the entry thereof, the Final Financing Order, other than any such failure to comply which is not material and is remedied within 2 Business Days, (F) the Borrower or any other Credit Party is enjoined, restrained or in any way prevented by order of a court of competent jurisdiction from continuing or conducting all or any material part of its business or affairs, (G) the Financing Orders shall cease to be in full force and effect or or (H) a final non-appealable order in the Cases shall be entered surcharging any of the Collateral under Section 506(c) of the Bankruptcy Code or the CCAA against the Secured Parties or the Debtors shall file or support any motion supporting such surcharging under Section 506(c) of the Bankruptcy Code or the CCAA; or

(iv) The Bankruptcy Courts shall have entered an order in any of the Cases (A) denying or terminating use of cash collateral by any of the Debtors, and the Debtors have not obtained use of cash collateral (consensually or non-consensually), (B) granting relief from any stay or proceeding (including, without limitation, the automatic stay under Section 362 of the Bankruptcy Code or the CCAA) so as to allow any third party to proceed with foreclosure (or the granting of a deed in lieu of foreclosure or the like) against any assets of the Debtors with a value in excess of $500,000 in the aggregate or the Equity Interests in any Credit Party or in any Subsidiary whose Equity Interest (or portion thereof) has been pledged as security for the Obligations or permit third parties to exercise other remedies that would have a Material Adverse Effect or (C) without the prior written consent of the Required Lenders, authorizing financing for any of the Credit Parties under Section 364 of the Bankruptcy Code or the CCAA (other than the ABL DIP Facilities and the other transactions contemplated by the Credit Documents) unless such financing is expressly permitted hereunder or such order contemplates Payment in Full of the Obligations upon consummation thereof; or

(v) The filing or support of any pleading by any Credit Party or other Debtor seeking, or otherwise consenting to, any of the matters set forth in clauses (i) through (iv) above, unless such filing or any pleading is in connection with the enforcement of the Credit Documents against any Secured Party; or

(vi) The filing of a motion in any of the Cases by the Borrower or any other Debtor to (A) use DIP Cash Collateral under Section 363(c) of the Bankruptcy Code or the CCAA without the consent of the Required Lenders or (B) file any plan of liquidation unless such plan contemplates a Payment in Full of all Obligations; or

(m) *Material Payments*. Any material payments are made in respect of pre-petition obligations of any Debtor other than (i) to the extent permitted by the Interim Financing Order (or the Final Financing Order, when applicable), (ii) to the extent permitted by any "first day order" or "second day order" entered by the Bankruptcy Courts that is in form and substance reasonably satisfactory to the Required Lenders, or (iii) as otherwise permitted hereunder; or

(n) *Consolidation*. Any Credit Party consolidating or combining with any other Person except to the extent expressly permitted hereunder; or

(o) *Claim Status*. Other than in respect of the Obligations, the Carve-Out or as otherwise permitted under the Credit Documents, an order is entered by the Bankruptcy Courts granting superpriority administrative expense claim status in the Cases pursuant to Section 364(c)(1) of the Bankruptcy Code on a *pari passu* or senior basis to the claims against the Debtors of the Secured Parties under the Credit Documents, or the filing by any Credit Party of a motion or application seeking entry of such an order; or

(p) *Plan of Reorganization*. A Chapter 11 plan or any other plan, a plan of compromise or arrangement in the Canadian Cases that does not provide for the Payment in Full of the Obligations shall be confirmed in any of the Cases, or any of the Credit Parties or any of their Subsidiaries shall file, propose, support or fail to contest in good faith the filing or confirmation of such a plan unless such plan contemplated a Payment in Full of all Obligations; or

(q) *Avoidance; Disgorgement; etc*. The Bankruptcy Courts shall (i) enter an order avoiding or requiring disgorgement by the Secured Parties of any amounts received in respect of the Obligations, (ii) enter an order authorizing or directing payment of any claim or claims under Section 506(c) or 552(b) of the Bankruptcy Code against or with respect to any of the Collateral or (iii) enter an order resulting in marshaling of any Collateral or precluding the attachment of Liens securing the Obligations to post-petition property based on the "equities of the case" under Section 552(b) of the Bankruptcy Code; or

(r) *[Reserved]*; or

(s) *Material Impairment.* If any Credit Party shall file a motion, pleading or proceeding that challenges the rights and remedies of any of the Administrative Agent or the Lenders under the Credit Documents in any of the Cases or that is inconsistent with the Credit Documents, in any such case, to the extent the relief sought thereby or such determination could reasonably be expected to result in a material impairment of the rights or interests of the Lenders, other than a challenge to whether an Event of Default has, in fact, occurred and is continuing; or

(t) *Non-Debtor Proceedings*. (i) Any Domestic Subsidiary that is not a Debtor (or a Debtor as a result thereof) institutes or consents to the institution of any proceeding under any Debtor Relief Law or (ii) any Foreign Subsidiary that is a Credit Party institutes or consents to the institution of a proceeding for relief under Chapter 11 of the Bankruptcy Code, and, in any event set forth in clause (i) or (ii) above, within twenty (20) days after the occurrence thereof, the court overseeing such proceeding has not entered an order subjecting such non-Debtor to the Interim Financing Order (or, after entry thereof, the Final Financing Order) and such other orders as the Required Lenders may reasonably require (it being agreed that, during any such thirty (30)-day period after any event set forth in clause (i) or (ii) above, such event shall not constitute a Default).

(u) *Additional Financing*. The Borrower or any other Debtor shall file a motion in any of the Cases to obtain, or the Bankruptcy Courts shall enter an order to approve, any additional financing under Sections 364(c) or (d) of the Bankruptcy Code (including, without limitation, any indebtedness secured by a Lien on any Collateral equal or senior to the priority of the Liens securing the Obligations) unless (i) such financing and, if applicable, any Liens securing such financing are expressly permitted hereunder or (ii) such motion or order, as applicable, contemplates Payment in Full of the Obligations upon consummation thereof.

(v) *Priming Liens*. At any time, the Borrower any other Credit Party or any Debtor seeks or consents to a priority of any Liens against the Borrower or any other Credit Party that is equal or senior to the priority of the Liens granted to the Secured Parties, except (i) as provided in the Financing Orders, (ii) with respect to a Permitted Lien or (iii) such motion or order, as applicable contemplates Payment in Full of the Obligations upon consummation thereof.

(w) *Post-Petition Intercreditor Arrangements*. Following the Final Financing Order Date (i) the Liens securing the Obligations shall cease to have the priorities contemplated in Section 2.14 and/or in the Post-Petition Intercreditor Arrangements or any such provision thereof, (ii) the Post-Petition Intercreditor Arrangements shall be invalidated or otherwise cease, for any reason, to be obligations in full force and effect, and valid, binding and enforceable obligations of the Persons (other than the Lenders or the Administrative Agent) subject thereto, (iii) any Person (other than the Lenders or the Administrative Agent) shall breach any obligations under the Post-Petition Intercreditor Arrangements or any Person (other than the Lenders or the Administrative Agent) shall repudiate its obligations thereunder and/or state that any such obligations are not in full force and effect, valid, binding and enforceable against any such Person, (iv) any Person (other than the Lenders or the Administrative Agent) shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Post-Petition Intercreditor Arrangements, or (B) that any of such Post-Petition Intercreditor Arrangements exist for the benefit of any Secured Party; or (v) any Person (other than the Lenders or the Administrative Agent) thereof or any other Person fails to observe or perform any of the provisions of the Post-Petition Intercreditor Arrangements applicable to it.

Section 10.02 *Remedies Upon Event of Default*. Following the Final Financing Order Date, subject in all respects to the Financing Orders, including any notice requirement thereunder as applicable, if any Event of Default shall have occurred and be continuing, the Administrative Agent may, with the consent of the Required Lenders, and shall, upon the written request of the Required Lenders, in each case by written notice to the Borrower, take any or all of the following actions, without prejudice to the rights of the Administrative Agent, any Lender or the holder of any Note to enforce its claims against any Credit Party: (i) declare the Commitments terminated, whereupon all Commitments of each Lender shall forthwith terminate immediately; (ii) declare the principal of and any accrued interest, any premiums and/or fees (including any applicable Prepayment Premium) in respect of all Term Loans and the Notes and all Obligations owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Credit Party; (iii) enforce, as Collateral Agent, all of the Liens and security interests created pursuant to the Security Documents; and (iv) enforce the terms of Article 13.

ARTICLE 11
THE ADMINISTRATIVE AGENT

Section 11.01 *Appointment and Authority.*

(a) Each of the Lenders hereby irrevocably appoints 9938982 Canada Inc. to act on its behalf as the Administrative Agent hereunder and under the other Credit Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders and neither the Borrower nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Credit Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the "Collateral Agent" under the Credit Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Credit Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 11.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article 11 (including Section 11.05, as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Credit Documents) as if set forth in full herein with respect thereto.

Section 11.02 *Rights as a Lender*. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 11.03 *Exculpatory Provisions*. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

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

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents), *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Credit Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

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

(d) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 10.02 and Section 12.11) or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

(e) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (v) the satisfaction of any condition set forth in Article 5 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 11.04 *Reliance by Administrative Agent*. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Term Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Term Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 11.05 *Delegation of Duties*. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 11.06 *Resignation of Administrative Agent*.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, (or such earlier day as shall be agreed by the Required Lenders) (the "**Resignation Effective Date**"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the "**Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Credit Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 4.04(e) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Credit Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

Section 11.07 *Non-Reliance on Administrative Agent and Other Lenders.* Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

Section 11.08 *[Reserved].*

Section 11.09 *Administrative Agent May File Proofs of Claim; Credit Bidding.* In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Term Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Term Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Section 3.01 and Section 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 3.01 and Section 11.04.

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

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Secured Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or under the provisions of the Bankruptcy and Insolvency Act (Canada) or the Companies' Creditors Arrangement Act (Canada), or any similar Laws in any other jurisdictions to which a Credit Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that, any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (c) of Section 12.11), (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Section 11.10 *Collateral and Guaranty Matters.* Without limiting the provisions of this Section 11.10, the Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Credit Document (i) upon termination of the Commitments and Payment in Full of all Obligations (other than contingent indemnification obligations), (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Credit Document to a Person that is not a Credit Party, (iii) that constitutes Excluded Property, or (iv) if approved, authorized or ratified in writing in accordance with Section 12.11;

(b) to release any Subsidiary Guarantor from its obligations under Article 13 if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Credit Documents; and

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Credit Document to the holder of any Lien on such property that is permitted by Section 9.01(vi).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under Article 13 pursuant to this Section 11.10. In each case as specified in this Section 11.10, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Credit Party such documents as such Credit Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Subsidiary Guarantor from its obligations under Article 13, in each case in accordance with the terms of the Credit Documents and this Section 11.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

As part of its duties as the Collateral Agent under the Credit Documents, the Collateral Agent (x) is, for the purposes of holding any security granted under the Security Documents governed by the laws of the Province of Quebec, hereby appointed by the Lenders, and (y) hereby agrees to act as hypothecary representative within the meaning of Article 2692 of the Civil Code of Quebec, for all present and future Lenders. Any Person who becomes a Lender shall, by its execution of an Assignment and Assumption Agreement, be deemed to have consented to and confirmed the Collateral Agent as the Person acting as hypothecary representative holding the aforementioned Security Documents. The appointment of a successor Collateral Agent pursuant to this Agreement shall also constitute the appointment of a successor hypothecary representative hereunder. Notwithstanding the provisions of Section 12.08, the provisions of this subsection shall be governed by the laws of the Province of Quebec and the federal laws of Canada applicable therein.

Section 11.11 *Rights as a Lender.* The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 11.12 *Reliance by Administrative Agent*. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Term Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Term Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 11.13 *[Reserved]*.

Section 11.14 *Withholding Taxes*. To the extent required by any applicable law (as determined in the good-faith discretion of the withholding agent), the Administrative Agent may withhold from any payment to any lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service, the Canada Revenue Agency or any other authority of the United States, Canada or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall, within ten (10) days after written demand therefor, indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower pursuant to Section 4.04 and without limiting or expanding the obligation of the Borrower to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Credit Document against any amount due the Administrative Agent under this Section 11.14. The agreements in this Section 11.14 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations.

ARTICLE 12
MISCELLANEOUS

Section 12.01 *Payment of Expenses, etc.*

(a) The Credit Parties hereby jointly and severally agree to (i) following the Final Financing Order Date, pay all reasonable invoiced out-of-pocket costs and expenses of (x) the Administrative Agent for fees and documented expenses of any advisors and professionals engaged by the Administrative Agent (including, without limitation, the reasonable fees and disbursements of Kirkland & Ellis LLP, and Blake, Cassels & Graydon LLP and, if reasonably necessary, one local counsel in any other relevant jurisdiction, but excluding the monthly fees and disbursements of any financial advisor(s)) in connection with the preparation, execution and delivery of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein, the administration hereof and thereof and any amendment, waiver or consent relating hereto or thereto (whether or not effective) and/or those associated with collateral monitoring, collateral reviews and appraisals, environmental reviews, of (y) the Administrative Agent and each Lender but, in no event, more than one firm of outside counsel for the Lenders (or if reasonably necessary, one firm of local counsel in any local jurisdiction), in connection with the enforcement of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or pursuant to any insolvency or bankruptcy proceedings (and, in each case, in the case of an actual or perceived conflict of interest, where the party affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of another firm of counsel, for each such affected party similarly situated); (ii) pay and hold each Agent and each Lender harmless from and against any and all Other Taxes with respect to the foregoing matters and save each Agent and each Lender harmless from and against any and all liabilities with respect to or resulting from any delay or omission (other than to the extent attributable to such Agent or such Lender) to pay such Other Taxes; and (iii) indemnify each Agent, each Lender and each other Secured Party and each of their respective Affiliates, successors and assigns, and the partners, officers, directors, employees, trustees, agents, advisors, controlling persons, investment advisors and other representatives of each of the foregoing (each, an "**Indemnified Person**") but, in no event, more than one firm of outside counsel for the Lenders (or if reasonably necessary, one firm of local counsel in any local jurisdiction), from and against and hold each of them harmless against (and will reimburse each Indemnified Person as the same are incurred for) any and all liabilities, obligations (including removal or remedial actions), losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements and documented out-of- pocket expenses) incurred by, imposed on, assessed or asserted against any of them as a result of, or arising out of, or in any way related to, or by reason of, (I) any investigation, litigation or other proceeding (whether or not any Agent, any Lender or other Secured Party is a party thereto and whether or not such investigation, litigation or other proceeding is brought by or on behalf of any Credit Party) related to the entering into and/or performance of this Agreement or any other Credit Document or the proceeds of any Term Loans hereunder or the consummation of the Transaction or any other transactions contemplated herein or in any other Credit Document or the exercise of any of their rights or remedies provided herein or in the other Credit Documents, or (II) the actual or alleged presence of Hazardous Materials in the Environment relating in any way to any Real Property owned, leased or operated, at any time, by the Borrower, any of its Subsidiaries or any of their respective predecessors; the generation, storage, transportation, handling, treatment, use, Release or threat of Release of Hazardous Materials by or on behalf of the Borrower, any of its Subsidiaries or any of their respective predecessors at any location, whether or not owned, leased or operated by the Borrower or any of its Subsidiaries or any of their respective predecessors; the non-compliance by the Borrower or any of its Subsidiaries or any of their respective predecessors with any Environmental Law (including applicable permits thereunder); or any Environmental Claim or liability under any applicable Environmental Laws related to the Borrower or any of its Subsidiaries or any of their respective predecessors or relating in any way to any Real Property at any time owned, leased or operated by the Borrower or any of its Subsidiaries or any of their respective predecessors (but excluding in each case any losses, liabilities, claims, damages or expenses, (III) to the extent incurred by reason of the gross negligence or willful misconduct of the applicable Indemnified Person or any of its Related Indemnified Persons, (IV) to the extent incurred by reason of any material breach of the obligations of such Indemnified Person under this Agreement or the other Credit Documents (in the case of each of preceding clauses (III) and (IV), as determined by a court of competent jurisdiction in a final and non-appealable decision) or (V) that do not involve or arise from an act or omission by the Borrower or other Credit Parties or any of their respective affiliates and is brought by an Indemnified Person against an Indemnified Person (other than claims against any Agent in its capacity as such or in its fulfilling such role). To the extent that the undertaking to indemnify, pay or hold harmless any Agent, any Lender or any other Secured Party or other Indemnified Person set forth in the preceding sentence may be unenforceable because it violates any law or public policy, the Credit Parties shall make the maximum contribution to the payment and satisfaction of each of the indemnified liabilities which is permissible under applicable law. Notwithstanding the foregoing, this Section 12.01(a) shall not apply with respect to Taxes other than any Taxes that represent losses, liabilities, claims and damages arising from a non-Tax claim. All amounts due under this Section 12.01(a) shall be paid within ten (10) Business Days of receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail.

(b) To the fullest extent permitted by applicable law, each of the Credit Parties shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnified Person, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Term Loan or Letter of Credit or the use of the proceeds thereof. No Indemnified Person referred to above shall be liable for any damages arising from the use by others of any information or other materials distributed to such party by such Indemnified Person through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnified Person as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(c) To the extent that the Credit Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section 12.01 to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Affiliate thereof, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Affiliate, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the aggregate Term Loan Commitments at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Term Loan Exposure (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), *provided*, *further* that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or against any Affiliate thereof acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.01(c).

Section 12.02 *Right of Setoff*. In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, subject to the Financing Orders and the Post-Petition Intercreditor Arrangements, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent and each Lender is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to any Credit Party or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special) (other than accounts used exclusively for payroll, payroll taxes, fiduciary and trust purposes, and employee benefits) and any other Indebtedness at any time held or owing by the Administrative Agent or such Lender (including, without limitation, by branches and agencies of the Administrative Agent or such Lender wherever located) to or for the credit or the account of the Borrower or any of its Subsidiaries against and on account of the Obligations and liabilities of the Credit Parties to the Administrative Agent or such Lender under this Agreement or under any of the other Credit Documents, including, without limitation, all interests in Obligations purchased by such Lender pursuant to Section 12.06(b), and all other claims of any nature or description arising out of or connected with this Agreement or any other Credit Document, irrespective of whether or not the Administrative Agent or such Lender shall have made any demand hereunder and although said Obligations, liabilities or claims, or any of them, shall be contingent or unmatured.

Section 12.03 *Notices; Effectiveness; Electronic Communications*.

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

(i) if to the Borrower or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 1.01; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in an administrative questionnaire in form and substance reasonably satisfactory to the Administrative Agent (an "**Administrative Questionnaire**") (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

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

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article 2 if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "**Agent Parties**") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's, any Credit Party's or the Administrative Agent's transmission of Borrower Materials through the Internet except for losses, claims, damages, liabilities or expenses to the extent that such losses, claims, damages, liabilities or expenses (x) are determined by a court of competent jurisdiction by a final an nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party.

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

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic Notices of Borrowing) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 12.04 *Successors and Assigns*

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 12.04(b), (ii) by way of participation in accordance with the provisions of Section 12.04(d), or (iii) by way of pledge or assignment of a security interest or hypothec subject to the restrictions of Section 12.04(e) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement. No lender may assign or transfer any of its rights or obligations hereunder to an Ineligible Transferee. The list of all Ineligible Transferees shall be made available to all Lenders. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Ineligible Transferees. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is an Ineligible Transferees or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to, or the restrictions on any exercise of rights or remedies of, any Ineligible Transferees.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Term Loans at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Term Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in subsection (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Term Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Term Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption Agreement with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption Agreement, as of the Trade Date, shall not be less than $1,000,000 unless each of the Administrative Agent and, so long as no Event of Default under Sections 10.01(a) or (e) has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Term Loans or the Commitment assigned;

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

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

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

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption Agreement, together with a processing and recordation fee in the amount of $3,500; *provided* that, the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. Except as expressly provided herein, no such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), (C) to an Ineligible Transferee or (D) to a natural Person.

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

(vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption Agreement, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption Agreement covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Section 2.10, Section 2.12, Section 4.04 and Section 12.01 with respect to facts and circumstances occurring prior to the effective date of such assignment; *provided*, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section 12.04.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Notice Office in the United States of America a copy of each Assignment and Assumption Agreement delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Term Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than an Ineligible Transferee, a natural Person, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Term Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.14 without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (i), (ii) and (iii) of the first proviso to Section 12.11 or clause (1) of the second proviso to Section 12.11, in each case, that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Section 2.10, Section 2.12 and Section 4.04 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; *provided* that such Participant (A) agrees to be subject to the provisions of Section 2.13 as if it were an assignee under subsection (b) of this Section and (B) shall not be entitled to receive any greater payment under Section 2.10 or Section 4.04 (subject to the requirements and limitations therein, including Section 4.04(b)-(c) (it being understood that the documentation required under Section 4.04(b)-(c) shall be delivered to the participating Lender)), than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.13 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.02 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 12.06(b) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Term Loans or other obligations under the Credit Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations or in connection with an enquiry by the Canada Revenue Agency in accordance with the provisions of the ITA. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

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

Section 12.05 *No Waiver; Remedies Cumulative*.

(a) No failure or delay on the part of the Administrative Agent, the Collateral Agent or any Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between the Borrower or any other Credit Party and the Administrative Agent, the Collateral Agent or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Credit Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Administrative Agent, the Collateral Agent or any Lender would otherwise have. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Administrative Agent, the Collateral Agent or any Lender to any other or further action in any circumstances without notice or demand.

(b) Notwithstanding anything to the contrary contained herein or in any other Credit Document, the authority to enforce rights and remedies hereunder and under the other Credit Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 10.02 for the benefit of all the Lenders; *provided*, *however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Credit Documents, (b) any Lender from exercising setoff rights in accordance with Section 12.02 (subject to the terms of Section 12.11(f)), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Credit Party under any Debtor Relief Law; and *provided*, *further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Credit Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 9.05 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 12.11(f), any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 12.06 *Payments Pro Rata.*

(a) The Administrative Agent agrees that promptly after its receipt of each payment from or on behalf of any Credit Party in respect of any Obligations of such Credit Party, it shall, except as otherwise provided in this Agreement, distribute such payment to the Lenders (other than any Lender that has consented in writing to waive its pro rata share of such payment) pro rata based upon their respective shares, if any, of the Obligations with respect to which such payment was received.

(b) Each of the Lenders agrees that, if it should receive any amount hereunder (whether by voluntary payment, by realization upon security, by the exercise of the right of setoff or banker's lien, by counterclaim or cross action, by the enforcement of any right under the Credit Documents, or otherwise) which is applicable to the payment of the principal of, or interest on, the Term Loans or Fees, of a sum which with respect to the related sum or sums received by other Lenders is in a greater proportion than the total of such Obligation then owed and due to such Lender bears to the total of such Obligation then owed and due to all of the Lenders immediately prior to such receipt, then such Lender receiving such excess payment shall purchase for cash without recourse or warranty from the other Lenders an interest in the Obligations of the respective Credit Party to such Lenders in such amount as shall result in a proportional participation by all of the Lenders in such amount; *provided* that if all or any portion of such excess amount is thereafter recovered from such Lender, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest.

(c) Notwithstanding anything to the contrary contained herein, the provisions of the preceding Sections 12.06(a) and (b) shall be subject to (x) the express provisions of this Agreement which require, or permit, differing payments to be made to Non-Defaulting Lenders as opposed to Defaulting Lenders, (y) the express provisions of this Agreement which permit disproportionate payments with respect to various of the class of Term Loans as, and to the extent, provided herein, and (z) any other provisions which permit disproportionate payments with respect to the Term Loans as, and to the extent, provided therein.

Section 12.07 *Calculations; Computations*.

(a) The financial statements to be furnished to the Lenders pursuant hereto shall be made and prepared in accordance with GAAP consistently applied throughout the periods involved (except as set forth in the notes thereto).

(b) All computations of interest and other Fees hereunder shall be made on the basis of a a three hundred sixty-five (365)-day or three hundred sixty-six (366)-day year, as the case may be, for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or Fees are payable.

(c) The calculation of any financial ratios under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-down if there is no nearest number).

Section 12.08 *GOVERNING LAW; SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL*.

(a) THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL, EXCEPT AS OTHERWISE PROVIDED IN THE RELEVANT SECURITY DOCUMENT, BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF, TO THE EXTENT THAT THE SAME ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION) AND (TO THE EXTENT APPLICABLE) THE U.S. BANKRUPTCY CODE. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT (EXCEPT THAT, (X) IN THE CASE OF ANY SECURITY DOCUMENT, PROCEEDINGS MAY ALSO BE BROUGHT BY THE ADMINISTRATIVE AGENT OR COLLATERAL AGENT IN THE JURISDICTION IN WHICH THE RELEVANT COLLATERAL IS LOCATED OR ANY OTHER RELEVANT JURISDICTION AND (Y) IN THE CASE OF ANY BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS WITH RESPECT TO ANY CREDIT PARTY, ACTIONS OR PROCEEDINGS RELATED TO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS SHALL BE BROUGHT IN SUCH COURT HOLDING SUCH BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS) MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE WHICH ARE LOCATED IN THE COUNTY OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, EACH OF THE PARTIES HERETO OR THERETO HEREBY IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HERETO HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH COURTS LACK PERSONAL JURISDICTION OVER IT, AND AGREES NOT TO PLEAD OR CLAIM, IN ANY LEGAL ACTION PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENTS BROUGHT IN ANY OF THE AFOREMENTIONED COURTS, THAT SUCH COURTS LACK PERSONAL JURISDICTION OVER IT.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT BROUGHT IN THE COURTS REFERRED TO IN CLAUSE (a) ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B)

ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH.

Section 12.09 *Counterparts*. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A set of counterparts executed by all the parties hereto shall be lodged with the Borrower and the Administrative Agent.

Section 12.10 *Headings Descriptive*. The headings of the several Sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 12.11 *Amendment or Waiver; etc.*

(a) Neither this Agreement nor any other Credit Document nor any terms hereof or thereof may be changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing signed by the Credit Parties party hereto or thereto and the Required Lenders (although additional parties may be added to (and annexes may be modified to reflect such additions) the Security Documents in accordance with the provisions hereof and thereof without the consent of the other Credit Parties party thereto or the Required Lenders), *provided* that no such change, waiver, discharge or termination shall:

(i) without the prior written consent of each Lender directly and adversely affected thereby, extend the final scheduled maturity or scheduled date of any amortization payment of any Term Loan or Note, or reduce the rate or extend the time of payment of interest or Fees thereon (except in connection with the applicability of any post-default increase in interest rates) or reduce or forgive the principal amount thereof;

(ii) except as otherwise expressly provided in the Security Documents, release all or substantially all of the Collateral under all the Security Documents without the prior written consent of each Lender, other than in connection with the Payment in Full of all Obligations;

(iii) except as otherwise provided in the Credit Documents or in connection with the Payment in Full of the Obligations, release all or substantially all of the value of Article 13 without the prior written consent of each Lender;

(iv) amend, modify or waive any provision of this Section 12.11(a) or Section 12.06 (except for technical amendments with respect to additional extensions of credit pursuant to this Agreement which afford the protections to such additional extensions of credit of the type provided to the Refinancing Term Loans on the Signing Date), in each case, without the prior written consent of each Lender directly and adversely affected thereby;

(v) reduce the percentage specified in the definition of Required Lenders without the prior written consent of each Lender directly and adversely affected thereby (it being understood that, with the prior written consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders, as applicable, on substantially the same basis as the extensions of Refinancing Term Loans are included on the Signing Date); or

(vi) consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement without the consent of each Lender;

provided, *further*, that no such change, waiver, discharge or termination shall (i) increase the Commitments of any Lender over the amount thereof then in effect without the consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the Total Commitment shall not constitute an increase of the Commitment of any Lender), (ii) without the consent of each Agent adversely affected thereby, amend, modify or waive any provision of Article 11 or any other provision as same relates to the rights or obligations of such Agent or (iii) without the consent of Collateral Agent, amend, modify or waive any provision relating to the rights or obligations of the Collateral Agent.

(b) If, in connection with any proposed change, waiver, discharge or termination of any of the provisions of this Agreement as contemplated by clauses (i) through (v), inclusive, of the first proviso to Section 12.11(a), the consent of the Required Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained (such Lender, a "**Non-Consenting Lender**"), then the Borrower shall have the right, so long as all Non-Consenting Lenders whose individual consent is required are treated as described in either clauses (A) or (B) below, to either (A) replace each such Non-Consenting Lender or Lenders with one or more replacement Lenders pursuant to Section 2.13 so long as at the time of such replacement, each such replacement Lender consents to the proposed change, waiver, discharge or termination or (B) terminate such Non-Consenting Lender's Commitments and/or repay the outstanding Term Loans of such Lender in accordance with Section 4.01(b), *provided* that, unless the Commitments that are terminated, and Term Loans repaid, pursuant to the preceding clause (B) are immediately replaced in full at such time through the addition of new Lenders or the increase of outstanding Term Loans of existing Lenders (who in each case must specifically consent thereto), then in the case of any action pursuant to preceding clause (B) the Required Lenders (determined after giving effect to the proposed action) shall specifically consent thereto, *provided*, *further*, that in any event the Borrower shall not have the right to replace a Lender, terminate its Commitments or repay its Term Loans solely as a result of the exercise of such Lender's rights (and the withholding of any required consent by such Lender) pursuant to the second proviso to Section 12.11(a).

(c) Notwithstanding anything to the contrary herein, any fee letter may be amended, or rights and privileges thereunder waived, in a writing executed only by the parties thereto.

(d) Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, to the fullest extent permitted by applicable law, such Lender will not be entitled to vote in respect of amendments, waivers and consents hereunder and the Commitment and the outstanding Term Loans or other extensions of credit of such Lender hereunder will not be taken into account in determining whether the Required Lenders or all of the Lenders, as required, have approved any such amendment, waiver or consent (and the definition of the "Required Lenders" will automatically be deemed modified accordingly for the duration of such period); *provided* that any such amendment or waiver that would increase or extend the term of the Commitment of such Defaulting Lender, extend the date fixed for the payment of principal or interest owing to such Defaulting Lender hereunder, reduce the principal amount of any obligation owing to such Defaulting Lender, reduce the amount of or the rate or amount of interest on any amount owing to such Defaulting Lender or of any fee payable to such Defaulting Lender hereunder, or alter the terms of this proviso, will require the consent of such Defaulting Lender.

(e) Further, notwithstanding anything to the contrary contained in this Section 12.11, if following the Signing Date, the Administrative Agent and any Credit Party shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Credit Documents, then the Administrative Agent and the Credit Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Credit Documents if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof.

Section 12.12 *Survival*.

(a) All indemnities set forth herein including, without limitation, in Sections 2.10, 4.03, Section 11.07 and 12.01 shall survive the execution, delivery and termination of this Agreement and the Notes and the making and repayment of the Obligations.

(b) All representations and warranties made hereunder and in any other Credit Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any

Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Event, and shall continue in full force and effect as long as any Term Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

Section 12.13 *Domicile of Term Loans*. Each Lender may transfer and carry its Term Loans at, to or for the account of any office, Subsidiary or Affiliate of such Lender. Notwithstanding anything to the contrary contained herein, to the extent that a transfer of Term Loans pursuant to this Section 12.13 would, at the time of such transfer, result in increased costs under Section 2.10 or 4.03 from those being charged by the respective Lender prior to such transfer, then the Borrower shall not be obligated to pay such increased costs (although the Borrower shall be obligated to pay any other increased costs of the type described above resulting from changes after the date of the respective transfer).

Section 12.14 *Confidentiality*.

(a) Subject to the provisions of subsection (b) of this Section 12.14, each Agent and Lender agrees that it will use its commercially reasonable efforts not to disclose without the prior consent of the Borrower (other than to its directors, officers, employees, accountants, auditors, advisors or counsel or other representatives or to another Lender if such Lender or such Lender's holding or parent company in its sole discretion determines that any such party should have access to such information, provided such Persons shall be subject to the provisions of this Section 12.14 to the same extent as such Lender (or language substantially similar to this Section 12.14(a)) any information with respect to the Borrower or any of its Subsidiaries that is now or in the future furnished pursuant to this Agreement or any other Credit Document, *provided* that any Lender may disclose any such information (i) as has become generally available to the public other than by virtue of a breach of this Section 12.14(a) by such Lender, (ii) as may be required or appropriate in any report, statement or testimony submitted to any municipal, state, provincial or federal regulatory body having or claiming to have jurisdiction over such Lender or to the Federal Reserve Board or the Federal Deposit Insurance Corporation or the Canada Deposit Insurance Corporation or similar organizations (whether in the United States, Canada or elsewhere) or their successors, (iii) as may be required or appropriate in respect to any summons or subpoena or in connection with any litigation, (iv) in order to comply with any law, order, regulation or ruling applicable to such Lender, (v) to the Administrative Agent or the Collateral Agent, (vi) to any prospective or actual direct or indirect contractual counterparty in any swap, hedge or similar agreement (or to any such contractual counterparty's professional advisor), so long as such contractual counterparty (or such professional advisor) agrees to be bound by the provisions of this Section 12.14 (or language substantially similar to this Section 12.14(a)), and (vii) to any prospective or actual transferee, pledgee or participant in connection with any contemplated transfer, pledge or participation of any of the Notes or Commitments or any interest therein by such Lender, *provided* that such prospective transferee, pledge or participant agrees to be bound by the confidentiality provisions contained in this Section 12.14 (or language substantially similar to this Section 12.14(a)); *provided*, *further*, that, to the extent permitted pursuant to any applicable law, order, regulation or ruling, and other than in connection with credit and other bank examinations conducted in the ordinary course with respect to such Lender, in the case of any disclosure pursuant to the foregoing clauses (ii), (iii) or (iv), such Lender will use its commercially reasonable efforts to notify the Borrower in advance of such disclosure so as to afford the Borrower the opportunity to protect the confidentiality of the information proposed to be so disclosed.

(b) The Borrower hereby acknowledge and agree that each Lender may share with any of its affiliates, and such affiliates may share with such Lender, any information related to the Borrower or any of its Subsidiaries (including, without limitation, any non-public customer information regarding the creditworthiness of the Borrower and its Subsidiaries), provided such Persons shall be subject to the provisions of this Section 12.14 to the same extent as such Lender.

Section 12.15 *USA Patriot Act and Canadian AML Acts Notice*. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act Title III of Pub. 107-56 (signed into law October 26, 2001 and amended on March 9, 2009) (the "**Patriot Act**") and the Canadian AML Acts, it is required to obtain, verify, and record information that identifies the Borrower and each Subsidiary Guarantor, which information includes the name of each Credit Party and other information that will allow such Lender to identify the Credit Party in accordance with the Patriot Act and the Canadian AML Acts, and each Credit Party agrees to promptly provide such information from time to time to any Lender.

Section 12.16 *Special Provisions Regarding Pledges of Equity Interests in Persons Not Organized in Qualified Jurisdictions*. The parties hereto acknowledge and agree that the provisions of the various Security Documents executed and delivered by the Credit Parties require that, among other things, all Equity Interests in various Persons owned by the respective Credit Party be pledged, and delivered for pledge, pursuant to the Security Documents. The parties hereto further acknowledge and agree that each Credit Party shall be required to take all actions under the laws of the jurisdiction in which such Credit Party is organized to create and perfect all security interests or hypothecs granted pursuant to the various Security Documents and to take all actions under the laws of the United States or Canada (as applicable) to perfect the security interests in the Equity Interests of any Person organized under the laws of said jurisdictions (to the extent said Equity Interests are owned by any Credit Party).

Section 12.17 *Currency Indemnity.* If a judgment or order is rendered by any court or tribunal for the payment of any amount owing to the Agents or any Lender under any Credit Document or for the payment of damages in respect of any breach of any Credit Document, or under or in respect of a judgment or order of another court or tribunal for the payment of those amounts or damages, and the judgment or order is expressed in a currency (the "**Judgment Currency**") except the currency payable under the relevant Credit Document (the "**Agreed Currency**"), the party against whom the judgment or order is made shall indemnify and hold the Agents and the Lenders harmless against any deficiency in terms of the Agreed Currency in the amounts received by the Agents and the Lenders arising or resulting from any variation as between (a) the actual rate of exchange at which the Agreed Currency is converted into the Judgment Currency for the purposes of the judgment or order, and (b) the actual rate of exchange at which the Agents or the Lender is able to purchase the Agreed Currency with the amount of the Judgment Currency actually received by the Agent or the Lender on the date of receipt. The indemnity in this Section shall constitute a separate and independent obligation from the other obligations of the Credit Parties under the Credit Documents and shall apply irrespective of any indulgence granted by the Agents or any Lender.

Section 12.18 *Waiver of Sovereign Immunity*. Each of the Credit Parties, in respect of itself, its Subsidiaries, its process agents, and its properties and revenues, hereby irrevocably agrees that, to the extent that the Borrower and its Subsidiaries or any of their properties has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, whether in the United States, Canada or elsewhere, to enforce or collect upon the Term Loans or any Credit Document or any other liability or obligation of the Borrower or any of their respective Subsidiaries related to or arising from the transactions contemplated by any of the Credit Documents, including, without limitation, immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment, and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, the Borrower, for itself and on behalf of its Subsidiaries, hereby expressly waives, to the fullest extent permissible under applicable law, any such immunity, and agrees not to assert any such right or claim in any such proceeding, whether in the United States, Canada or elsewhere. Without limiting the generality of the foregoing, the Borrower further agrees that the waivers set forth in this Section 12.18 shall have the fullest extent permitted under the Foreign Sovereign Immunities Act of 1976 of the United States and are intended to be irrevocable for purposes of such Act.

Section 12.19 *INTERCREDITOR ARRANGEMENTS*.

(a) EACH LENDER PARTY HERETO UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT IT (AND EACH OF ITS SUCCESSORS AND ASSIGNS) AND EACH OTHER LENDER (AND EACH OF THEIR SUCCESSORS AND ASSIGNS) SHALL BE BOUND BY THE POST-PETITION INTERCREDITOR ARRANGEMENTS, WHICH IN CERTAIN CIRCUMSTANCES MAY REQUIRE (AS MORE FULLY PROVIDED THEREIN) THE TAKING OF CERTAIN ACTIONS BY THE LENDERS, INCLUDING THE PURCHASE AND SALE OF PARTICIPATIONS BY VARIOUS LENDERS TO EACH OTHER IN ACCORDANCE WITH THE TERMS THEREOF.

(b) THE PROVISIONS OF THIS SECTION 12.19 ARE NOT INTENDED TO SUMMARIZE OR FULLY DESCRIBE THE PROVISIONS OF THE POST-PETITION INTERCREDITOR ARRANGEMENTS. REFERENCE MUST BE MADE TO THE POST-PETITION INTERCREDITOR ARRANGEMENTS TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF THE POST-PETITION INTERCREDITOR ARRANGEMENTS AND THE TERMS AND PROVISIONS THEREOF, AND NO AGENT

OR ANY OF AFFILIATES MAKES ANY REPRESENTATION TO ANY LENDER AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN THE POST-PETITION INTERCREDITOR ARRANGEMENTS.

Section 12.20 *Acknowledgment and Consent to Bail-In of EEA Financial Institutions.* Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

Section 12.21 *Absence of Fiduciary Relationship; Acknowledgment of no Liability*. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Lenders are arm's-length commercial transactions between the Borrower and its respective Affiliates, on the one hand, and the Administrative Agent, and the Lenders, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents; (ii) (A) the Administrative Agent and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; and (iii) the Administrative Agent, the Lenders, and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent nor any Lender has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby. For the avoidance of doubt, each of the parties hereto agree that the Advisors shall not have any liability with respect to or arising out of this Agreement or the other Credit Documents.

ARTICLE 13
GUARANTY

Section 13.01 *Subsidiary Guaranty*. Each Subsidiary Guarantor, severally, unconditionally and irrevocably guarantees (the undertaking by each Subsidiary Guarantor under this Article 13 being the "**Guaranty**") the punctual payment when and as due, whether at scheduled maturity or at a date fixed for prepayment or by acceleration, demand or otherwise, of all of the Obligations of each of the other Credit Parties now or hereafter existing under or in respect of the Credit Documents (including, without limitation, any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing Obligations), whether direct or indirect, absolute or contingent, and whether for principal, interest, premium, fees, indemnification payments, contract causes of action, costs, expenses or otherwise (such Obligations being the "**Guaranteed Obligations**"), and agrees to pay any and all expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by the Administrative Agent, the Collateral Agent or any of the other Secured Parties solely in enforcing any rights under this Guaranty. Without limiting the generality of the foregoing, each Subsidiary Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any of the other Credit Parties to the Administrative Agent or any of the other Secured Parties under or in respect of the Credit Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Credit Party.

Section 13.02 *Guaranty Absolute*. Each Subsidiary Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Credit Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Administrative Agent or any other Secured Party with respect thereto. The Obligations of each Subsidiary Guarantor under this Guaranty are independent of the Guaranteed Obligations or any other Obligations of any Credit Party under the Credit Documents, and a separate action or actions may be brought and prosecuted against such Subsidiary Guarantor to enforce this Guaranty, irrespective of whether any action is brought against any other Credit Party or whether any other Credit Party is joined in any such action or actions. The liability of each Subsidiary Guarantor under this Guaranty shall be absolute, unconditional and irrevocable irrespective of, and such Subsidiary Guarantor hereby irrevocably waives any defenses it may now or hereafter have in any way relating to, any and all of the following:

(a) any lack of validity or enforceability of any Credit Document or any other agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other Obligations of any Credit Party under the Credit Documents, or any other amendment or waiver of or any consent to departure from any Credit Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Credit Party or any of its Subsidiaries or otherwise;

(c) any taking, exchange, release or nonperfection of any Collateral, or any taking, release or amendment or waiver of or consent to departure from any Subsidiary Guaranty or any other guaranty, for all or any of the Guaranteed Obligations;

(d) any manner of application of Collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any Collateral for all or any of the Guaranteed Obligations or any other Obligations of any Credit Party under the Credit Documents, or any other property and assets of any other Credit Party or any of its Subsidiaries;

(e) any change, restructuring or termination of the corporate structure or existence of any other Credit Party or any of its Subsidiaries;

(f) any failure of the Administrative Agent or any other Secured Party to disclose to any Credit Party any information relating to the financial condition, operations, properties or prospects of any other Credit Party now or hereafter known to the Administrative Agent or such other Secured Party, as the case may be (such Subsidiary Guarantor waiving any duty on the part of the Secured Parties to disclose such information);

(g) the failure of any other Person to execute this Guaranty or any other guarantee or agreement of the release or reduction of the liability of any of the other Credit Parties or any other guarantor or surety with respect to the Guaranteed Obligations; or

(h) any other circumstance (including, without limitation, any statute of limitations or any existence of or reliance on any representation by the Administrative Agent or any other Secured Party) that might otherwise constitute a defense available to, or a discharge of, such Guarantor, any other Credit Party or any other guarantor or surety other than payment in full in cash of the Guaranteed Obligations.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Administrative Agent or any other Secured Party or by any other Person upon the insolvency, bankruptcy or reorganization of any other Credit Party or otherwise, all as though such payment had not been made.

Section 13.03 *Waivers and Acknowledgments*.

(a) Each Subsidiary Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Guaranty, and any requirement that the Administrative Agent or any other Secured Party protect, secure, perfect or insure any Lien or any property or assets subject thereto or exhaust any right or take any action against any other Credit Party or any other Person or any Collateral.

(b) Each Subsidiary Guarantor hereby unconditionally waives any right to revoke this Guaranty, and acknowledges that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

(c) Each Subsidiary Guarantor hereby unconditionally and irrevocably waives (i) any defense arising by reason of any claim or defense based upon an election of remedies by the Secured Parties which in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Subsidiary Guarantor or other rights to proceed against any of the other Credit Parties, any other guarantor or any other Person or any Collateral, and (ii) any defense based on any right of setoff or counterclaim against or in respect of such Subsidiary Guarantor's obligations hereunder.

(d) Each Subsidiary Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Credit Documents and that the waivers set forth in Section 13.02 and this Section 13.03 are knowingly made in contemplation of such benefits.

Section 13.04 *Subrogation*. Each Subsidiary Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or may hereafter acquire against any other Credit Party or any other insider guarantor that arise from the existence, payment, performance or enforcement of its Obligations under this Guaranty or under any other Credit Document, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Administrative Agent or any other Secured Party against such other Credit Party or any other insider guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from such other Credit Party or any other insider guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, until such time as all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall have been paid in full in cash, and the Commitments shall have expired or terminated. If any amount shall be paid to any Subsidiary Guarantor in violation of the immediately preceding sentence at any time prior to the latest of (a) the payment in full in cash of all of the Guaranteed Obligations and all other amounts payable under this Guaranty, and (b) the Maturity Date, such amount shall be held in trust for the benefit of the Administrative Agent and the other Secured Parties and shall forthwith be paid to the Administrative Agent to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of the Credit Documents, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. If (i) any Subsidiary Guarantor shall pay to the Administrative Agent all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall have been paid in full in cash, and (iii) the Maturity Date shall have occurred, the Administrative Agent and the other Secured Parties will, at such Subsidiary Guarantor's request and expense, execute and deliver to such Subsidiary Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer of subrogation to such Subsidiary Guarantor of an interest in the Guaranteed Obligations resulting from the payment made by such Subsidiary Guarantor.

Section 13.05 *Additional Guarantors*. Upon the execution and delivery by any Person of a guaranty joinder agreement in substantially the form of Exhibit M hereto or otherwise in a form reasonably acceptable to the Administrative Agent (each, a "**Guaranty Supplement**"), (a) such Person shall be referred to as an "Additional Guarantor" and shall become and be a Subsidiary Guarantor hereunder, and each reference in this Guaranty to a "Subsidiary Guarantor" shall also mean and be a reference to such Additional Guarantor, and each reference in any other Credit Document to a "Subsidiary Guarantor" shall also mean and be a reference to such Additional Guarantor, and (b) each reference herein to "this Guaranty", "hereunder", "hereof" or words of like import referring to this Guaranty, and each reference in any other Credit Document to the "Guaranty", "thereunder", "thereof" or words of like import referring to this Guaranty, shall include each such duly executed and delivered Guaranty Supplement.

Section 13.06 *Continuing Guarantee; Assignments*. This Guaranty is a continuing guaranty and shall (a) remain in full force and effect until the latest of (i) the payment in full in cash of all of the Guaranteed Obligations and all other amounts payable under this Guaranty, and (ii) the Maturity Date, (b) be binding upon each Subsidiary Guarantor and its successors and assigns and (c) inure to the benefit of, and be enforceable by, the Administrative Agent and the other Secured Parties and their respective successors, transferees and assigns. Without limiting the generality of clause (c) of the immediately preceding sentence, any Lender may assign or otherwise transfer all or any portion of its rights and obligations under this Agreement to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender under this Article 13 or otherwise, in each case as provided in Section 12.04.

Section 13.07 *No Reliance*. Each Subsidiary Guarantor has, independently and without reliance upon any Agent or any Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Guaranty and each other Credit Document to which it is or is to be a party, and such Subsidiary Guarantor has established adequate means of obtaining from each other Credit Party on a continuing basis information pertaining to, and is now and on a continuing basis will be completely familiar with, the business, condition (financial or otherwise), operations, performance, properties and prospects of such other Credit Party.

Section 13.08 *Quebec Guarantees*. To the extent that any Subsidiary Guarantor, whether now or at any time in the future, is located in the Province of Quebec:

(a) it hereby agrees that it shall be liable for, and hereby absolutely, irrevocably and unconditionally guarantees, on a solidary basis and as primary obligor and not merely as surety, to the Administrative Agent and the other Secured Parties and their respective successors and assigns, the Guaranteed Obligations; and

(b) it expressly waives and renounces the benefits of division and discussion.

ARTICLE 14
SECURITY

Section 14.01 *Grant of Security*.

(a) Upon and subject to the Final Financing Order Date, as security for the prompt and complete payment or performance, as the case may be, when due of all of its Obligations, each Credit Party does hereby pledge, assign, mortgage, charge and grant to the Collateral Agent, for the benefit of the Secured Parties, as and by way of a fixed and specific mortgage and charge, and grants to the Collateral Agent, for the benefit of the Secured Parties, a continuing security interest in, all of its present and after-acquired personal property, including, without limiting the foregoing, all of its right, title and interest in, to and under all of the following personal property and fixtures (and all rights therein), or in which or to which it has any rights, in each case whether now existing or hereafter from time to time acquired (but excluding any Excluded Property):

(i) each and every Account, including all claims of any kind that such Credit Party has, including claims against the Crown and claims under insurance policies;

(ii) the Cash Collateral Account and all Money, Securities, Instruments and other investments deposited or required to be deposited in the Cash Collateral Account;

(iii) all Chattel Paper;

(iv) all Contracts, together with all Contract Rights arising thereunder;

(v) all Equipment and fixtures;

(vi) all Deposit Accounts and all Money, Securities, Instruments and other investments deposited or required to be deposited in any of the foregoing;

(vii) all Documents of Title;

(viii) all Financial Assets;

(ix) all Goods;

(x) all Instruments;

(xi) all Intangibles;

(xii) all Intellectual Property;

(xiii) all Inventory;

(xiv) all Investment Property, including shares, stock, warrants, bonds, debentures, debenture stock and other Securities (in each case whether evidenced by a Security Certificate or an Uncertificated Security) and Security Entitlements, Securities Accounts, Futures Contracts and Futures Accounts;

(xv) all rights in letters of credit (whether or not the respective letter of credit is evidenced by a writing);

(xvi) all Money;

(xvii) all Permits;

(xviii) all Commercial Tort Claims;

(xix) all Letter of Credit Rights;

(xx) all insurance policies and Proceeds thereof;

(xxi) all Real Property (including each Credit Party's estate, right, title, interest, property, claim and demand, now or hereafter arising, in and to such Credit Party's Real Property);

(xxii) any Proceeds of an Avoidance Action (but not the Avoidance Action itself);

(xxiii) any and all other assets of each Credit Party;

(xxiv) with respect to the foregoing, all parts, components, renewals, substitutions and replacements of that property and all attachments, accessories and increases, additions and Accessions to that property; and

(xxv) all Proceeds and products of any and all of the foregoing, including property in any form derived directly or indirectly from any dealing with such property

(all of the above, the "**Collateral**").

(b) The security interest of the Collateral Agent under this Agreement extends to all Collateral that any Credit Party may acquire, or with respect to which any Credit Party may obtain rights, at any time during the term of this Agreement.

Section 14.02 *Intellectual Property*. The security interest with respect to Intellectual Property constitutes a security interest in, and a charge and pledge of, such Collateral in favour of the Collateral Agent, for the benefit of the Secured Parties, but does not constitute an assignment or mortgage of such Collateral to the Collateral Agent or any Secured Party.

Section 14.03 *Attachment*. Each Credit Party has rights in its Collateral and agrees that the Secured Parties have given value and that the security interests created by this Agreement are intended to attach (a) with respect to Collateral that is now in existence, upon execution of this Agreement, and (b) with respect to Collateral that comes into existence in the future, upon such Credit Party acquiring rights in the Collateral or the power to transfer rights in the Collateral to the Collateral Agent. In each case, the parties do not intend to postpone the attachment of any security interests created by this Agreement.

Section 14.04 *Power of Attorney*. Subject to the entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders, each Credit Party hereby constitutes and appoints the Collateral Agent its true and lawful attorney, irrevocably, with full power after the occurrence of and during the continuance of an Event of Default (in the name of such Credit Party or otherwise) to act, require, demand, receive, compound and give acquittance for any and all moneys and claims for moneys due or to become due to such Credit Party under or arising out of the Collateral, to endorse any cheques or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Collateral Agent may deem to be reasonably necessary or advisable to protect the interests of the Secured Parties, which appointment as attorney is coupled with an interest. Each Credit Party hereby constitutes and appoints the Collateral Agent its true and lawful attorney, irrevocably, with full power after the occurrence of and during the continuance of an Event of Default (in the name of such Credit Party or otherwise) to sign any document which may be required by the United States Patent and Trademark Office, any domain name registrar, the United States Copyright Office, the Canadian Intellectual Property Office or any other governmental authority in order to effect an assignment of all right, title and interest in any Intellectual Property constituting Collateral, and record the same. Each Credit Party hereby constitutes and appoints the Collateral Agent its true and lawful attorney, irrevocably, with full power after the occurrence of and during the continuance of an Event of Default (in the name of such Credit Party or otherwise) to execute and file any IP Security Documents to evidence and perfect the Collateral Agent's security interest in any after-acquired Recordable Intellectual Property.

Section 14.05 *In Addition to Other Rights; No Marshalling*. This Agreement is in addition to and is not in any way prejudiced by or merged with any other security interest or Lien now or subsequently held by the Collateral Agent in respect of any Obligations. The Secured Parties shall be under no obligation to marshal in favour of the Credit Parties any other security interest or Lien or any money or other property that the Secured Parties may be entitled to receive or may have a claim upon.

Section 14.06 *Covenants*. Each Credit Party covenants and agrees with the Collateral Agent (for its own benefit and for the benefit of the other Secured Parties) that:

(a) such Credit Party will keep and maintain proper books and records of its Accounts and Contracts, in which full, true and correct entries in conformity with generally accepted accounting principles and all

Requirements of Law shall be made of all such Accounts and Contracts, and such Credit Party will make the same available on such Credit Party's premises to officers and designated representatives of the Collateral Agent for inspection in accordance with the terms and conditions set forth in this Agreement. Upon the occurrence and during the continuance of an Event of Default and at the request of the Collateral Agent, such Credit Party shall, at its own cost and expense, deliver all tangible evidence of its Accounts and Contract Rights (including, without limitation, all documents evidencing the Accounts and all Contracts) and such books and records to the Collateral Agent or to its representatives (copies of which evidence and books and records may be retained by such Credit Party). Subject to entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders, upon the occurrence and during the continuance of an Event of Default and if the Collateral Agent so requests, such Credit Party shall legend, in form and manner satisfactory to the Collateral Agent, the Accounts and the Contracts, as well as books, records and documents (if any) of such Credit Party evidencing or pertaining to such Accounts and Contracts with an appropriate reference to the fact that such Accounts and Contracts have been assigned to the Collateral Agent and that the Collateral Agent has a security interest therein;

(b) subject to entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders, upon the occurrence and during the continuance of an Event of Default, after giving notice to the relevant Credit Party of its intent to do so, if the Collateral Agent so directs any Credit Party, such Credit Party agrees (i) to cause all payments on account of the Accounts and Contracts to be made directly to the Cash Collateral Account, (ii) that the Collateral Agent may, at its option, directly notify the obligors in its own name or in the name of others with respect to any Accounts and/or under any Contracts to make payments with respect thereto as provided in the preceding clause (i), and (iii) that the Collateral Agent may enforce collection of any such Accounts and Contracts and may adjust, settle or compromise the amount of payment thereof, in the same manner and to the same extent as such Credit Party; provided that, (x) any failure by the Collateral Agent to give or any delay in giving such notice to the relevant Credit Party shall not affect the effectiveness of such notice or the other rights of the Collateral Agent created by this Section 14.06(b) and (y) no such notice shall be required if an Event of Default has occurred and is continuing. Subject to entry and the terms of the Financing Orders, including the Post-Petition Intercreditor Arrangements, without notice to or assent by any Credit Party, the Collateral Agent may, upon the occurrence and during the continuance of an Event of Default, apply any or all amounts then in, or thereafter deposited in, the Cash Collateral Account toward the payment of the Obligations in the manner provided in this Agreement. The reasonable costs and expenses of collection (including reasonable legal fees), whether incurred by a Credit Party or the Collateral Agent, shall be borne by the relevant Credit Party. The Collateral Agent shall deliver a copy of each notice referred to in the preceding clause (y) to the relevant Credit Party, provided that (x) the failure by the Collateral Agent to so notify such Credit Party shall not affect the effectiveness of such notice or the other rights of the Collateral Agent created by this Section and (y) no such notice shall be required if an Event of Default has occurred and is continuing;

(c) except in accordance with such Credit Party's ordinary course of business and consistent with reasonable business judgment, or as permitted hereunder or by the Credit Documents, no Credit Party shall rescind or cancel any indebtedness evidenced by any Account, or modify any material term thereof or make any material adjustment with respect thereto, or extend or renew the same, or compromise or settle any material dispute, claim, suit or legal proceeding relating thereto, or sell any Account, or interest therein, without the prior written consent of the Collateral Agent unless such rescissions, cancellations, modifications, adjustments, extensions, renewals, compromises, settlements, releases, or sales would not reasonably be expected to materially adversely affect the value of the Accounts constituting Collateral taken as a whole. Except as otherwise permitted by the Credit Documents, no Credit Party will do anything to impair the rights of the Collateral Agent in the Accounts or Contracts;

(d) such Credit Party shall endeavor in accordance with historical business practices to cause to be collected from the Account Debtor named in each of its Accounts or obligor under any Contract, as and when due (including, without limitation, amounts which are delinquent, such amounts to be collected in accordance with generally accepted lawful collection procedures) any and all amounts owing under or on account of such Account or Contract, and apply forthwith upon receipt thereof all such amounts as are so collected to the outstanding balance of such Account or under such Contract. Except as otherwise directed by the Collateral Agent after the occurrence and during the continuation of an Event of Default or otherwise required pursuant to the Credit Agreement, any Credit Party may allow in the ordinary course of business as adjustments to amounts owing under its Accounts and Contracts (i) an extension or renewal of the time or times of payment, or settlement for less than the total unpaid balance, which such Credit Party finds appropriate in accordance with reasonable business judgment, (ii) a refund or credit due as a result of returned or damaged merchandise or improperly performed services or for other reasons which such Credit Party finds appropriate in accordance with reasonable business judgment and (iii) any other adjustments necessary or desirable in the Credit Party's reasonable business judgment. The reasonable costs and expenses (including, without limitation, reasonable legal fees) of collection, whether incurred by a Credit Party or the Collateral Agent, shall be borne by the relevant Credit Party;

(e) anything herein to the contrary notwithstanding, the Credit Parties shall remain liable under each of the Accounts to observe and perform all of the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise to such Accounts. Neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any Account (or any agreement giving rise thereto) by reason of or arising out of this Agreement, nor shall the Collateral Agent or any other Secured Party be obligated in any manner to perform any of the obligations of any Credit Party under or pursuant to any Account (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by them or as to the sufficiency of any performance by any party under any Account (or any agreement giving rise thereto), to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to them or to which they may be entitled at any time or times;

(f) anything herein to the contrary notwithstanding, the Credit Parties shall remain liable under each of the Contracts to observe and perform all of the conditions and obligations to be observed and performed by them thereunder, all in accordance with and pursuant to the terms and provisions of each Contract. Neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any Contract by reason of or arising out of this Agreement, nor shall the Collateral Agent or any other Secured Party be obligated in any manner to perform any of the obligations of any Credit Party under or pursuant to any Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any performance by any party under any Contract, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to them or to which they may be entitled at any time or times;

(g) [reserved];

(h) each Credit Party will, at its own expense, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent from time to time such vouchers, invoices, schedules, confirmatory assignments, conveyances, financing statements, transfer endorsements, certificates, reports and other assurances or instruments and take such further steps, including any and all actions as may be necessary or required relating to its Accounts, Contracts, Instruments and other property or rights which constitute Collateral, as the Collateral Agent may reasonably require for the purpose of obtaining or preserving the full benefits of the security interests, rights and powers herein granted;

(i) each Credit Party will do nothing to impair the rights of the Collateral Agent in the Collateral. Each Credit Party or an affiliate on behalf of such Credit Party will at all times maintain insurance, at such Credit Party's own expense to the extent and in the manner provided in the Secured Debt Agreements. If any Event of Default shall have occurred and be continuing, the Collateral Agent shall, at the time any proceeds of such insurance are distributed to the Secured Parties, apply such proceeds in accordance with Section 14.08(e). Each Credit Party assumes all liability and responsibility in connection with the Collateral acquired by it and the liability of such Credit Party to pay the Obligations shall in no way be affected or diminished by reason of the fact that such Collateral may be lost, destroyed, stolen, damaged or for any reason whatsoever unavailable to such Credit Party;

(j) to the extent practicable, each Credit Party agrees that if any warehouse receipt or receipt in the nature of a warehouse receipt is issued with respect to any of its Inventory, such Credit Party shall request that such warehouse receipt or receipt in the nature thereof shall not be a "negotiable" document of title (as such term is used in Section 26(1) of the PPSA or Section 7-104 of the UCC, in each case, as in effect in any relevant jurisdiction or under other relevant law);

(k) each Credit Party will, at its own expense, from time to time upon the reasonable request of the Collateral Agent, promptly furnish to the Collateral Agent such information with respect to the Collateral (including the identity of the Collateral or such components thereof as may have been reasonably requested by the Collateral Agent, the value and location of such Collateral, etc.) as may be requested by the Collateral Agent;

(l) each Credit Party will, at its own expense and upon the reasonable request of the Collateral Agent, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent from time to time such lists, descriptions and designations of its Collateral, warehouse receipts, receipts in the nature of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, conveyances, financing statements, transfer endorsements, certificates, reports and other assurances or instruments and take such further steps relating to the Collateral and other property or rights covered by the security interest hereby granted, which the Collateral Agent deems reasonably appropriate or advisable to perfect, preserve or protect its security interest in the Collateral; provided, that notwithstanding anything herein to the contrary, the Credit Parties shall not be required to (i) take any action to perfect any security interest in any Collateral under the laws of any jurisdiction outside of the United States or Canada or (ii) enter into any control agreement or similar arrangements relating to any Deposit Account; and

(m) each Credit Party agrees to file such financing statements, in form reasonably acceptable to the Collateral Agent, as the Collateral Agent may from time to time reasonably request to establish and maintain a valid, enforceable, perfected security interest in the Collateral as provided herein and for the purpose of obtaining and preserving the full benefits of the other rights and security contemplated hereby. Each Credit Party will pay any applicable filing fees, recordation taxes and related expenses relating to its Collateral. Each Credit Party hereby authorizes the Collateral Agent to file any such financing statements without the signature of such Credit Party where permitted by law (and such authorization includes describing the Collateral as “all assets and all personal property whether now owned or hereafter acquired” or as “all present and after-acquired personal property” of such Credit Party or words of similar effect).

Section 14.07 *Security Representations and Warranties*. Each Credit Party represents and warrants, as applicable, as of the date hereof, as follows:

(a) Such Credit Party is the record and beneficial owner of Securities and Security Entitlements forming part of the Collateral. No security agreement, financing statement or other notice with respect to any or all of the Collateral is on file or on record in any public office, except for filings with respect to Permitted Liens.

(b) The terms of any interest in a partnership or limited liability company that is Collateral expressly provide that such interest is a “security” for the purposes of the Securities Transfer Act (Ontario), as such legislation may be amended, renamed or replaced from time to time, and includes all regulations from time to time made under such legislation.

Section 14.08 *Remedies*.

(a) Each Credit Party agrees that, subject to entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders, if any Event of Default shall have occurred and be continuing, then and in every such case, the Collateral Agent, in addition to any rights now or hereafter existing under applicable law and under the other provisions of this Agreement, shall have all rights as a secured party under any PPSA, any UCC, and such additional rights and remedies to which a secured party is entitled under the laws in effect in all relevant jurisdictions and may:

(i) personally, or by agents or attorneys, immediately take possession of the Collateral or any part thereof, from such Credit Party or any other Person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon such Credit Party's premises where any of the Collateral is located and remove the same and use in connection with such removal any and all services, supplies, aids and other facilities of such Credit Party;

(ii) instruct the obligor or obligors on any agreement, instrument or other obligation (including, without limitation, the Accounts and the Contracts) constituting the Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to the Collateral Agent and may exercise any and all remedies of such Credit Party in respect of such Collateral;

(iii) sell, assign or otherwise liquidate any or all of the Collateral or any part thereof in accordance with Section 14.08(b) hereof, or direct such Credit Party to sell, assign or otherwise liquidate any or all of the Collateral or any part thereof, and, in each case, take possession of the proceeds of any such sale or liquidation;

(iv) take possession of the Collateral or any part thereof, by directing such Credit Party in writing to deliver the same to the Collateral Agent at any reasonable place or places designated by the Collateral Agent, in which event such Credit Party shall at its own expense:

(A) forthwith cause the same to be moved to the place or places so designated by the Collateral Agent and there delivered to the Collateral Agent;

(B) store and keep any Collateral so delivered to the Collateral Agent at such place or places pending further action by the Collateral Agent as provided in Section 14.08(b) hereof; and

(C) while the Collateral shall be so stored and kept, provide such security and maintenance services as shall be reasonably necessary to protect the same and to preserve and maintain it in good condition;

(v) license or sublicense, on a royalty free basis, whether on an exclusive or nonexclusive basis, any Intellectual Property included in the Collateral (in the case of Trademarks, subject to reasonable quality control and in connection with goods and services of a similar type and quality sold by the applicable Credit Party under such Trademarks), subject to those exclusive licenses granted by Credit Parties in effect on the date hereof and those granted by any Credit Party hereafter to the extent permitted by the Credit Agreement for such term and on such conditions and in such manner as the Collateral Agent shall in its sole judgment determine, it being understood that any such license may be exercised, at the option of the Collateral Agent, only upon the occurrence and during the continuation of an Event of Default; provided, that any such license shall be binding upon the Credit Parties notwithstanding any subsequent cure of an Event of Default;

(vi) apply any monies constituting Collateral or proceeds thereof in accordance with the provisions of Section 14.18(e); and

(vii) take any other action as specified in the PPSA or in the UCC;

it being understood that each Credit Party's obligation so to deliver the Collateral is of the essence of this Article 14 and that, accordingly, upon application to a court of equity having jurisdiction, the Collateral Agent shall be entitled to a decree requiring specific performance by such Credit Party of said obligation. By accepting the benefits of this Agreement and each other Security Document, the Secured Parties expressly acknowledge and agree that this Agreement and each other Security Document may be enforced only by the action of the Collateral Agent acting upon the instructions of the Required Lender and that no other Secured Party shall have any right individually to seek to enforce or to enforce this Agreement or to realize upon the security to be granted hereby, it being understood and agreed that such rights and remedies may be exercised by the Collateral Agent or the holders of at least a majority of the outstanding other Obligations, as the case may be, for the benefit of the Secured Parties upon the terms of this Agreement and the other Security Documents.

(b) To the extent permitted by applicable law, subject to entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders:

(i) if any Event of Default shall have occurred and be continuing, then any Collateral repossessed by the Collateral Agent under or pursuant to Section 14.08(a) hereof and any other

Collateral whether or not so repossessed by the Collateral Agent, may be sold, assigned, leased or otherwise disposed of under one or more contracts or as an entirety, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner, at such time or times, at such place or places and on such terms as the Collateral Agent may, in compliance with any mandatory requirements of applicable law, determine to be commercially reasonable. Any of the Collateral may be sold, leased or otherwise disposed of, in the condition in which the same existed when taken by the Collateral Agent or after any overhaul or repair at the expense of the relevant Credit Party which the Collateral Agent shall reasonably determine to be commercially reasonable.

(ii) any such sale, lease or other disposition may be effected by means of a public disposition or private disposition, effected in accordance with the applicable requirements (in each case if and to the extent applicable) of the UCC and the PPSA and/or such other mandatory requirements of applicable law as may apply to the respective disposition.

(iii) the Collateral Agent may, without notice or publication, adjourn any public or private disposition or cause the same to be adjourned from time to time by announcement at the time and place fixed for the disposition, and such disposition may be made at any time or place to which the disposition may be so adjourned.

(iv) to the extent permitted by any such requirement of law, the Collateral Agent may bid for and become the purchaser (and may pay all or any portion of the purchase price by crediting Obligations against the purchase price) of the Collateral or any item thereof, offered for disposition in accordance with this Section 14.08(b) without accountability to the relevant Credit Party.

(v) the Collateral Agent may also accept the Collateral in satisfaction of the Obligations. Each Credit Party agrees to do or cause to be done all such other acts and things as may be reasonably necessary to make such disposition or dispositions of all or any portion of the Collateral valid and binding and in compliance with any and all applicable laws, regulations, orders, writs, injunctions, decrees or awards of any and all courts, arbitrators or governmental instrumentalities, domestic or foreign, having jurisdiction over any such sale or sales, all at such Credit Party's expense.

(c) Subject to entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders, the Collateral Agent may take proceedings in any court of competent jurisdiction for the appointment of a receiver (which term includes a receiver and manager) of the Collateral or may by appointment in writing appoint any person to be a receiver of the Collateral; the Collateral Agent may remove any receiver appointed by it and appoint another in its place, and may determine the remuneration, acting reasonably, of any receiver, which may be paid from the proceeds of the Collateral in priority to other Obligations; any receiver appointed by the Collateral Agent shall, to the extent permitted by applicable law, have all of the rights, benefits and powers of the Collateral Agent under this Agreement, the PPSA or otherwise; any receiver shall be deemed the agent of the Credit Parties and the Collateral Agent shall not be in any way responsible for any misconduct or negligence of any receiver.

(d) Except as otherwise provided in this Agreement, subject to entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders, EACH CREDIT PARTY HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOTICE AND JUDICIAL HEARING IN CONNECTION WITH THE COLLATERAL AGENT'S TAKING POSSESSION OR THE COLLATERAL AGENT'S DISPOSITION OF ANY OF THE COLLATERAL, INCLUDING, WITHOUT LIMITATION, ANY AND ALL PRIOR NOTICE AND HEARING FOR ANY PREJUDGMENT REMEDY OR REMEDIES, and each Credit Party hereby further waives, to the extent permitted by law:

(i) all damages occasioned by such taking of possession or any such disposition except any damages which are the direct result of the Collateral Agent's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision);

(ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Collateral Agent's rights hereunder; and

(iii) all rights of redemption, appraisement, valuation, stay, extension or moratorium now or hereafter in force under any applicable law in order to prevent or delay the enforcement of this Agreement or the absolute sale of the Collateral or any portion thereof, and each Credit Party, for itself and all who may claim under it, insofar as it or they now or hereafter lawfully may, hereby waives the benefit of all such laws.

Any sale of, or the grant of options to purchase, or any other realization upon, any Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the relevant Credit Party therein and thereto, and shall be a perpetual bar both at law and in equity against such Credit Party and against any and all Persons claiming or attempting to claim the Collateral so sold, optioned or realized upon, or any part thereof, from, through and under such Credit Party.

(e) Subject to entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders, all moneys collected by the Collateral Agent (or, to the extent any other Security Document requires proceeds of collateral under such other Security Document to be applied in accordance with the provisions of this Agreement, the Collateral Agent under such other Security Document) upon any sale or other disposition of the Collateral (or the collateral under the relevant Security Document), together with all other moneys received by the Collateral Agent hereunder (or under the relevant Security Document), in each case, as a result of the exercise of remedies by the Collateral Agent after the occurrence and during the continuance of an Event of Default, shall be applied as follows:

(i) first, to the payment of all amounts owing the Collateral Agent in respect of the Obligations and any and all sums advanced by the Collateral Agent in order to preserve the Collateral or preserve its security interest in the Collateral;

(ii) second, to the extent proceeds remain after the application pursuant to the preceding clause (i), to the payment of all amounts owing to any Agent or any of its Affiliates in respect of any amounts paid by any Indemnified Person as to which such Indemnified Person has the right to reimbursement under this Agreement and all amounts owing to any Agent or any of its Affiliates pursuant to any of the Credit Documents in its capacity as such;

(iii) third, to the extent proceeds remain after the application pursuant to preceding clauses (i) through (ii), inclusive, ratably to any other then remaining unpaid Obligations; and

(iv) fourth, to the extent proceeds remain after the application pursuant to the preceding clauses (i) through (iii), inclusive, and following the termination of this Agreement, to the relevant Credit Party or to whomever may be lawfully entitled to receive such surplus.

For purposes of this Article 14, "Pro Rata Share" shall mean, when calculating a Secured Party's portion of any distribution or amount, that amount (expressed as a percentage) equal to a fraction the numerator of which is the then unpaid amount of such Secured Party's Obligations, and the denominator of which is the then outstanding amount of all Obligations. All payments required to be made hereunder shall be made to the Administrative Agent for the account of the Secured Parties.

For purposes of applying payments received in accordance with this Section 14.18(e), the Collateral Agent shall be entitled to rely upon the Administrative Agent for a determination (which the Administrative Agent agrees (or shall agree) to provide upon request of the Collateral Agent) of the outstanding Obligations owed to the Secured Parties. It is understood that the Credit Parties are and shall remain jointly and severally liable to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Obligations.

(f) Subject to entry and the terms of the Post-Petition Intercreditor Arrangements, including the Financing Orders, each and every right, power and remedy hereby specifically given to the Collateral Agent shall be in addition to every other right, power and remedy specifically given to the Collateral Agent under this Agreement, the other Security Documents or now or hereafter existing at law, in equity or by statute and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by the Collateral Agent. All such rights, powers and remedies shall be cumulative and the exercise or the beginning of the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Collateral Agent in the exercise of any such right, power or remedy and no renewal or extension of any of the Obligations shall impair any such right, power or remedy or shall be construed to be a waiver of any Default or Event of Default or an acquiescence thereof. No notice to or demand on any Credit Party in any case shall entitle it to any other or further notice or demand in similar or other circumstances or constitute a waiver of any of the rights of the Collateral Agent to any other or further action in any circumstances without notice or demand. In the event that the Collateral Agent shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Collateral Agent may recover reasonable expenses, including reasonable legal fees, and the amounts thereof shall be included in such judgment.

(g) In case the Collateral Agent shall have instituted any proceeding to enforce any right, power or remedy under this Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Collateral Agent, then and in every such case the relevant Credit Party, the Collateral Agent and each holder of any of the Obligations shall be restored to their former positions and rights hereunder with respect to the Collateral subject to the security interest created under this Agreement, and all rights, remedies and powers of the Collateral Agent shall continue as if no such proceeding had been instituted.

(h) Any amounts paid by any Indemnified Person as to which such Indemnified Person has the right to reimbursement shall constitute Obligations secured by the Collateral. The indemnity obligations of each Credit Party contained in the Credit Agreement shall continue in full force and effect notwithstanding the full payment of all of the other Obligations and notwithstanding the full payment of all the Notes issued, and Term Loans made, under this Agreement and the payment of all other Obligations and notwithstanding the discharge thereof.

* * * * *

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Exhibit "D" to the Affidavit

Of Brian J. Fox, sworn

November 21, 2016

Commissioner for taking affidavits

SARAH L. JENSEN
Notary Public, State of New York
Qualified in King County
No. 02JE6316369
My Commission Expires Dec. 15, 20 18

Court File No. CV-16-11582-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PERFORMANCE SPORTS GROUP LTD., BAUER HOCKEY CORP., BAUER HOCKEY RETAIL CORP., BAUER PERFORMANCE SPORTS UNIFORMS CORP., BPS CANADA INTERMEDIATE CORP., BPS DIAMOND SPORTS CORP., EASTON BASEBALL/SOFTBALL CORP., KBAU HOLDINGS CANADA, INC., PERFORMANCE LACROSSE GROUP CORP., PSG INNOVATION CORP., BAUER HOCKEY RETAIL INC., BAUER HOCKEY, INC., BAUER PERFORMANCE SPORTS UNIFORMS INC., BPS DIAMOND SPORTS INC., BPS US HOLDINGS INC., EASTON BASEBALL/SOFTBALL INC., PERFORMANCE LACROSSE GROUP INC., PSG INNOVATION INC.

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9300-2764 QUEBEC INC. 172, rivière-à-Simon St-Sauveur, QC J0R 1R7	

SKYLINE COMMERCIAL REAL ESTATE HOLDINGS INC. 1655 Russell Road, Suite 200, Unit 2 Ottawa, ON K1G 0N1	
MEO HOLDINGS INC. 10 Bertal Road Toronto, ON M6M 4M4	
RIOCAN REAL ESTATE INVESTMENT TRUST 2300 Yonge Street, Suite 500, PO Box 2386 Toronto, ON M4P 1E4	
RIOCAN MANAGEMENT INC. 700 Lawrence Avenue West, Suite 315 Toronto, ON M6A 3B4	
GOLDER ASSOCIATES LTD. 6925 Century Avenue, Suite 100 Mississauga, ON L5N 7K2	
GOVERNMENT ENTITIES AND UNIONS	
DEPARTMENT OF JUSTICE Ontario Regional Office Tax Law Services Division The Exchange Tower 130 King St. West, Suite 3400, Box 36 Toronto, ON M5X 1K6	
MINISTRY OF THE ATTORNEY GENERAL OF ONTARIO McMurtry-Scott Building 720 Bay Street, 11th Floor Toronto, ON M7A 2S9	**Insolvency Unit** Email: insolvency.unit@ontario.ca
MINISTRY OF FINANCE OF ONTARIO 33 King Street West Oshawa, ON L1H 8H5	
MINISTÈRE DE LA JUSTICE DU QUÉBEC Édifice Louis-Philippe-Pigeon 1200, route de l'Église, 6e étage Québec, QC G1V 4M1	

REVENU QUÉBEC 1265, boul. Charest Quest, secteur C65-61 Quebec, QC G1N 4V5	**Pierre Jobidon** Tel: (418) 577-0289 Email: Pierre.Jobidon@revenuquebec.ca
NOVA SCOTIA DEPARTMENT OF JUSTICE 1690 Hollis Street, P.O. Box 7 Halifax, NS B3J 2L6	
BRITISH COLUMBIA REVENUE AND TAXATION GROUP Legal Services Branch 400 – 1675 Douglas Street Victoria, BC V8W 2G5	**Revenue and Taxation Group Legal Services Branch** E-mail: aglsbrevtax@gov.bc.ca Fax: (250) 387-0700
NOVA SCOTIA DEPARTMENT OF FINANCE AND TREASURY BOARD 1723 Hollis Street, P.O. Box 187 Halifax, NS B3J 2N3	
LOCAL 967, UNITED STEELWORKERS' UNION OF AMERICA 5100-565 Crémazie Boulevard East Montreal, QC H2M 2V8 **Union Chapter for Employees at Blainville Facility**	

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

Court File No: CV-16-11582-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PERFORMANCE SPORTS GROUP LTD. ET. AL.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF BRIAN J. FOX
(SWORN NOVEMBER 21, 2016)

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199 Bay Street
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Lawyers for the Applicants

TAB 2

Court File No. CV-16-11582-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	MONDAY, THE 31ST
	)	
JUSTICE NEWBOULD	)	DAY OF OCTOBER, 2016

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PERFORMANCE SPORTS GROUP LTD., BAUER HOCKEY CORP., BAUER HOCKEY RETAIL CORP., BAUER PERFORMANCE SPORTS UNIFORMS CORP., BPS CANADA INTERMEDIATE CORP., BPS DIAMOND SPORTS CORP., EASTON BASEBALL/SOFTBALL CORP., KBAU HOLDINGS CANADA, INC., PERFORMANCE LACROSSE GROUP CORP., PSG INNOVATION CORP., BAUER HOCKEY RETAIL INC., BAUER HOCKEY, INC., BAUER PERFORMANCE SPORTS UNIFORMS INC., BPS DIAMOND SPORTS INC., BPS US HOLDINGS INC., EASTON BASEBALL/SOFTBALL INC., PERFORMANCE LACROSSE GROUP INC., PSG INNOVATION INC.

(**Applicants**)

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Mark Vendetti sworn October 31, 2016 (the "**Vendetti Affidavit**") and the Exhibits thereto, the affidavit of Brian J. Fox sworn November 13, 2016 and the Exhibits thereto, the prefiling report of Ernst & Young Inc. ("**EY**") in its capacity as proposed monitor (the "**Monitor**") to the Applicants dated October 31, 2016, and the second report of the Monitor dated November ●, 2016 and on hearing the submissions of counsel for the Applicants, the Monitor, the ABL DIP Lenders (as defined below), Sagard Capital Ltd. ("**Sagard**"), Fairfax Financial Holdings Limited ("**Fairfax**"), the ad hoc committee of certain Pre-Filing Term Lenders (as defined below) (the "**Ad Hoc Committee of Pre-Filing Term Lenders**"), and the directors of Performance Sports Group Ltd. ("**PSG**"), no one appearing for any other party although duly served as appears from the affidavit of service of ●, sworn ● and on reading the consent of EY to act as the Monitor.

SERVICE

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

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to

retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Vendetti Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as defined below) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that, subject to the terms of the ABL DIP Agreement (as defined below) and the Term Loan DIP Credit Agreement (as defined below) and the Budget (as defined in the ABL DIP Agreement), the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges;

(c) amounts owing for goods and services actually supplied to the Applicants, or to obtain the release of goods contracted for prior to the date of this Order:

(i) by common carriers, dedicated carriers, freight-forwarders, ocean and lake carriers, parcel carriers, consolidators, brokers and customs agents, with the prior consent of the Monitor for any amounts in excess of $5,000 per transaction, if, in the opinion of the Applicants, it is necessary to prevent the possibility of possessory liens being asserted against any raw materials or finished products ("**Merchandise**") and to continue their business uninterrupted;

(ii) by third-party warehousers, distributors and logistics providers, based at various locations, with the prior consent of the Monitor for any amounts in excess of $5,000, if, in the opinion of the Applicants, it is necessary to prevent the possibility of possessory liens being asserted against any Merchandise and to continue their business uninterrupted;

(iii) by third parties such as contractors, builders, and repairers, who may potentially assert liens under applicable law against the Applicants, with the prior consent of the Monitor and in the aggregate maximum amount of $3,000,000, if, in the opinion of the Applicants, it is necessary to prevent the possibility of liens, whether possessory or non-possessory, being asserted against any Property and to continue their business uninterrupted;

(iv) by non-United States or Canadian suppliers from which the Applicants source their manufacturing operations who the

Applicants have determined to be critical to the continued operations of the their business, with the prior consent of the Monitor for any amounts in excess of $10,000;

(v) with the prior consent of the Monitor for amounts in excess of $5,000, by any suppliers who delivered goods to the U.S. PSG Entities (as defined in the Vendetti Affidavit) in the twenty days before their filing date in the United States, provided that such suppliers are entitled to be paid pursuant to section 503(9) of Chapter 11 of Title 11 of the United States Code ("**U.S. Code**");

(vi) by any other suppliers, with the prior consent of the Monitor for any amounts in excess of $10,000, if, in the opinion of the Applicants, the supplier is critical to the business and ongoing operations of the Applicants;

(d) any amounts owing in connection with the Applicants' customer programs, which include gift cards, loyalty programs, discounts, warranties allowing refunds and exchanges, and other offers or accommodations the Applicants, in their business judgment, provide to their wholesale customers and/or directly to retail customers;

(e) any province, state or federal taxes or fees up to an individual amount of $1,000 and up to $15,000 in the aggregate; and

(f) any amounts owing to employees or former employees of the Applicants on account of termination or severance obligations in connection with the termination of such employees' employment with Applicants.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this

Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sale Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. **THIS COURT ORDERS** that until a real property lease in respect of property located in Canada is disclaimed or resiliated in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, in accordance with the terms of the lease, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court:

(a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date, provided however that the Applicants are hereby authorized and directed to make: (i) all such payments under the ABL DIP Agreement (as defined below), including amounts under the pre-filing asset-based revolving credit facility and interest thereon; and (ii) all payments authorized under the Term Loan DIP Credit Agreement (as defined below), including the payments necessary to complete the Refinancing (as defined in the Term Loan DIP Credit Agreement) and (iii) all payments of interest (at the applicable default rate), fees, costs, expenses (including professional advisor fees and expenses) indemnities and other amounts owing under the term loan credit agreement dated April 15, 2014 (as amended, restated and otherwise modified, the "**Term Loan Agreement**") between PSG, as borrower, and a syndicate of lenders, as lenders, (the "**Pre-Filing Term Lenders**"); provided that the lenders ("**Pre-Filing ABL Lenders**") under the Applicants' revolving ABL credit facility shall be entitled to apply receipts and deposits (not including any deposits on account of any advances made under any DIP facility) made to the Applicants' bank accounts against the indebtedness of the Applicants pursuant to their pre-filing ABL credit agreement, whether such indebtedness arose before or after the date of this Order;

(b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property other than as may be contemplated by the U.S. Court (as defined below) in respect of the Applicants' proceedings under Chapter 11 of the U.S. Code; and

(c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the ABL DIP Definitive Documents or Term Loan DIP Definitive Documents (as defined below), have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding $250,000 in any one transaction or $1,000,000 in the aggregate;

(b) terminate the employment of such of their employees or temporarily lay off such of its employees as it deems appropriate; and

(c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises in Canada 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 Canadian leased premises to observe such removal and, if the landlord disputes the Applicants' 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 Applicant, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such Canadian leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such

landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including November 30, 2016, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**" and collectively "**Proceedings**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (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 RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, 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 Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants 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 Business or the Applicants, 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 Applicants, and that the Applicants shall be entitled to the continued use of their current premises, 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 Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this

Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of USD $7.5 million, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 57 and 60 herein.

22. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or

claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPROVAL OF ENGAGEMENT OF CHIEF RESTRUCTURING OFFICER

23. **THIS COURT ORDERS** that the agreement dated as of October 24, 2016 (the "**CRO Engagement Letter**") pursuant to which the Applicants have engaged the services of Brian J. Fox to act as the chief restructuring officer of the Applicants (the "**CRO**"), is hereby approved as of the date of the CRO Engagement Letter, including, without limitation, the payment of fees and expenses contemplated thereby, and the Applicants are authorized to continue the engagement of the CRO on the terms set out in the CRO Engagement Letter.

24. **THIS COURT ORDERS** that the CRO shall be entitled to the benefit of the Administration Charge (as defined below) in respect of any obligations of the Applicants under the CRO Engagement Letter, whether for payment of compensation, fees, expenses, indemnities or otherwise~~ to the extent not paid pursuant to the Carve Out (as defined in the ABL DIP Agreement)~~.

25. **THIS COURT ORDERS** that any claims of the CRO under the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**") in respect of the Applicants.

26. **THIS COURT ORDERS** that the CRO shall incur no liability or obligations as a result of its engagement or the carrying out of its mandate under the CRO Engagement Letter, save and except for gross negligence or willful misconduct on its part.

APPROVAL OF ENGAGEMENT OF CENTERVIEW

27. **THIS COURT ORDERS** that the agreement dated August 19, 2016 (the "**CV Engagement Letter**") between the Applicants and Centerview Partners LLC ("**Centerview**") pursuant to which the Applicants have engaged the services of Centerview, is hereby approved as of the date of the CV Engagement Letter, including, without limitation, the payment of fees and expenses contemplated thereby, and the Applicants are authorized to continue the engagement of Centerview on the terms set out in the CV Engagement Letter.

28. **THIS COURT ORDERS** that Centerview shall be entitled to the benefit of the Administration Charge (as defined below) in respect of any obligations of the Applicants under the CV Engagement Letter, whether for payment of compensation, fees, expenses, indemnities or otherwise~~ to the extent not paid pursuant to the Carve-Out~~.

29. **THIS COURT ORDERS** that any claims of Centerview under the CV Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Applicants.

30. **THIS COURT ORDERS** that Centerview shall incur no liability or obligations as a result of its engagement or the carrying out of its mandate under the CV Engagement Letter, save and except for gross negligence or willful misconduct on its part.

APPROVAL OF CLAIMS AND NOTICING AGENT

31. **THIS COURT ORDERS** that the agreement dated as of September 29, 2016 (the "**Prime Clerk Engagement Letter**"), pursuant to which the Applicants have engaged Prime Clerk LLC to act claims and noticing agent in the United States (the "**Claims and Noticing Agent**") is hereby approved as of the date of the Prime Clerk Engagement Letter, including without limitation, the payment of fees and expenses contemplated thereby, and the Applicants are authorized to continue the engagement of the Claims and Noticing Agent on the terms set out in the Prime Clerk Engagement Letter.

APPOINTMENT OF MONITOR

32. **THIS COURT ORDERS** that EY is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

33. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the ABL DIP Lenders, the Term Loan DIP Lenders, the

Pre-Filing ABL Lenders, the Pre-Filing Term Lenders (until the Refinancing been completed) and their respective counsel, financial and other information as agreed to between the Applicants and the ABL DIP Lenders, the Term Loan DIP Lenders, the Pre-Filing ABL Lenders, and the Pre-Filing Term Lenders (until the Refinancing has been completed), which may be used in these proceedings including reporting on a basis to be agreed with the ABL DIP Lenders, the Term Loan DIP Lenders, and the Pre-Filing ABL Lenders;

(d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the ABL DIP Lenders and the Term Loan DIP Lenders, which information shall be reviewed with the Monitor and delivered to the ABL DIP Lenders, the Term Loan DIP Lenders, and the Pre-Filing ABL Lenders and their respective counsel;

(e) advise the Applicants in their development of the Plan and any amendments to the Plan;

(f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform their duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(i) monitor and have full access to and transparent and timely information regarding the sale process of the Applicants; and

(j) perform such other duties as are required by this Order or by this Court from time to time.

34. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

35. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor 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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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.

36. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants, including the Pre-Filing ABL Lenders, the Pre-Filing Term Lenders, the ABL

DIP Lenders and the Term Loan DIP Lenders, with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

37. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

38. **THIS COURT ORDERS** that the Monitor, United States and Canadian counsel to the Monitor, United States and Canadian counsel to the Applicants, and counsel to the directors of PSG (the "**Case Professionals**") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Case Professionals on a weekly basis and, in addition, the Applicants are hereby authorized to pay to the Case Professionals retainers in amounts of CAD $100,000 for each Canadian counsel and for the Monitor and USD $100,000 for each United States counsel, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

39. **THIS COURT ORDERS** that the Monitor and its United States and Canadian counsel shall pass their accounts from time to time, and for this purpose the accounts of

the Monitor and its United States and Canadian counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

40. **THIS COURT ORDERS** that the Case Professionals, the CRO and Centerview shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed USD $3.75 million in respect of the Fixed Asset (Term) Priority Collateral (as defined in the Vendetti Affidavit), USD $3.75 million in respect of the ABL Priority Collateral (as defined in the Vendetti Affidavit) ~~and~~for an aggregate amount of USD $7.5 million on all Property (including the Fixed Asset (Term) Priority Collateral and the ABL Priority Collateral), in each case plus all accrued and unpaid fees, disbursements, costs and expenses incurred by the Case Professionals, the CRO and Centerview as at the date on which notice is delivered in in the Chapter 11 Proceedings (as defined in the Vendetti Affidavit) requiring the Applicants to fund the Carve-Out~~ in respect of the Property~~, as security for their professional fees and disbursements incurred at the standard rates and charges of the Case Professionals, the CRO and Centerview. The Administration Charge shall have the priority set out in paragraphs 57 and 60 herein. For greater certainty, the Administration Charge is included in the Carve-Out and shall not be duplicative of the Carve-Out.

ABL DIP FINANCING

41. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "**ABL DIP Facility**") from the lenders party to the ABL DIP Agreement (as defined below) (collectively, the "**ABL DIP Lenders**") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed USD $200 million unless permitted by further Order of this Court.

42. **THIS COURT ORDERS** that the ABL DIP Facility shall be on the terms and subject to the conditions set forth in the Superpriority Debtor-In-Possession ABL Credit

Agreement dated as of October 31, 2016 between the Applicants and the ABL DIP Lenders (the "**ABL DIP Agreement**").

43. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**ABL DIP Definitive Documents**"), as are contemplated by the ABL DIP Agreement or as may be reasonably required by the ABL DIP Lenders pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the ABL DIP Lenders under and pursuant to the ABL DIP Agreement and the ABL DIP Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

44. **THIS COURT ORDERS** that the ABL DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**ABL DIP Charge**") on the Property, which ABL DIP Charge shall not secure an obligation that exists before the date of this Order. The ABL DIP Charge shall have the priority set out in paragraphs 57 and 60 herein.

45. **THIS COURT ORDERS** that, subject to the ABL/Term Intercreditor Agreement dated as of October 31, 2016 (the "**Post-Filing ICA**"), notwithstanding any other provision of this Order:

(a) the ABL DIP Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the ABL DIP Charge or any of the ABL DIP Definitive Documents;

(b) upon the occurrence of an event of default under the ABL DIP Definitive Documents or the ABL DIP Charge, the ABL DIP Lenders, upon 7 days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the ABL

DIP Agreement, ABL DIP Definitive Documents and the ABL DIP Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the ABL DIP Lenders to the Applicants against the obligations of the Applicants to the ABL DIP Lenders under the ABL DIP Agreement, the ABL DIP Definitive Documents or the ABL DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the ABL DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

46. **THIS COURT ORDERS AND DECLARES** that the ABL DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the BIA, with respect to any advances made under the ABL DIP Agreement and the ABL DIP Definitive Documents.

TERM LOAN DIP FINANCING

47. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "**Term Loan DIP Facility**") from 9938982 Canada Inc. and the other lenders party to the Term Loan DIP Credit Agreement (as defined below) (collectively, the "**Term Loan DIP Lenders**") in order to complete the Refinancing (as defined below) and to finance the Business and general corporate purposes and capital expenditures of the Applicants, provided that (a) the Applicants shall not be permitted to borrow under any Delayed Draw Term Loans (as defined in the Term Loan DIP Credit Agreement) until the Refinancing has been

completed; and (b) borrowing under such credit facility shall not exceed USD $361.3 million unless permitted by further order of this Court.

48. **THIS COURT ORDERS** that the Term Loan DIP Facility shall be on the terms and subject to the conditions set forth in the Superpriority Debtor-In-Possession Term Loan Credit Agreement dated as of October 31, 2016 between the Applicants and the Term Loan DIP Lenders (the "**Term Loan DIP Credit Agreement**").

49. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Term Loan DIP Definitive Documents**"), as are contemplated by the Term Loan DIP Credit Agreement or as may be reasonably required by the Term Loan DIP Lenders pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the Term Loan DIP Lenders under and pursuant to the Term Loan DIP Credit Agreement and the Term Loan DIP Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

50. **THIS COURT ORDERS** that the Term Loan DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**Term Loan DIP Charge**") on the Property, which Term Loan DIP Charge shall not secure an obligation that existed before the date of this Order. The Term Loan DIP Charge shall have the priority set out in paragraphs 57 and 60 herein.

51. **THIS COURT ORDERS** that, subject to the Post-Filing ICA, notwithstanding any other provision of this Order:

(a) the Term Loan DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect or any of the Term Loan DIP Definitive Documents;

(b) upon the occurrence of an event of default under the Term Loan DIP Definitive Documents or the Term Loan DIP Charge, Term Loan DIP Lenders, upon 7 days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Term Loan DIP Credit Agreement and Term Loan DIP Definitive Documents or the Term Loan DIP Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the Term Loan DIP Lenders to the Applicants against the obligations of the Applicants to the Term Loan DIP Lenders under the Term Loan DIP Credit Agreement, the Term Loan DIP Definitive Documents or the Term Loan DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the Term Loan DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

52. **THIS COURT ORDERS AND DECLARES** that the Term Loan DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the BIA, with respect to any advances made under the Term Loan DIP Credit Agreement and the Term Loan DIP Definitive Documents.

REFINANCING

53. **THIS COURT ORDERS** that the Refinancing is hereby approved and the Applicants are authorized and directed to carry out the Refinancing in accordance with the terms of the Term Loan DIP Credit Agreement and are further authorized and

empowered to complete all transactions and take all actions necessary or desirable to complete the Refinancing.

54. **THIS COURT ORDERS** that, subject to the terms of the Term Loan DIP Credit Agreement, the Applicants shall (a) repay in full the obligations outstanding under the Term Loan Agreement (the "~~**Prepetition**~~**Pre-Filing** **Term Loan Obligations**") by distributing the proceeds of the applicable refinancing loans advanced under the Term Loan DIP Facility pursuant to the Term Loan DIP Credit Agreement to the administrative agent under the Term Loan Agreement (the "~~**Prepetition**~~**Pre-Filing** **Term Loan Agent**"), and (b) pay in full all of the reasonable fees and expenses of the ~~Prepetition~~Pre-Filing Term Loan Agent and of the professional advisors retained by the Ad Hoc Committee of ~~Prepetition~~Pre-Filing Term Lenders or the ~~Prepetition~~Pre-Filing Term Loan Agent, and (c) upon receipt of the Applicants' payment in satisfaction of the ~~Prepetition~~Pre-Filing Term Loan Obligations contemplated in subparagraph (a) above, the ~~Prepetition~~Pre-Filing Term Loan Agent shall be authorized and directed to make distributions to the ~~Prepetition~~Pre-Filing Term Lenders in accordance with the Term Loan Agreement.

55. **THIS COURT ORDERS** that notwithstanding:

(a) the pendency of these proceedings

(b) any assignment in bankruptcy or any petition for a bankruptcy order now or hereafter issued pursuant to the BIA and any order issued pursuant to any such petition;

(c) any application for a receivership order; or

(d) any provisions of any federal or provincial legislation;

and subject to any other applicable laws, the payments, distributions, and disbursements to or for the account of the ~~Prepetition~~Pre-Filing Term Lenders, the ~~Prepetition~~Pre-Filing

Term Loan Agent and the professionals retained by the Ad Hoc Committee of ~~Prepetition~~Pre-Filing Term Lenders or the ~~Prepetition~~Pre-Filing Term Loan Agent in connection with the Refinancing, shall be made, free and clear of any Encumbrances (as defined below), including the Charges, shall be binding on any trustee in bankruptcy, interim receiver or receiver that may be appointed in respect of any of the Applicants, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Applicants, the Monitor, the Term Loan DIP Lenders and the Pre-Filing Term Lenders and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

INTERCOMPANY FINANCING

56. **THIS COURT ORDERS** that to the extent that any one or more of the Applicants (the "**Lending Applicant**") after the date of this Order, makes any payment or incurs or discharges any obligation that is a payment or obligation of any~~ of~~ one or more of the other Applicants or otherwise transfers value to or for the benefit of one or more of the other Applicants, each of the Lending Applicants are hereby granted a charge (the "**Intercompany Charge**") on all of the Property in the amount of such payment or obligation or transfer. The Intercompany Charge shall have the priority set out in paragraphs 57 and 60 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

57. **THIS COURT ORDERS** that, until further Order of this Court and subject to paragraph 58 of this Order, the priorities of the Directors' Charge, the Administration Charge, the ABL DIP Charge, Term Loan DIP Charge and the Intercompany Charge, as among them and certain existing encumbrances, shall be, with respect to the type of collateral at issue, as follows:

(a) With respect to the Fixed Asset (Term) Priority Collateral:

First – the Administration Charge (to the maximum amount of USD $3.75 million plus all accrued and unpaid fees, disbursements, costs and expenses incurred by the Case Professionals, the CRO and Centerview as at the date on which notice is delivered in the Chapter 11 Proceedings requiring the Applicants to fund the Carve-Out in respect of the Property specifically in respect of the Fixed Asset (Term) Priority Collateral);

Second – the Term Loan DIP Charge;

Third – the Pre-Filing Term Loan Facility Security (as defined in the Vendetti Affidavit) to the extent obligations are outstanding under the Term Loan Agreement, if any;

Fourth – the ABL DIP Charge;

Fifth – the Pre-Filing ABL Facility Security (as defined in the Vendetti Affidavit);

Sixth – the Directors' Charge ~~(to the maximum amount of USD $7.5 million)~~; and

Seventh – the Intercompany Charge.

(b) With respect to the ABL Priority Collateral:

First – the Administration Charge (to the maximum amount of USD $3.75 million plus all accrued and unpaid fees, disbursements, costs and expenses incurred by the Case Professionals, the CRO and Centerview as at the date on which notice is delivered in the Chapter 11 Proceedings requiring the Applicants to fund the Carve-Out in respect of the Property specifically in respect of the ABL Priority Collateral);

Second – the ABL DIP Charge;

Third – the Pre-Filing ABL Facility Security;

Fourth – the Pre-Filing Term Loan Facility Security (prior to the Refinancing);

Fifth – the Term Loan DIP Charge;

Sixth – the Directors' Charge ~~(to the maximum amount of USD $7.5 million)~~; and

Seventh – the Intercompany Charge.

(c) With respect to the assets, property and undertakings of PSG Innovation Corp. and PSG Innovation Inc. (the "**PSG Innovation Collateral**"):

First – the Administration Charge ~~(to the maximum amount of USD $7.5 million)~~;

Second – the Term Loan DIP Charge;

Third – the ABL DIP Charge;

Fourth – the Directors' Charge ~~(to the maximum amount of USD $7.5 million)~~; and

Fifth – the Intercompany Charge.

(d) With respect to all other Property that is not Fixed Asset (Term) Priority Collateral or ABL Priority Collateral or PSG Innovation Collateral:

First – the Administration Charge ~~(to the maximum amount of USD $7.5 million)~~;

Second – the Term Loan DIP Charge;

Third – the ABL DIP Charge;

Fourth – the Directors' Charge~~ (to the maximum amount of USD $7.5 million)~~; and

Fifth – the Intercompany Charge.

provided, however, that (i) as between the Pre-Filing ABL Lenders, the ABL DIP Lenders and the Term Loan DIP Lenders, nothing in this Order shall derogate from the priorities agreed to by them in the Post-Filing ICA; and (ii) to the extent the PSG Innovation Collateral or the Property described in Paragraph 57(d) above would otherwise constitute ABL Priority Collateral, it shall be treated as such (and otherwise shall be treated as Fixed Asset (Term) Priority Collateral as reflected above).

58. **THIS COURT ORDERS** that, upon completion of the Refinancing, until further Order of this Court, the priorities of the Directors' Charge, the Administration Charge, the ABL DIP Charge, Term Loan DIP Charge and the Intercompany Charge, as among them and certain existing encumbrances, shall be, with respect to the ABL Priority Collateral:

First – the Administration Charge (to the maximum amount of USD $3.75 million specifically in respect of the ABL Priority Collateral);

Second – the ABL DIP Charge;

Third – the Pre-Filing ABL Facility Security;

Fourth – the Term Loan DIP Charge;

Fifth – the Directors' Charge (to the maximum amount of USD $7.5 million);

Sixth – the Intercompany Charge; and

Seventh – the Pre-Filing Term Loan Facility Security to the extent obligations are outstanding under the Term Loan Agreement, if any.

59. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the ABL DIP Charge, the Term Loan DIP Charge, the Intercompany Charge or the Director's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

60. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person except as specifically as set out in paragraph 57.

61. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor, the ABL DIP Lenders, the Term Loan DIP Lenders and the beneficiaries of the Intercompany Charge, the Directors' Charge and the Administration Charge, or further order of this Court.

62. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the Term Loan DIP Credit Agreement, the Term Loan DIP Definitive Documents, the Term Loan DIP Charge, the ABL DIP Agreement, the ABL DIP Definitive Documents and the ABL DIP Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the

"**Chargees**") and/or the ABL DIP Lenders and the Term Loan DIP Lenders thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ABL DIP Agreement, the ABL DIP Definitive Documents, the Term Loan DIP Credit Agreement and Term Loan DIP Definitive Documents, shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants~~ entering into~~' execution, delivery or performance of the ABL DIP Agreement, the Term Loan DIP Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the ABL DIP Definitive Documents or the Term Loan DIP Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, ABL DIP Agreement, the ABL DIP Definitive Documents, the Term Loan DIP Credit Agreement and the Term Loan DIP Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

63. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

CROSS BORDER PROTOCOL

64. **THIS COURT ORDERS** that the cross border protocol, in the form attached as Schedule "1" hereto, is hereby approved and shall become effective upon its approval by the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") and the parties to these proceedings and any other Person shall be governed by it and shall comply with same.

SERVICE AND NOTICE

65. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the national edition of *The Globe and Mail*, the *Wall Street Journal* and *Le Devoir* a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $5,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that, for the purposes of this list, the Monitor shall not make the names and addresses of creditors who are individuals publicly available.

66. **THIS COURT ORDERS** that the Applicants shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to

time, on the Case Website (as defined below) as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

67. **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/eservice-commercial/) 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 (the "**Case Website**") shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/psg.

68. **THIS COURT ORDERS** that the Claims and Noticing Agent is entitled to serve and distribute all motion materials and other notices in these proceedings on behalf of the Applicants and the Monitor (when and if so instructed by the Applicants or the Monitor) by electronic service in accordance with the Protocol.

69. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants, the Monitor and the Claims and Noticing Agent are 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 Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants 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.

70. **THIS COURT ORDERS** that, except with respect to urgent motions, all motions in this proceeding are to be brought on not less than seven (7) days' notice to all persons on the Service List and shall specify a date and time for the hearing of the motion.

GENERAL

71. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

72. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

73. **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 Applicants, the Monitor and their respective 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

74. **THIS COURT ORDERS** that each of the Applicants and the Monitor 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 Monitor 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.

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

76. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

Court File No. CV-16-11582-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PERFORMANCE SPORTS GROUP LTD ET. AL.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

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Document 1 ID	PowerDocs://SETOR1/6637590/6
Description	SETOR1-#6637590-v6-PSG_CCAA_Amended_Initial_Order
Document 2 ID	PowerDocs://SETOR1/6637590/7
Description	SETOR1-#6637590-v7-PSG_CCAA_Amended_Initial_Order
Rendering set	standard

Legend:	
Insertion	
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~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	25
Deletions	26
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	51

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

Court File No. CV-16-11582-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PERFORMANCE SPORTS GROUP LTD. ET AL.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

SUPPLEMENTARY MOTION RECORD OF THE APPLICANTS
(Returnable November 30, 2016)
(Re: Sales Process and Comeback Motion)

STIKEMAN ELLIOTT LLP
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