

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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	:	
<i>In re:</i>	:	<b>Chapter 11</b>
	:	
FURNITURE BRANDS INTERNATIONAL, INC.,	:	<b>Case No. 13-12329 (CSS)</b>
<i>et al.</i>	:	
	:	<b>(Jointly Administered)</b>
	:	
Debtors. <sup>1</sup>	:	<b>Re: Dkt. No. 230</b>
	:	
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**NOTICE OF FILING OF SUPPLEMENT TO OMNIBUS OBJECTION  
OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

**PLEASE TAKE NOTICE** that on September 9, 2013 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the District of Delaware;

**PLEASE TAKE FURTHER NOTICE** that on the Petition Date, the Debtors filed the *Debtors Motion for Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to Bankruptcy Code Sections 105, 361, 362, 363, and 364, (B) to Utilize Cash Collateral Pursuant to Bankruptcy Code Section 363; and (C) to Refinance Existing ABL Credit Agreement Pursuant to Bankruptcy Code Section 363; (II) Granting Adequate Protection to Existing Term Loan Lenders Pursuant to Bankruptcy Code Sections 361, 362, 363, and 364; and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001 [D.I. 21];*

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax indemnification number, as applicable, are: Furniture Brands International, Inc. (7683); Action Transport, Inc. (7587); Broyhill Furniture Industries, Inc. (3217); Broyhill Home Furnishings, Inc. (8844); Broyhill Retail, Inc. (8843); Broyhill Transport, Inc. (1721); Furniture Brands Holdings, Inc. (2837); Furniture Brands Operations, Inc. (4908); Furniture Brands Resource Company, Inc. (1288); HDM Furniture Industries, Inc. (7484); HDM Retail, Inc. (6125); HDM Transport, Inc. (4378); Lane Furniture Industries, Inc. (5064); Lane Home Furnishings Retail, Inc. (9085); Laneventure, Inc. (8434); Maitland-Smith Furniture Industries, Inc. (7486); Thomasville Furniture Industries, Inc. (6574); Thomasville Home Furnishings, Inc. (3139); Thomasville Retail, Inc. (f/k/a Classic Design Furnishings, Inc.) (6174). The Debtors’ corporate headquarters is located at 1 N. Brentwood Blvd., St. Louis, Missouri 63105.

**PLEASE TAKE FURTHER NOTICE** that also on the Petition Date, the Debtors filed the *Motion for Orders: (I) Approving (A) Bidding Procedures; (B) Form and Manner of Notices; (C) Form of Asset Purchase Agreement, Including Bid Protections; (II) Scheduling Dates to Conduct Auction and Hearing to Consider Final Approval of Sale, Including Treatment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief; and (IV)(A) Approving Sale of Substantially All of Acquired Assets; (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* [D.I. 26];

**PLEASE TAKE FURTHER NOTICE** that on September 30, 2013, the Committee filed the *Omnibus Objection to Debtors' (I) Motion for a Final Order Authorizing the Debtors to Obtain Post-Petition Financing and (II) Motion for an Order Approving Bidding Procedures for the Sale of Substantially all of the Debtors' Assets and Related Relief* [D.I. 230] (the "Objection"); and

**PLEASE TAKE FURTHER NOTICE** that in accordance with the Objection, the Committee hereby files this Supplement attaching the following relevant documents in connection with the proposal submitted by KPS Capital Partners, L.P.:

**EXHIBIT A:** Proposed *Asset Purchase Agreement*, dated September 30, 2013;

**EXHIBIT B:** Blackline comparison of the *Asset Purchase Agreement*, dated September 30, 2013 marked against the *Asset Purchase Agreement* [D.I. 224], dated September 28, 2013, submitted by the Debtors in connection with the Oaktree Capital Management L.P. ("Oaktree") proposal.

**EXHIBIT C:** Proposed *Bidding Procedures*;

**EXHIBIT D:** Blackline comparison of proposed *Bidding Procedures* marked against the *Bidding Procedures* [D.I. 26] submitted by the Debtors in connection with the Oaktree proposal;

**EXHIBIT E:** Proposed *Final Order (I) Authorizing the Debtors To (A) Obtain Post-Petition Financing on a Superpriority, Senior Secured Basis, (B) Use Cash Collateral, Repay Existing Post-Petition Loan in Full, (II) Granting Adequate Protection to Certain Prepetition Lenders and (III) Modifying the Automatic Stay* (the “KPS Proposed Final DIP Order”);

**EXHIBIT F:** Blackline comparison of the KPS Proposed Final DIP Order marked against the *Final Order (I) Authorizing the Debtors To (A) Obtain Post-Petition Financing on a Superpriority, Senior Secured Basis, (B) Use Cash Collateral, Repay the Prepetition Revolver in Full (II) Granting Adequate Protection to Certain Prepetition Lenders and (III) Modifying the Automatic Stay* [D.I. 243] submitted by the Debtors in connection with Oaktree proposal;

**EXHIBIT G:** Proposed *Senior Secured Super-Priority Debtor in Possession Credit Agreement*, dated September 30, 2013 (the “KPS DIP Agreement”);

**EXHIBIT H:** Blackline comparison of the proposed KPS DIP Agreement marked against the *Senior Secured Super-Priority Debtor in Possession Credit Agreement* [D.I. 225], dated September 28, 2013, submitted by the Debtors in connection with the Oaktree proposal.

Dated: September 30, 2013

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*Proposed Co-Counsel to The Official Committee of Unsecured Creditors of Furniture Brands International, Inc., et al.*

**EXHIBIT A**

**ASSET PURCHASE AGREEMENT**

**dated as of [\_\_\_\_\_], 2013**

**among**

**FURNITURE BRANDS INTERNATIONAL, INC.,**

**THE OTHER SELLERS NAMED HEREIN,**

**FBN ACQUISITION HOLDINGS, LLC, ON BEHALF OF ITSELF AND,**

**THE OTHER PURCHASERS NAMED HEREIN**

**AND**

**THE GUARANTORS NAMED HEREIN  
(SOLELY FOR PURPOSES OF SECTION 11.21)**

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**EXHIBITS**

Exhibit A Form of Bidding Procedures Order  
 Exhibit B Form of Sale Order

**SCHEDULES**

Schedule of Sellers and Purchasers  
 Schedule of Guarantors

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Schedule 8.2(k)	Certain Conditions

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made and entered into as of [\_\_\_\_], 2013 (the “Effective Date”), by and among Furniture Brands International, Inc., a Delaware corporation (“FB Parent”), the Subsidiaries of FB Parent set forth on the Schedule of Sellers and Purchasers (together with FB Parent, each a “Seller” and, collectively, “Sellers”), FBN Acquisition Holdings, LLC or its designees (“Holdings”), the Subsidiaries of Holdings who are formed after the date of this Agreement and who join this Agreement and are set forth on the Schedule of Sellers and Purchasers (together with Holdings, and Intermediate Holdings (as defined below) the “Purchasers”), and, solely for purposes of Section 11.21, the Persons set forth on the Schedule of Guarantors (each a “Guarantor” and, collectively, “Guarantors”).

In consideration of the mutual covenants, agreements and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions. Unless otherwise defined herein, terms used herein shall have the meanings set forth below:

“503 Liabilities” has the meaning set forth in Section 2.3(a)(ii) hereof.

“Accounts Receivable” means all accounts and notes receivable (whether current or non-current) in respect of goods shipped, products sold or services rendered prior to the Closing Date.

“Acquired Assets” has the meaning set forth in Section 2.1(a) hereof.

“Acquired Owned Real Property” has the meaning set forth in Section 2.1(a)(vi).

“Affiliate” of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether by contract, through the ownership of voting securities or otherwise.

“Affiliated Group” means an “affiliated group” as defined in Section 1504 of the Code (or any analogous combined, consolidated or unitary group defined under state, local or foreign income Tax Law) of which any Seller or Foreign Subsidiary is or has been a member.

“Agreement” means this Asset Purchase Agreement, including all of the Exhibits and the Schedules hereto, as the same may be amended from time to time in accordance with its terms.

“Allocated Share” means the percentage shares of the Cash Amount, 80% of the Debt Interests and Intermediate Holdings Units set forth opposite a Purchaser’s or a Seller’s

name on the Schedule of Sellers and Purchasers. Holdings may update the Allocated Share percentages set forth on the Schedule of Sellers and Purchasers at any time prior to the Closing.

“Allocation” has the meaning set forth in Section 3.6 hereof.

“Alternative Transaction” means a transaction or series of transactions (other than by Purchasers or their Affiliates), whether by merger, consolidation, business combination, sale of equity interests or assets, tender offer, foreclosure or plan of reorganization or liquidation or otherwise, involving (i) the sale or other disposition of ten percent (10%) or more of the Acquired Assets, (ii) the sale of ten percent (10%) or more of the outstanding shares of capital stock or equity interests of any Seller or (iii) a similar transaction or business combination involving one or more Third Parties and any Seller (but excluding sales of Inventory in the Ordinary Course of Business); provided, however, that the items set forth on Schedule 7.3 shall be excluded from the definition of “Alternative Transaction.”

“Assignment and Assumption Agreements” has the meaning set forth in Section 4.2(a)(iv) hereof.

“Assumed Contracts” has the meaning set forth in Section 2.1(a)(xii).

“Assumed Employee Benefit Plans” has the meaning set forth in Section 2.1(a)(xiii).

“Assumed Equipment Leases” has the meaning set forth in Section 2.1(a)(viii).

“Assumed Executory Contracts” means the Assumed Contracts and the Assumed Leases.

“Assumed Facility Leases” has the meaning set forth in Section 2.1(a)(vii).

“Assumed Leased Facilities” means the Leased Facilities identified in the Assumed Facility Leases.

“Assumed Leases” has the meaning set forth in Section 2.1(a)(viii).

“Assumed Obligations” has the meaning set forth in Section 2.3(a) hereof.

“Assumption Notice” has the meaning set forth in Section 2.6(d) hereof.

“Auction” means the auction conducted by Sellers pursuant to the Bidding Procedures Order for substantially all of the Acquired Assets in the event a Qualified Bid is timely received prior to the Bid Deadline (as defined in the Bidding Procedures Order).

“Auction Deadline Date” means December 10, 2013 or such earlier date as may be agreed upon in accordance with the Bidding Procedures Order.

“Avoidance Actions” means any causes of action arising under Chapter 5 of the Bankruptcy Code and any similar state law claims.

“Bankruptcy Code” means Title 11 of the United States Code.

“Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware.

“Bid Deadline” means December 6, 2013 or such earlier date as may be agreed upon in accordance with the Bidding Procedures Order.

“Bidding Procedures Order” means the order of the Bankruptcy Court, in the form attached hereto as Exhibit A or such other form consented to by Purchasers in their sole discretion.

“Bidding Procedures Order Deadline Date” means October 24, 2013.

“Books and Records” means all records and lists of the Business, including (i) all inventory, merchandise, analysis reports, marketing reports, research and development materials and creative material pertaining to the Acquired Assets, the Facilities or the Business, (ii) all records relating to customers, suppliers or personnel of Sellers or of the Business (including customer lists, mailing lists, e-mail address lists, recipient lists, sales records, correspondence with customers, customer files and account histories, supply lists and records of purchases from and correspondence with suppliers), (iii) all records relating to all product, business and marketing plans of Sellers or of the Business, (iv) all accounting records, Tax records and Tax Returns and (v) all books, ledgers, files, reports, plans, drawings and operating records of every kind; provided, however, that “Books and Records” shall not include books and records that are Excluded Assets as set forth in Section 2.2(a)(vii) and Section 2.2(a)(xiv) other than copies of such books and records as provided in Section 2.2(a)(vii) and Section 2.2(a)(xiv).

“Borrowers” means Furniture Brands International, Inc., Broyhill Furniture Industries, Inc., HDM Furniture Industries, Inc., Lane Furniture Industries, Inc., Maitland-Smith Furniture Industries, Inc. and Thomasville Furniture Industries, Inc.

“Breakup Fee” has the meaning set forth in Section 9.2(a) hereof.

“Business” means the activities carried on by Sellers and the Foreign Subsidiaries, including the development, design, manufacture, sourcing, production, licensing, marketing, sale and distribution of home furnishings and home decorative accessories.

“Business Day” means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in the State of Delaware are authorized by Law to close.

“Cash Amount” means the excess, if any, of (i) \$280,000,000 over (ii) the Credit Bid Amount.

“Carve-Out” has the meaning set forth in the DIP Credit Agreement.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.) and any Laws promulgated thereunder.

“Chapter 11 Cases” means the cases commenced by Sellers under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court.

“Claim” has the meaning set forth in Section 101(5) of the Bankruptcy Code.

“Closing” has the meaning set forth in Section 4.1 hereof.

“Closing Date” has the meaning set forth in Section 4.1 hereof.

“Closing Date Deadline” means December 23, 2013 or such earlier date as may be agreed upon in accordance with the Bidding Procedures Order.

“COBRA” has the meaning set forth in Section 5.16(e) hereof.

“Code” means the United States Internal Revenue Code of 1986, as amended.

“Collective Bargaining Agreement” means any Contract or other binding agreement or arrangement (written or oral) with any labor union or organization, works council or other employee representative.

“Company Intellectual Property” has the meaning set forth in Section 5.12(b) hereof.

“Company Reports” has the meaning set forth in Section 5.5(c) hereof.

“Company Systems” has the meaning set forth in Section 5.12(f) hereof.

“Contract” means any agreement, license, contract, commitment or other binding arrangement or understanding, whether written or oral, and, with respect to any Contract to which any Seller is a party, such contract which any Seller is permitted under the Bankruptcy Code to assume and assign other than an Employee Benefit Plan.

“Contract Retention Period” has the meaning set forth in Section 2.6(c) hereof.

“Corresponding Purchaser” means, with respect to any particular Seller, the Purchaser set forth opposite such Seller’s name on the Schedule of Sellers and Purchasers.

“Corresponding Seller” means, with respect to any particular Purchaser, the Seller set forth opposite such Purchaser’s name on the Schedule of Sellers and Purchasers.

“Credit Bid Amount” has the meaning set forth in Section 3.3 hereof.

“Cure Amount” means any costs of cure as required by Section 365 of the Bankruptcy Code with respect to (i) any Assumed Executory Contract, or (ii) any Designated

Contract that becomes an Assumed Executory Contract pursuant to Section 2.6(c), in the amount set forth next to such Designated Contract on Schedule 2.6(c).

“Cure Reserve” has the meaning set forth in Section 10.10(b) hereof.

“Customs and International Trade Laws” means any Law, executive order, permit, license, award, or other decision or requirement having the force or effect of Law, of any Governmental Authority, concerning the importation of merchandise, the export or re-export of products (including technology and services), the terms and conduct of international transactions, and the making or receiving of international payments, including the Tariff Act of 1930, as amended, and other Laws and programs administered or enforced by U.S. Customs and Border Protection (“Customs”), U.S. Immigration and Customs Enforcement, and their predecessor agencies, the Export Administration Act of 1979, as amended, the Export Administration Regulations, the International Emergency Economic Powers Act, as amended, the Trading With the Enemy Act, as amended, the Arms Export Control Act, the International Traffic in Arms Regulations, any other export control regulations administered by an agency of the U.S. government, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), as amended, executive orders of the President regarding embargoes and restrictions on transactions with designated entities (including countries, terrorists, organizations and individuals), the embargoes and restrictions administered by the U.S. Office of Foreign Assets Control, the Money Laundering Control Act of 1986, as amended, requirements for the marking of imported merchandise, prohibitions or restrictions on the importation of merchandise made with the use of slave or child labor, the Foreign Corrupt Practices Act, as amended, the antiboycott regulations administered by the U.S. Department of Commerce, the antiboycott regulations administered by the U.S. Department of the Treasury, legislation and regulations of the U.S. and other countries implementing the North American Free Trade Agreement and other free trade agreements to which the U.S. is a party, the antidumping and countervailing duty Laws, and Laws adopted by the Governmental Authorities of other countries concerning the ability of U.S. persons to own businesses or conduct business in those countries, restrictions by other countries on holding foreign currency or repatriating funds, or otherwise relating to the same subject matter as the U.S. statutes and regulations described above.

“Data Room” means (i) Sellers’ “Project Whispering Pines” electronic data room located at <https://services.intralinks.com> as of five (5) Business Days following the Effective Date, to which Purchasers have been granted access; (ii) the “FTP” site provided by Sellers and Miller Buckfire & Co. LLC located at <ftp://files2.millerbuckfire.net> (or such location to which the contents of such “FTP” site are transferred and to which Purchasers are granted access as soon as reasonably practicable following such transfer) as of five (5) Business Days following the Effective Date, to which Purchasers have been granted access; and (iii) the electronic folders located at <http://fbnet/SharedServices/Legal/FBNetContractRepository/Shared%20Documents/Forms/AllItems.aspx> as of five (5) Business Days following the Effective Date, to which Purchasers have been granted access, in each case to the extent the items disclosed therein as of such date remain therein through the Closing Date.

“Debt Interests” means all rights and obligations of any kind of the lenders under the DIP Facility and the Prepetition Term Loan Facility, in each case as of the Closing Date.

“Designated Contracts” has the meaning set forth in Section 2.6(c) hereof.

“Designated Remaining Executory Contract Obligations” has the meaning set forth in Section 2.6(c) hereof.

“DIP Amount” means the sum of all outstanding obligations of any kind under the DIP Facility as of the Closing Date.

“DIP Budget” means the budget attached as Exhibit A to the DIP Credit Agreement.

“DIP Credit Agreement” means that certain Senior Secured Super-Priority Debtor in Possession Credit Agreement, dated as of [\_\_\_\_\_], 2013, among the Borrowers, as borrowers, the other credit parties party thereto, each lender from time to time party thereto, and Bank of America, N.A., as administrative agent and collateral agent, as amended or otherwise modified prior to the Closing Date and as further amended or otherwise modified from time to time in accordance with the terms thereof.

“DIP Facility” means the credit facility governed by the DIP Credit Agreement and the DIP Order.

“DIP Lenders” means the lenders under the DIP Credit Agreement.

“DIP Order” means, collectively, those certain interim or final orders entered by the Bankruptcy Court approving the DIP Facility.

“Disclosure Schedules” means the Schedules delivered pursuant to Article V hereof.

“Distributions” has the meaning set forth in Section 3.2 hereof.

“Effective Date” has the meaning set forth in the preamble hereto.

“Electronic Delivery” has the meaning set forth in Section 11.6 hereof.

“Employee Benefit Plan” means any “employee benefit plan” (as defined in ERISA §3(3)) and each other benefit or compensation plan, program, agreement or arrangement maintained, sponsored, or contributed or required to be contributed to by any Seller or any ERISA Affiliate (within the 6 years preceding the date hereof) or with respect to which any Seller or any ERISA Affiliate (within the 6 years preceding the date hereof) has any Liability.

“Environmental Laws” means, whenever in effect, all federal, state, provincial, local and foreign statutes, Laws (including CERCLA and analogous state Laws), ordinances, directives and other provisions having the force or effect of law, all judicial and administrative Orders and determinations, all contractual obligations and all common law, in each case concerning public health and safety, worker health and safety, or pollution or protection of the environment.



“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and all Laws issued thereunder.

“ERISA Affiliate” means any Person that, at any relevant time, is or was considered to be a single employer with any Seller for purposes of Code § 414.

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Excluded Assets” has the meaning set forth in Section 2.2(a) hereof.

“Excluded Contracts” has the meaning set forth in Section 2.2(a)(v) hereof.

“Excluded Environmental Liabilities” means any Liability (including any investigatory, corrective or remedial obligation) with respect to or concerning any environmental, health or safety matter, including any arising under Environmental Laws or relating to Hazardous Substances, and relating to (i) Sellers or any predecessor or Affiliate of any Seller, (ii) the ownership or operation of the Acquired Assets or the operation of the Business prior to the Closing, (iii) any Excluded Asset, (iv) any property, facility, or location other than the Acquired Owned Real Property and the Assumed Leased Facilities, (v) any fines, penalties, or other sanctions imposed by any Governmental Authority or other Person in connection with any actual or alleged violation of or failure to comply with Environmental Laws by Sellers or any predecessor or Affiliate of any Seller, or otherwise with respect to the Acquired Assets prior to Closing, or (vi) any operations, events, facts, conditions, or circumstances occurring or existing on or prior to the Closing Date, including any Release, threatened Release, use, handling, manufacturing, distribution, treatment, storage, disposal, or arrangement for disposal of, or any exposure of any Person to, Hazardous Substances occurring or existing on or prior to the Closing Date (whether or not constituting a breach of any representation or warranty herein and whether or not set forth on any Disclosure Schedule).

“Excluded Equipment Leases” has the meaning set forth in Section 2.2(a)(iv) hereof.

“Excluded Facility Leases” has the meaning set forth in Section 2.2(a)(iii) hereof.

“Excluded Leases” has the meaning set forth in Section 2.2(a)(iv) hereof.

“Excluded Liabilities” has the meaning set forth in Section 2.4(a) hereof.

“Exhibits” means the exhibits attached hereto.

“Expense Reimbursement” has the meaning set forth in Section 9.2(b) hereof.

“Facilities” means collectively the premises at which Sellers and the Foreign Subsidiaries operate.

“Facility Leases” means all right, title and interest of Sellers and the Foreign Subsidiaries in all leases, subleases, licenses, concessions and other agreements (written or oral)

and all amendments, modifications, extensions, renewals, guaranties and other agreements with respect thereto, including the right to all security deposits and other amounts and instruments deposited by or on behalf of any Seller or Foreign Subsidiary thereunder, pursuant to which a Seller or Foreign Subsidiary holds a leasehold or subleasehold estate in, or is granted the right to use or occupy, a Leased Facility.

“FB Parent” has the meaning set forth in the preamble hereto.

“Fees and Expenses” means all actual reasonable and documented out-of-pocket fees, costs, and expenses of Purchasers and their Affiliates incurred in connection with the transactions contemplated by this Agreement, including reasonable attorneys’ fees and other professional fees, and reasonable due diligence, transportation, negotiation, duplication, appraisal, audit (including per diems), consultant, search, filing and recording fees, costs and expenses; provided, however, that Fees and Expenses shall not include financing fees payable to Purchasers’ lenders.

“Filed Company SEC Documents” has the meaning set forth in Article V hereof.

“Final Order” means an Order as to which no appeal, motion for rehearing or reconsideration or a petition for writ of certiorari is pending.

“First Closing” has the meaning set forth in Section 3.1 hereof.

“First Credit Bid Amount” has the meaning set forth in Section 3.1 hereof.

“Foreign Subsidiaries” means Furniture Brands Asia, Ltd., Furniture Brands Hangzhou Co., Ltd., Furniture Brands Canada ULC, Furniture Brands de Mexico S. de R.L. de C.V., Maitland-Smith Asia Holdings Limited, Maitland-Smith Export (L) Bhd., Maitland-Smith Cebu, Inc., Decorative Hardware Solutions (L) Bhd., P.T. Maitland-Smith, and Maitland-Smith, Limited.

“G Reorganizations” has the meaning set forth in Section 10.9(f) hereof.

“GAAP” means, as of the applicable time, United States generally accepted accounting principles, consistently applied.

“Government Contract” means any Contract (including any prime contract, subcontract, letter contract, purchase order, task order, delivery order, teaming agreement or letter of intent) that is (i) between any Seller and a Governmental Authority or (ii) entered into by any Seller as a subcontractor (at any tier) in connection with a Contract between another Person and a Governmental Authority.

“Governmental Authority” means any federal, state, local, municipal, foreign, supranational or other governmental or quasi-governmental authority of any nature (including any governmental agency, branch, bureau, commission, department, official or entity and any court or other tribunal), or any administrative, executive, judicial, legislative, police, regulatory or taxing authority, or arbitral body.

“Guaranteed Obligations” has the meaning set forth in Section 11.21 hereof.

“Guarantor” and “Guarantors” has the meaning set forth in the preamble hereto.

“Guaranty” means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon the Indebtedness, obligation or other Liability of any other Person (other than by endorsements of instruments in the ordinary course of collection), or guaranties of the payment of dividends or other distributions upon the shares of any other Person.

“Guaranty Percentages” has the meaning set forth in Section 11.21 hereof.

“Hazardous Substances” means any wastes, pollutants, contaminants or chemicals, any industrial, toxic or otherwise hazardous materials, substances or wastes, any explosive or radioactive substances, and any other substance, material or waste with respect to which Liability or standards of conduct may be imposed under applicable Law, including petroleum and petroleum related substances, products, by products and wastes, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon, urea, formaldehyde, mold, lead based paint, noise, odor and radiation.

“Holdings” has the meaning set forth in the preamble hereto.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder and any similar foreign Laws.

“Indebtedness” means, with respect to any Person as of any date of determination, without duplication: (i) all obligations of such Person for borrowed money or in respect of loans or advances, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or debt securities, (iii) all obligations in respect of letters of credit and bankers’ acceptances issued for the account of such Person, (iv) all obligations arising from cash/book overdrafts, (v) all obligations arising from deferred compensation arrangements, (vi) all obligations of such Person secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien (other than Permitted Liens) on property owned or acquired by such Person, (vii) all Guaranties of such Person in connection with any of the foregoing, (viii) all capital lease obligations, (ix) all deferred rent, (x) all indebtedness for the deferred purchase price of property or services with respect to which a Person is liable, contingently or otherwise, as obligor or otherwise (other than trade payables incurred in the Ordinary Course of Business which are not past due), (xi) all obligations under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (xii) all obligations (determined on the basis of actual, not notional, obligations) with respect to interest rate protection agreements, interest rate swap agreements, foreign currency exchange agreements, or other interest or exchange rate hedging agreements or arrangements, (xiii) with respect to the Foreign Subsidiaries, all other liabilities classified as non-current liabilities in accordance with GAAP as of the date of determination of such Indebtedness, and (xiv) all fees, accrued and unpaid interest, premiums or penalties related to any of the foregoing.

“Insider” means, any officer, director, governing body member, significant stockholder, partner or Affiliate, as applicable, of any Seller or of any predecessor or Affiliate of any Seller, or any individual related by marriage or adoption to any such individual or any entity in which any such Person owns any beneficial interest.

“Insolvent” has the meaning set forth in Section 6.7.

“Intellectual Property” means all of the following in any jurisdiction throughout the world: (i) patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations in part, revisions, divisionals, extensions and reexaminations thereof, (ii) trademarks, service marks, designs, trade dress, logos, slogans, trade names, internet domain names, corporate names, all applications, registrations and renewals in connection therewith, and all translations, adaptations, derivations and combinations of any of the foregoing, together with all goodwill associated with any of the foregoing, (iii) copyrights, mask works and copyrightable works, and all applications, registrations and renewals in connection therewith, (iv) trade secrets and confidential information (including formulations, ideas, research and development, information, know-how, inventions, technology, formulas, compositions, manufacturing and production processes and techniques, technical data, financial and marketing plans, customer and supplier lists and information, designs, drawings, plans, proposals and specifications), (v) computer software and systems (including source code, executable code, data, databases and related documentation), websites, URLs, email addresses, and telephone numbers, (vi) copies and tangible embodiments of any of the foregoing in whatever form or medium and (vii) other proprietary and intellectual property rights.

“Intermediate Holdings” means a Subsidiary of Holdings to be formed following the date of this Agreement.

“Intermediate Holdings Units” has the meaning set forth in Section 3.1 hereof.

“Inventory” means all inventory of any kind or nature, whether or not prepaid, and wherever located, held or owned by any Seller or by the Business, including all raw materials, work in process, semi-finished and finished products, replacement and spare parts, packaging materials, operating supplies, in-transit or consigned inventory, and fuels and other and similar items.

“IRS” has the meaning set forth in Section 3.6 hereof.

“Knowledge of Sellers” means, as of the date of measurement, the actual knowledge after reasonable inquiry of Ralph Scozzafava, Vance Johnston and Meredith Graham.

“Lane Business” means the “Lane” division or business of FB Parent and its Subsidiaries.

“Latest Balance Sheet” has the meaning set forth in Section 5.5(a) hereof.

“Law” means any law, statute, regulation, code, constitution, ordinance, treaty, rule of common law, or Order of, administered or enforced by or on behalf of, any Governmental Authority.

“Leased Facilities” means any land, buildings, structures, improvements, fixtures or other interest in real property which any Seller has the right to use, or which is used or intended to be used by any Seller or used or intended to be used in, or otherwise related to, the Business and leased pursuant to a Facility Lease.

“Liability” means any obligation or liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether determined or determinable, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due and regardless of when asserted), including any liability for Taxes, product liability or infringement liability.

“Lien” or “Liens” means any lien (statutory or otherwise), hypothecation, encumbrance, security interest, interest, mortgage, pledge, restriction, charge, instrument, license, preference, priority, security agreement, easement, covenant, encroachment, option, right of recovery, right of preemption, right of first refusal or other Third Party right, or Order of any Governmental Authority, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, (iii) any claim based on any theory that any Purchaser is a successor, transferee or continuation of any Seller or the Business, and (iv) any leasehold interest, license or other right, in favor of a Third Party or a Seller, to use any portion of the Acquired Assets), whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown; provided, however, that Liens shall not include non-exclusive licenses to Intellectual Property.

“Material Adverse Effect” means any event, effect, change, circumstance, condition or matter that, individually or in the aggregate, is or could reasonably be expected to be materially adverse to, or materially impairs the value of, the Acquired Assets or results in a material adverse effect or change in the operation or condition (financial or otherwise) of the Acquired Assets or the Business, taken as a whole, without regard to the duration or persistence of such event, effect, change, circumstance, condition or matter, or which materially impairs the ability of Sellers to perform their obligations under this Agreement or has a material adverse effect on or prevents or materially delays the consummation of the transactions contemplated hereby, in each case excluding the impact of any events, effects, changes, circumstances, conditions or matters arising from or relating to any of the following, alone or in combination: (a) changes or effects that generally affect the industries in which Sellers operate, (b) changes in securities markets or general economic (including changes in interest rates), regulatory or political conditions in the United States of America or in any country in which Sellers operate (including terrorism or the escalation of any war whether declared or undeclared or other hostilities), (c) changes in any Laws affecting Sellers or regulatory, political, economic or business conditions (or, in each case, any interpretation thereof), (d) the failure, in and of itself, of Sellers to meet any internal projections or forecasts (it being understood that other than as specifically excluded herein, the facts or occurrences giving rise to or contributing to such failure may be deemed to constitute, or be taken into account in determining whether there has been or will be, a Material Adverse Effect), (e) any publicly available statement made by Purchasers or any of their Affiliates concerning Sellers, or any employees, customers or suppliers of Sellers, or otherwise relating to the transactions contemplated by the Transaction Documents, (f) actions by

taken or omitted to be taken at the request or with the express consent of Purchasers, (g) acts of God, natural disasters or calamities, or (h) any changes, including deterioration, to the Lane Business, so long as (i) the Lane Business has, in the aggregate, been operated substantially in accordance with the DIP Budget, (ii) the Lane Business has, in the aggregate, been operated substantially in accordance with Section 7.3(b) and (iii) except for resignations, terminations for cause in the Ordinary Course of Business, as set forth on Schedule 5.17, or as provided in Section 10.1, employees of the Lane Business have not been terminated by Seller without Purchaser's consent; provided, however, that any change, effect, event, circumstance, or development referred to in subparagraphs (a), (b), (c) or (g) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur only to the extent that such change, effect, event, circumstance or development has a disproportionate effect on Sellers compared to other participants in the industry in which Sellers conduct their business; provided that the act of filing the Chapter 11 Cases in and of itself shall not constitute a Material Adverse Effect.

“Material Contract” has the meaning set forth in Section 5.13(b) hereof.

“Material Customers” has the meaning set forth in Section 5.23 hereof.

“Material Suppliers” has the meaning set forth in Section 5.23 hereof.

“Materiality Qualifiers” has the meaning set forth in Section 8.2(a).

“Miscellaneous Excluded Contracts” has the meaning set forth in Section 2.2(a)(v) hereof.

“Multiemployer Plan” means any “multiemployer plan” (as defined in ERISA Section 3(37)) that any Seller or any ERISA Affiliate contributes to or has any obligation to contribute to or with respect to which any Seller or any ERISA Affiliate has any Liability (including withdrawal liability as defined in Section 4201 of ERISA).

“Mutual Release” means the mutual release whereby the Sellers release any claims that they may have against the Acquired Subsidiaries, and the Acquired Subsidiaries release any claims that they may have against the Sellers.

“Notice” means any summons, citation, directive, Order, claim, litigation, proceeding, letter or other communication, written or oral, actual or threatened, from the United States Environmental Protection Agency or any other Governmental Authority, or any other Person, entity or any individual, and shall include the imposition of any Lien on property owned, leased, occupied or used by any Seller or the Business pursuant to any Environmental Law.

“Order” means any award, decision, decree, order, injunction, ruling, judgment, or consent of or entered, issued, made or rendered by any Governmental Authority.

“Ordinary Course of Business” means the operation of the Business by Sellers in the usual and ordinary course (including with respect to quantity and frequency), subject to the commencement of the Chapter 11 Cases and the actions taken with respect thereto.

“Owned Real Property” means all land, together with all buildings, structures, fixtures and other improvements located thereon owned by Sellers and the Foreign Subsidiaries.

“Permits” means licenses, permits, approvals, franchises, bonds, accreditations, certificates of occupancy, authorizations, operating permits, registrations, plans and the like.

“Permitted Lien” means, with respect to each Owned Real Property: (A) zoning, building codes and other land use Laws regulating the use or occupancy of such real property or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over such real property which are not violated by the current use or occupancy of such real property or the operation of the Business thereon; (B) easements, covenants, conditions, restrictions and other similar matters of record affecting title to such real property which do not or would not materially impair the use or occupancy of such real property in the operation of the Business conducted thereon; (C) statutory Liens for current Taxes, assessments and other Governmental Entity charges that are not yet due and payable; and (D) mechanics’, materialmen’s, warehouseman’s, landlords’ and similar Liens to the extent relating solely to Assumed Obligations.

“Permitted Settlements” has the meaning set forth in Section 7.3(r) hereof.

“Person” means any corporation, partnership (including any limited partnership and any limited liability partnership), joint venture, limited liability company, organization, trust, entity, authority or natural person.

“Petition Date” means September 9, 2013, which is the date of the filing of the Chapter 11 petitions of Sellers.

“Post-Closing Tax Period” means any taxable period beginning after the Closing Date and the portion of any Straddle Period beginning after the Closing Date.

“Postponed Schedules” has the meaning set forth in Section 11.19 hereof.

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

“Prepetition Term Loan Agreement” means that certain Term Loan Agreement, dated as of September 25, 2012, by and among the Borrowers, as borrowers, the other credit parties party thereto, the Prepetition Term Loan Lenders, NexBank SSB, as administrative agent and collateral agent thereunder, and any other Persons party thereto, as amended or otherwise modified prior to the Closing Date and as further amended or otherwise modified from time to time in accordance with the terms thereof and including any refinancing under the DIP Facility with respect thereto; provided that if the Purchasers or their Affiliates are not the Prepetition Term Loan Lenders as of the Closing, the use of Prepetition Term Loan Agreement, Prepetition Term Loan Facility and Prepetition Term Loan Lenders shall be deemed stricken from this Agreement and any amounts associated therewith either shall be paid by Purchasers in cash to the Sellers at the Closing or shall be paid as part of the Credit Bid Amount if the Prepetition Term Loan Agreement was refinanced under the DIP Facility.

“Prepetition Term Loan Facility” means the credit facility governed by the Prepetition Term Loan Agreement.

“Prepetition Term Loan Lenders” means the lenders under the Prepetition Term Loan Agreement.

“Proceeding” means any action, claim, charge, complaint, dispute, demand, grievance, action, litigation, audit, investigation, review, inquiry, arbitration, liability, damage, suit in equity or at law, administrative, regulatory or quasi-judicial proceeding, account, cost, expense, setoff, contribution, attorney’s fee or cause of action of whatever kind or character.

“Proration Items” has the meaning set forth in Section 10.9(d) hereof.

“Purchase Price” has the meaning set forth in Section 3.4 hereof.

“Purchaser” and “Purchasers” have the meanings set forth in the preamble hereto.

“Qualified Bid” has the meaning as shall be ascribed to such term in the Bidding Procedures Order.

“Rehired Employees” has the meaning set forth in Section 10.1 hereof.

“Rejection Effective Date” has the meaning set forth in Section 2.6(d) hereof.

“Rejection Notice” has the meaning set forth in Section 2.6(c) hereof.

“Related Person” has the meaning set forth in Section 11.21 hereof.

“Release” means any release, emission, disposal, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, dumping, leaching or migration into the environment (including the abandonment, discarding or disposal of any barrels, containers or other closed receptacles containing any Hazardous Substances) or any structure, facility or property.

“Relevant Transactions” has the meaning set forth in Section 10.9(f) hereof.

“Restricted Cash” means any and all cash or marketable securities (i) reserved for the purpose of collateralizing letters of credit, or (ii) received by any Seller representing or received in respect of insurance recoveries in respect of any assets (other than assets relating exclusively to Excluded Assets).

“Restricted Names” has the meaning set forth in Section 10.6 hereof.

“Rule” or “Rules” means the Federal Rules of Bankruptcy Procedure.

“Sale Motion” has the meaning set forth in Section 7.5(a) hereof.

“Sale Order” means the Final Order of the Bankruptcy Court, substantially in the form of Exhibit B or such other form consented to by Purchasers in their sole discretion, to be



entered by the Bankruptcy Court pursuant to Sections 363, 365 and 1146(c) of the Bankruptcy Code, which Final Order, amongst other approvals, approves the sale of the Business and the Acquired Assets to Purchasers free and clear of all Liens pursuant to Section 363(f) of the Bankruptcy Code.

“Sale Order Deadline” means December 12, 2013 or such earlier date as may be agreed upon in accordance with the Bidding Procedures Order.

“Scheduled Contracts” has the meaning set forth in Section 2.6(a) hereof.

“Schedules” means the schedules attached hereto (including the Disclosure Schedules).”

“SEC” has the meaning set forth in Article V hereof.

“Second Closing” has the meaning set forth in Section 3.3 hereof.

“Second Credit Bid Amount” has the meaning set forth in Section 3.3 hereof.

“Securities Act” means the United States Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Seller” and “Sellers” have the meanings set forth in the preamble hereto.

“Seller 401(k) Plan” has the meaning set forth in Section 10.2 hereof.

“Straddle Period” means a taxable period that includes but does not end on the Closing Date.

“Subsidiary” means, with respect to any Person, any corporation a majority of the total voting power of shares of stock of which that are entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one (1) or more of the other Subsidiaries of that Person or a combination thereof, or any partnership, limited liability company, association or other business entity a majority of the partnership or other similar ownership interest of which is at the time owned or controlled, directly or indirectly, by that Person or one (1) or more of the other Subsidiaries of that Person or a combination thereof. For purposes of this definition, a Person is deemed to have a majority ownership interest in a partnership, limited liability company, association or other business entity if such Person is allocated a majority of the gains or losses of such partnership, limited liability company, association or other business entity or is or controls the managing director or general partner of such partnership, limited liability company, association or other business entity.

“Successful Bidder” has the meaning as shall be ascribed to such term in the Bidding Procedures Order.

“Surveys” means a survey for each Owned Real Property prepared by a licensed surveyor satisfactory to Purchasers, and conforming to the ALTA/ACSM Minimum Detail

Requirements for Urban Land Title Surveys, including Table A Items requested by Purchaser, and such other standards as Purchasers and the title insurance company selected by Purchasers require, certified to Purchasers, Purchasers' lender(s) and such title insurance company.

“Tax” and, with correlative meaning, “Taxes” mean with respect to any Person (i) all federal, state, local, county, foreign and other taxes, assessments or other government charges, including any income, alternative or add-on minimum tax, estimated, gross income, gross receipts, sales, use, ad valorem, value added, transfer, capital stock, franchise, profits, license, registration, recording, documentary, intangibles, conveyancing, gains, withholding, payroll, employment, social security (or similar), unemployment, disability, excise, severance, stamp, occupation, premium, property (real and personal), environmental or windfall profit tax, customs duty or other tax, governmental fee or other like assessment, charge or tax of any kind whatsoever, together with any interest, penalty, addition to tax or additional amount imposed by any Governmental Authority (domestic or foreign), whether such Tax is disputed or not, (ii) Liability for the payment of any amounts of the type described in clause (i) above imposed on any other Person as a result of being party to any agreement to indemnify such other Person (other than any such agreement the principal subject matter of which is not indemnification of any amounts of the type described in clause (i)), or being a successor or transferee of such other Person, or (iii) Liability for the payment of any amounts of the type described in clause (i) imposed on any other Person arising as a result of being (or ceasing to be) a member of any Affiliated Group (or being included (or required to be included) in any Tax Return relating thereto).

“Tax Return” means any report, return, declaration, claim for refund or other information or statement supplied or required to be supplied by any Person relating to Taxes, including any schedules or attachments thereto and any amendments thereof.

“Taxing Authority” means, with respect to any Tax, the Governmental Authority that imposes such Tax and the agency, court or other Person or body (if any) charged with the interpretation, administration or collection of such Tax for such Governmental Authority.

“Third Party” means any Person other than Sellers, Purchasers or any of their respective Affiliates.

“Title Commitments” means a commitment for an ALTA Owner's Title Insurance for each Owned Real Property issued by a title insurance company selected by Purchasers, together with a copy of all documents referenced therein.

“Title Policies” means title insurance policies from a title insurance company selected by Purchasers insuring Purchasers' fee simple title to each Owned Real Property as of the Closing Date (including all recorded appurtenant easements insured as separate legal parcels) with gap coverage from Sellers through the date of recording, subject only to Permitted Liens, in such amount as Purchasers reasonably determine to be the value of the real property insured thereunder and approved by Sellers (which approval shall not be unreasonably withheld, conditioned or delayed).

“Transaction Documents” means this Agreement, and all other agreements, instruments, certificates and other documents to be entered into or delivered by any party in connection with the transactions contemplated to be consummated pursuant to this Agreement.

“Transfer Taxes” has the meaning set forth in Section 10.9(a) hereof.

“United States” or “U.S.” means the United States of America.

“United States Foreign Corrupt Practices Act” means the Foreign Corrupt Practices Act of 1977, as amended, and all Laws issued thereunder.

“WARN Act” has the meaning set forth in Section 5.17(c) hereof.

“Wind-Down Reserve” has the meaning set forth in Section 10.10(b).

1.2 Rules of Construction. Unless the context otherwise clearly indicates, in this Agreement:

- (a) the singular includes the plural;
- (b) “includes” and “including” are not limiting;
- (c) “may not” is prohibitive and not permissive;
- (d) “neither,” “nor,” “any,” “either” and “or” are not exclusive; and
- (e) any capitalized terms used in any Schedule or Exhibit attached hereto and not otherwise defined therein shall have the meanings set forth in this Agreement.

## **ARTICLE II PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES**

2.1 Purchase and Sale of Assets.

(a) Subject to the terms and conditions set forth in this Agreement, at the Closing, each Seller shall sell, contribute, convey, assign, transfer and deliver to the Corresponding Purchaser, free and clear of all Liens (other than Permitted Liens), whether arising prior to, on or subsequent to the Petition Date, and each Purchaser shall purchase, acquire and take assignment and delivery from the Corresponding Seller, for the consideration and in the manner specified in Article III, of all rights, titles and interests of every kind and nature of such Seller (including indirect and other forms of beneficial ownership) in and to all of the properties, assets and rights (contractual or otherwise) of such Seller as of the Closing Date, other than the Excluded Assets, whether tangible or intangible, real or personal and wherever located and by whomever possessed, whether or not listed below but including for the avoidance of doubt all of the following properties, assets and rights of such Seller (all of the assets to be sold, assigned, transferred and delivered pursuant to this Section 2.1(a) shall be referred to herein as the “Acquired Assets”):

- (i) all Restricted Cash;
- (ii) all Accounts Receivable and all claims, including deposits, advances, prepaid and other current assets, rights under warranties and guaranties, rights in respect of promotional allowances, vendor rebates and other refunds, causes of action, rights of recovery, rights of set-off and rights of recoupment of every kind and nature (whether known or unknown or contingent or non-contingent); the right to receive and retain mail, Accounts Receivable payments and other communications of such Seller; and the right to bill and receive payment for products shipped or delivered and services performed but unbilled or unpaid as of the Closing;
- (iii) any rights, claims or causes of action (excluding for Tax refunds) of such Seller against third parties (excluding against any Taxing Authority) arising out of events occurring prior to the Closing Date (including, for the avoidance of doubt, those arising out of events occurring prior to the Petition Date) and relating to the Acquired Assets or the Assumed Liabilities, including any rights under or pursuant to any and all warranties, representations and guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to such Seller, other than the Avoidance Actions set forth in Section 2.2(a)(i) and the rights, claims, counterclaims, demands and causes of action set forth in Sections 2.2(a)(xvii) and (xix);
- (iv) all bank accounts, safety deposit boxes, lock boxes and the like (but excluding any cash and cash equivalents other than Restricted Cash);
- (v) all Inventory;
- (vi) the Owned Real Property set forth on Schedule 2.1(a)(vi), and any part or parcel thereof (the “Acquired Owned Real Property”);
- (vii) all of such Sellers’ rights existing under the Facility Leases set forth on Schedule 2.1(a)(vii) (the “Assumed Facility Leases”), including all rights to security deposits held pursuant thereto;
- (viii) the equipment leases set forth on Schedule 2.1(a)(viii) (the “Assumed Equipment Leases” and, together with the Assumed Facility Leases, the “Assumed Leases”);
- (ix) all tangible personal property, including all machinery, equipment (including all transportation and office equipment), vehicles, computers, mobile phones, personal digital assistants, fixtures, trade fixtures, computer equipment, hardware, peripherals, information technology infrastructure, telephone systems, furniture, office supplies, production supplies, spare parts, other miscellaneous supplies, and other tangible personal property of any kind owned by such Seller, wherever located, including all such items which are located in any building, warehouse, office or other space leased, owned or occupied by such Seller or any other space where any of such Sellers’ properties or any other assets may be situated;
- (x) all Intellectual Property owned, licensed, used or held for use by such Seller (including all of the Intellectual Property set forth on Schedule 5.12(a)), along with

all income, royalties, damages and payments due or payable to such Seller as of the Closing or thereafter, including damages and payments for past, present or future infringements or misappropriations thereof or other conflicts therewith, the right to sue and recover for past, present or future infringements or misappropriations thereof or other conflicts therewith, and any and all corresponding rights that, now or hereafter, may be secured throughout the world, including all copies and tangible embodiments of any such Intellectual Property in such Seller's possession or control;

(xi) all Company Systems;

(xii) all rights of such Seller under all outstanding purchase orders for the delivery or receipt of good and services, incurred in the ordinary course of business consistent with past practice, and the Contracts of such Seller set forth on Schedule 2.1(a)(xii) (such purchase orders and Contracts, the "Assumed Contracts"), including all security deposits thereunder, all contractual rights of such Seller to indemnification, exculpation, advancement or reimbursement of expenses thereunder, and all rights to proceeds under insurance policies to the extent relating to the Acquired Assets;

(xiii) all rights of Sellers under all of the Employee Benefit Plans identified in Schedule 2.1(a)(xiii) (the "Assumed Employee Benefit Plans"), including all pre-payments, deposits and refunds thereunder, and any assets maintained pursuant thereto or in connection therewith;

(xiv) all Books and Records and all advertising, marketing and promotional materials and all other printed or written materials;

(xv) all Permits, licenses, certifications and approvals from all permitting, licensing, accrediting and certifying agencies or other Persons, including all of the rights, interests and benefits accruing under such Permits, licenses, certifications and approvals and all pending applications therefor, and the rights to all data and records of such Seller held by such permitting, licensing and certifying agencies;

(xvi) all goodwill as a going concern and all other intangible property of such Seller;

(xvii) [Reserved];

(xviii) Subject to Section 7.11, all of the outstanding equity interests of any Foreign Subsidiary the equity interests of which are held directly by a Seller and which is set forth on Schedule 2.1(a)(xviii) (the "Acquired Subsidiaries"); and

(xix) all such other properties, assets and rights (contractual or otherwise) of such Seller as of the Closing Date, whether tangible or intangible, real or personal and wherever located and by whomever possessed which are not otherwise expressly set forth above as Acquired Assets and are not Excluded Assets.

## 2.2 Excluded Assets.

(a) Notwithstanding anything to the contrary in this Agreement, the following assets of Sellers shall be retained by Sellers and are not being sold or assigned to Purchasers hereunder (all of the following are referred to collectively as the “Excluded Assets”):

- (i) all Avoidance Actions (including the proceeds thereof);
- (ii) all Owned Real Property of Sellers other than the Acquired Owned Real Property, including the Owned Real Property set forth on Schedule 2.2(a)(ii);
- (iii) all Facility Leases of Sellers other than the Assumed Facility Leases (the “Excluded Facility Leases”), including the Facility Leases set forth on Schedule 2.2(a)(iii);
- (iv) all equipment leases of Sellers other than the Assumed Equipment Leases (the “Excluded Equipment Leases” and, together with the Excluded Facility Leases, the “Excluded Leases”), including the equipment leases set forth on Schedule 2.2(a)(iv);
- (v) all Contracts of Sellers other than the Assumed Contracts, including those set forth on Schedule 2.2(a)(v) (the “Miscellaneous Excluded Contracts” and, together with the Excluded Leases, the “Excluded Contracts”);
- (vi) all assets, rights, pre-payments, deposits and refunds maintained pursuant to or in connection with any Employee Benefit Plan or any other employee benefit plan sponsored by Sellers or their Affiliates, other than the Assumed Employee Benefit Plans;
- (vii) all of Sellers’ certificates of incorporation and other organizational documents, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock books, stock certificates and other documents relating to the organization, maintenance and existence of any Seller as a corporation or other entity; provided, copies of such materials shall be Acquired Assets;
- (viii) the equity securities or other ownership interest in each Seller;
- (ix) all of Sellers’ intercompany claims and accounts, other than those against any Acquired Subsidiary that are released pursuant to the Mutual Release;
- (x) all cash (including checking account balances, certificates of deposit and other time deposits and petty cash), other than Restricted Cash, and all cash equivalents and marketable and other securities;
- (xi) all other assets listed on Schedule 2.2(a)(xi);
- (xii) all Tax refunds, rebates, credits and similar items relating to any taxable period, or portion of any taxable period, ending on or prior to the Closing Date;
- (xiii) all insurance policies and all cash surrender values and other rights associated therewith (provided that any and all claims, causes of action, receivables and other

rights of recovery and rights of recoupment under any such insurance policies to the extent relating to the Acquired Assets shall be Acquired Assets);

(xiv) all financial statements, corporate or other entity filings and Tax Returns and all books and records (including working papers) related thereto, all documents and agreements relating to the Chapter 11 Cases, all documents that are protected by the attorney-client or other recognized privilege and that do not relate to the Acquired Assets described in Section 2.1(a)(i) through (xviii), and any confidential personnel and medical records pertaining to employees and other books and records that the Sellers are required by Law to retain (provided, that unless prohibited by Law or protected by the attorney-client or other recognized privilege, copies of such materials shall be provided to Purchasers);

(xv) any loans or notes payable to any Seller from any employee of any Seller;

(xvi) all security deposits and utility deposits (in each case, other than with respect to the Assumed Executory Contracts), any instruments, bonds, other prepaid assets, unbilled costs and fees, tax assets and accounts, in each case to the extent they relate to any Excluded Asset or any Excluded Liability;

(xvii) any and all rights, claims, counterclaims, demands and causes of action of any Seller against any current or former directors, officers, agents, advisors, consultants, lawyers, accountants or other professionals of Sellers;

(xviii) all rights of the Sellers under this Agreement and the other Transaction Documents; and

(xix) all rights, claims, counterclaims, causes of actions, demands, prepaid expenses, deposits, refunds and that relate solely to the Excluded Assets and the Excluded Liabilities.

### 2.3 Assignment and Assumption of Liabilities.

(a) Subject to the terms and conditions set forth in this Agreement, including Section 2.4 hereof, each Purchaser shall assume from the Corresponding Seller and thereafter be responsible for the payment, performance or discharge of only the following Liabilities of such Seller (all such Liabilities assumed pursuant to this Section 2.3(a) shall be referred to herein as the “Assumed Obligations”):

(i) all obligations under the Assumed Executory Contracts arising after the Closing Date;

(ii) except as may arise from a breach by Sellers of Section 7.9, administrative expense claims of Sellers (including trade payable obligations in an amount not to exceed \$10,000,000 in the aggregate) to the extent they arise following the Petition Date, relate solely to the Acquired Assets and are allowed pursuant to section 503(b)(1) of the Bankruptcy Code (but expressly excluding any and all obligations with respect to current or former employees which obligations are addressed in Section 2.3(a)(iv)) (the “503 Liabilities”);

(iii) the sponsorship and obligations of the Assumed Employee Benefit Plans, other than any Liabilities associated with such Assumed Employee Benefit Plans arising in connection with any breach of any representation, warranty or covenant hereunder;

(iv) all Liabilities relating to or arising out of the employment of the employees of Sellers to the extent they are employees of Sellers actively employed or engaged principally in the Business as of immediately prior to the Closing and to the extent that such employees become Rehired Employees (other than Liabilities arising under any individual employment agreements or pursuant to any key employee incentive or retention plans approved by the Bankruptcy Court which shall remain Excluded Liabilities)-arising in the ordinary course of business consistent with past practice (and with respect to severance obligations, in accordance with Sellers' plans in place as of the Petition Date), but specifically excluding pension Liabilities and/or any payroll accrued through the Closing; provided that, in furtherance and not in limitation of the foregoing, to the extent any employee of Seller becomes a Rehired Employee, Purchaser shall: (a) provide such Rehired Employees with unused vacation time, sick leave time and other paid time off accrued prior to the Closing; and (b) grant such Rehired Employees a credit for the amount of months and years of service of such Rehired Employee prior to the Closing Date for purposes of eligibility, vesting of benefits, calculation of severance pay, determination of vacation time, sick leave, or other approved or statutory leave of absence;

(v) the Designated Remaining Executory Contract Obligations;

(vi) any Transfer Taxes (as defined below); and

(vii) all obligations under product or service warranties and all obligations to repair products or accept product returns, provided by or agreed to by Sellers or any predecessor or Affiliate of any Seller arising out of or relating to services or products developed, designed, manufactured, sourced, produced, marketed, sold or distributed prior to the Closing in the ordinary course of business consistent with past practice.

(b) Section 2.3(a) shall not limit any claims or defenses Purchasers may have against any party. The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any Third Party against Purchasers or Sellers as compared to the rights and remedies which such Third Party would have had against Sellers absent the Chapter 11 Cases and had Purchasers not assumed the Assumed Obligations.

#### 2.4 No Other Liabilities Assumed.

(a) No Purchaser shall be the successor to any or all of Sellers, and each Seller acknowledges and agrees that, pursuant to the terms and provisions of this Agreement, no Purchaser will (and Purchasers would not enter into this Agreement or seek to acquire the Acquired Assets but for the clear understanding that no Purchaser will) assume, or in any way be liable or responsible for, any claim or Liability (whether known or unknown), whether existing on the Closing Date or arising thereafter and whether relating to or arising out of the Business, the Excluded Assets, the Acquired Assets or otherwise (including Liabilities relating to the pre-petition or post-petition operation of the Business, the Excluded Assets or the Acquired Assets (and the use thereof)), and whether or not listed below, including any Indebtedness, Employee



Benefit Plan, Collective Bargaining Agreement or other Liability of any Seller or any predecessor or Affiliate of any Seller whatsoever or any ERISA Affiliate, other than the Assumed Obligations (any such obligations, the “Excluded Liabilities”); provided that, in furtherance and not in limitation of the foregoing, the Assumed Obligations do not include, and Purchasers are expressly not assuming, any of the following Liabilities (each of which constitutes an Excluded Liability, whenever or wherever arising but the Excluded Liabilities specifically exclude the 503 Liabilities):

(i) all claims against or Liabilities that relate to any of the Excluded Assets, including executory Contracts and unexpired Facility Leases that are not Assumed Executory Contracts subject to Section 2.6;

(ii) except as set forth in Section 10.9(a), all Liabilities of any Seller for Taxes (with respect to the Business or the Acquired Assets or the Assumed Liabilities or otherwise but excluding any Transfer Taxes), including Taxes that may arise as a result of (x) any claim, audit, investigation, assessment, or adjustment for any amount of Tax proposed, asserted, or assessed by any taxing authority, court or other Governmental Authority against any Seller or (y) the sale of the Acquired Assets or the assumption of the Assumed Obligations, the distribution of the Intermediate Holdings Units by Sellers pursuant to Section 3.2, the transfer of the Intermediate Holdings Units by FB Parent to Holdings, and the related discharge of debt, in each case pursuant to this Agreement;

(iii) all Liabilities for Taxes (other than Transfer Taxes) imposed on or with respect to the Acquired Assets or the Business for any Pre-Closing Tax Period;

(iv) all accounts payable of Sellers or any predecessor or Affiliate of Sellers arising prior to the Closing;

(v) all Liabilities in respect of Indebtedness of Sellers or any predecessor or Affiliate of any Seller;

(vi) all Excluded Environmental Liabilities (regardless of whether such Liabilities accrue or attach to Sellers or to Purchasers in the first instance);

(vii) except as expressly otherwise provided in 2.3(a)(iv) or Sections 10.1 through 10.3, all Liabilities pursuant to the WARN Act relating to any action or inaction of Sellers prior to the Closing except as set forth in Sections 10.1 or 10.3;

(viii) except as otherwise set forth herein, all Liabilities of Sellers resulting from, caused by or arising out of, or which relate to, directly or indirectly, the conduct of Sellers (or any of their current or former officers, directors, employees or agents) anywhere or ownership or lease of any properties or assets or any properties or assets previously used by Sellers at any time, or other actions, omissions or events occurring prior to the Closing and which (x) constitute, may constitute or are alleged to constitute a tort, breach of contract or violation of any Law or (y) relate to any and all Proceedings against Sellers whether past, present, future, known or unknown, liquidated or unliquidated, accrued or unaccrued, pending or threatened, including the Proceedings set forth on Schedule 5.19;

(ix) except as otherwise set forth herein, all Liabilities arising out of any Proceeding commenced against Sellers or any predecessor or Affiliate of any Seller;

(x) all Liabilities under any Assumed Executory Contract which arises out of or relates to any breach that occurred prior to the Closing;

(xi) all Liabilities arising out of or relating to any infringement or misappropriation of, or other conflict with, the Intellectual Property of any Third Party arising out of or related to the conduct of the Business or any act or omission of any Seller or any predecessor or Affiliate of any Seller prior to the Closing;

(xii) all Liabilities arising out of, or relating to, any indemnification obligations of any Seller, including indemnification obligations pursuant to supply agreements, service agreements, purchase agreements, leases and any other type of Contract, and Liabilities to indemnify, reimburse or advance amounts to any officer, director, employee or agent of Sellers;

(xiii) except as expressly otherwise provided in Sections 2.3(a)(iii) or 2.3(a)(iv) or Sections 10.1 through 10.3, all Liabilities with respect to the employees or former employees, or both (or their representatives), of any Seller, including payroll, wages, salaries, bonuses, commissions, benefits, retention or stay bonus arrangements, other compensation, sick leave, worker's compensation, unemployment benefits, pension benefits, employee stock option or profit sharing plans, health care plans or benefits, or any other employee plans or benefits or other compensation of any kind to any employee, and obligations of any kind, including Liabilities arising under any Collective Bargaining Agreement, or employment, severance, retention or termination agreement with any employee, consultant or contractor (or their representatives) of any Seller;

(xiv) except as expressly otherwise provided in Sections 2.3(a)(iii) or 2.3(a)(iv) or Sections 10.1 through 10.3, all Liabilities relating to or arising under or in connection with any Employee Benefit Plan, any "employee benefit plan" (as defined in Section 3(3) or ERISA) or any other benefit or compensation plan, program, agreement or arrangement at any time maintained, sponsored or contributed or required to be contributed to by any Seller or any ERISA Affiliate, or with respect to which any Seller or any ERISA Affiliate has any Liability;

(xv) Except as expressly otherwise provided in Section 2.3(a)(vii), all Liabilities arising out of or relating to services or products of Sellers or any predecessor or Affiliate of any Seller to the extent developed, designed, manufactured, sourced, produced, marketed, sold or distributed prior to the Closing;

(xvi) all Liabilities of any Seller to any current, former or prospective shareholder or other equity interest holder of any Seller, including all Liabilities of Sellers related to the right to or issuance of any capital stock or other equity securities;

(xvii) all Liabilities for any legal, accounting, investment banking, reorganization, restructuring (including bankruptcy administrative expenses), brokerage or

similar fees or expenses incurred by any Seller in connection with, resulting from or attributable to the transactions contemplated by this Agreement, the Chapter 11 Cases or otherwise;

(xviii) any Cure Amounts with respect to the Assumed Executory Contracts and the Designated Contracts;

(xix) except for the Designated Remaining Executory Contract Obligations, all Liabilities of Sellers arising out of, or relating to, any Designated Contract, unless and until such Designated Contract is assumed by Purchasers;

(xx) all of Sellers' intercompany claims and accounts against any Acquired Subsidiary;

(xxi) all Liabilities of Sellers or any predecessor or Affiliate of any Seller based upon such Person's acts or omissions occurring after the Closing; and

(xxii) all Liabilities of Sellers to Purchasers, their Affiliates, and their Affiliates' agents, advisors and representatives, whether under the Transaction Documents or otherwise.

(b) The parties acknowledge and agree that disclosure of any Liability on any Schedule to this Agreement or otherwise shall not create an Assumed Obligation or other Liability of Purchasers, except where such disclosed obligation has been expressly assumed by Purchasers as an Assumed Obligation.

## 2.5 Revisions to Schedules to Sections 2.1 to 2.4.

(a) Other than with respect to the items forth on Schedule 7.3, notwithstanding anything in this Agreement to the contrary, Purchasers may revise the Schedules to Sections 2.1 to 2.4 at any time on or before three (3) Business Days prior to the Bid Deadline to include in the definition of Acquired Assets or Excluded Liabilities or exclude in the definition of Excluded Assets or Assumed Obligations, as applicable, any asset or property, or any portion, part or parcel of any such asset or property (other than Scheduled Contracts, which shall be governed by Section 2.6), or any Liability, not otherwise included therein or excluded therefrom, as the case may be, and, as a result thereof, Sellers agree to give required notice to any Third Party that should receive notice with respect to such asset or property or as otherwise reasonably requested by Purchasers; provided that such exclusion or inclusion, as the case may be, shall not have the effect of increasing the amount of Excluded Liabilities unless Purchasers assume the obligations with respect thereto. Notwithstanding anything in this Agreement to the contrary, other than with respect to the items set forth on Schedule 7.3, Purchasers may revise the Schedules to Sections 2.1 to 2.4 at any time on or before three (3) Business Days prior to the Closing Date in order to exclude from the definition of Acquired Assets or Excluded Liabilities or include in the definition of Excluded Assets or Assumed Obligations, as applicable, any asset or property, or any portion, part or parcel of any such asset or property (other than Scheduled Contracts, which shall be governed by Section 2.6), or any Liability, not otherwise included therein or excluded therefrom, as the case may be; provided that such exclusion or inclusion, as the case may be, shall not have the effect of increasing the amount of Excluded Liabilities unless Purchasers assume the obligations with respect thereto.

(b) For purposes of clarification, nothing in this Section 2.5 shall limit Purchasers' rights under Section 2.6.

## 2.6 Sellers' Actions With Respect to Contracts.

(a) Sellers' Obligation to Maintain Scheduled Contracts Until Closing. From and after the Effective Date, Sellers shall not reject or alter (or attempt to alter) the terms of any executory Contracts or unexpired leases to which any Seller is a party (collectively, the "Scheduled Contracts") unless otherwise agreed to in writing by Holdings or as provided below in Section 2.6(e) of this Agreement. Sellers shall provide timely and proper written notice of the motion seeking entry of the Sale Order to all parties to Scheduled Contracts and take all other actions necessary to cause such Scheduled Contracts to be assumed by Sellers and assigned by each Seller to the Corresponding Purchaser pursuant to Section 365 of the Bankruptcy Code to the extent that such Scheduled Contracts are Assumed Executory Contracts at Closing or are assumed and assigned to Purchasers pursuant to Section 2.6(c) of this Agreement.

(b) Excluding or Adding Assumed Executory Contracts Prior to Closing. At the Closing, each Seller shall, pursuant to the Sale Order and the Assignment and Assumption Agreements and other transfer and assignment documents reasonably requested by Purchasers, assume and sell and assign to the Corresponding Purchaser (the consideration for which is included in the Purchase Price), all Assumed Executory Contracts which may be assigned by such Seller to the Corresponding Purchaser pursuant to Sections 363 and 365 of the Bankruptcy Code and which shall be set forth on the Schedules delivered pursuant to Section 2.1(a) of this Agreement. Purchasers shall have the right in their sole and absolute discretion to notify Sellers in writing of any Assumed Executory Contract that they do not wish to assume or any Scheduled Contract that they wish to add as an Assumed Executory Contract up to three (3) Business Days prior to the Closing. At the sole discretion and instruction of Purchasers, any such previously considered Assumed Executory Contract that Purchasers no longer wish to assume shall be automatically deemed removed from the Schedules related to Assumed Executory Contracts, automatically deemed added to the Schedules related to Excluded Contracts, and shall be rejected by each Seller party to such Contract in accordance with Section 2.6(e). At the sole discretion and instruction of Purchasers, any such previously considered Excluded Contract that Purchasers wish to assume as an Assumed Executory Contract shall be automatically deemed added to the Schedules related to Assumed Executory Contracts, automatically deemed removed from the Schedules related to Excluded Contracts, and shall be assumed by each Seller party to such Contract and assigned to the Corresponding Purchaser.

(c) Designated Contracts. At least three (3) Business Days prior to the Closing, Holdings shall deliver to Sellers Schedule 2.6(c), which shall comprise a list of Scheduled Contracts that Purchasers wish to designate as "Designated Contracts" and for each Designated Contract the anticipated Cure Amount therefor. The Designated Contracts shall be automatically deemed removed from all Schedules related to Assumed Executory Contracts and Excluded Contracts, and shall not be Assumed Executory Contracts or Excluded Contracts as of the Closing Date. Except as otherwise set forth in Section 2.6(e), Sellers shall not seek to reject the Designated Contracts for a period of thirty (30) days following the Closing Date (the "Contract Retention Period"). Purchasers may, at their sole discretion and at any time during the

Contract Retention Period, deliver to Sellers one (1) or more written notices (each, a “Rejection Notice”) notifying Sellers of Purchasers’ intent not to assume any Designated Contract(s).

(d) With respect to the Designated Contracts, as soon as reasonably practicable after the date that Purchasers provide a Rejection Notice with respect to any Designated Contract, Sellers shall reject such Excluded Contract, and all Liabilities arising after the effective date of rejection (the “Rejection Effective Date”) of such Excluded Contract shall be considered Excluded Liabilities under this Agreement; provided, that Purchasers shall use commercially reasonable best efforts to have the Rejection Effective Date be no later than two (2) Business Days after delivery by Purchasers of such Rejection Notice or, if no such Rejection Notice and no Assumption Notice (as defined below) is delivered with respect to any such Designated Contract, the end of the Contract Retention Period. Notwithstanding anything in this Agreement to the contrary, after the end of the Contract Retention Period, any Designated Contract(s) not previously assumed or not identified in an Assumption Notice shall automatically be deemed an Excluded Contract for all purposes under this Agreement. Purchasers may, at their sole discretion and at any time during the Contract Retention Period, deliver to Sellers one (1) or more written notices (each, an “Assumption Notice”) requesting assumption and assignment of any Designated Contract(s). Upon receipt of an Assumption Notice, each Seller party to the Designated Contract(s) set forth in the applicable Assumption Notice shall, subject to the Corresponding Purchaser’s demonstrating adequate assurance of future performance thereunder, take all actions reasonably necessary to seek to assume and assign to the Corresponding Purchaser pursuant to Section 365 of the Bankruptcy Code the Designated Contract(s) set forth in the applicable Assumption Notice, and the Corresponding Purchaser shall be responsible for satisfying any Cure Amounts relating to such Designated Contracts. To the extent that any Designated Contract is a Facility Lease, each Seller party to such Facility Lease hereby grants the Corresponding Purchaser a license to use and possess the Facility that is leased pursuant to such Facility Lease. Such license shall commence on the Closing Date and shall terminate on the Rejection Effective Date of such Facility Lease. Notwithstanding anything in this Agreement to the contrary, on the date any Designated Contract is assumed and assigned to a Purchaser pursuant to this Section 2.6(d), such Contract shall be deemed an Assumed Executory Contract for all purposes under this Agreement. With respect to any Designated Contract, each Purchaser shall perform all of the Corresponding Seller’s obligations under such Designated Contract and shall compensate the Corresponding Seller for all obligations and liabilities, in each case first arising after the Closing Date and actually incurred by the Corresponding Seller as a result of such performance (or failure to so perform) by Purchaser after the Closing under such Designated Contract until the earliest of the date such Designated Contract is assigned to a Purchaser or the Rejection Effective Date with respect to such Designated Contract (the “Designated Remaining Executory Contract Obligations”). The covenants set forth in this Section 2.6(d) shall survive the Closing.

(e) Rejection of Excluded Contracts. As soon as practicable after the Closing Date, Sellers shall reject all Excluded Contracts. Upon the expiration of the Contract Retention Period, all Designated Contracts that have not been deemed Assumed Executory Contracts pursuant to an Assumption Notice and have not been the subject of a Rejection Notice shall be automatically deemed to be Excluded Contracts, Sellers shall immediately reject such Excluded Contracts if not previously rejected, and all obligations arising after the effective date of the Contract Retention Period in connection with such Excluded Contracts shall be considered

Excluded Liabilities under this Agreement. To the extent that any executory Contract or unexpired lease relating to the Business is not identified prior to the Closing Date or is not an Assumed Executory Contract, an Excluded Contract or a Designated Contract on the Closing Date, such executory Contract or unexpired lease shall be deemed an Excluded Contract and Sellers shall immediately reject any such executory Contract or unexpired lease upon discovery. The covenants set forth in this Section 2.6(e) shall survive the Closing.

(f) Notwithstanding anything in this Agreement to the contrary, Sellers may reject the Contracts set forth on Schedule 2.6(f) at any time from and after the Effective Date.

2.7 Cure Payments. Except as set forth in Section 2.6(d), Sellers will be responsible for paying all Cure Amounts (which Cure Amounts shall be paid out of the Cash Amount received by Sellers) in connection with the assignment and assumption of the Assumed Executory Contracts. In addition, Sellers will be responsible for paying all Cure Amounts with respect to any Designated Contract that becomes an Assumed Executory Contract pursuant to Section 2.6(c).

2.8 Deemed Consents and Cures. For all purposes of this Agreement (including all representations and warranties of Sellers contained herein), Sellers shall be deemed to have obtained all required consents in respect of the assignment of any Assumed Executory Contract if, and to the extent that, pursuant to the Sale Order or other Order of the Bankruptcy Court, Sellers are authorized to assume and assign to Purchasers, and Purchasers are authorized to accept, such Assumed Executory Contracts pursuant to Section 365 of the Bankruptcy Code, and any applicable Cure Amount has been satisfied by Sellers. If the consent required to effectuate the assignment of any Assumed Executory Contracts to Purchasers cannot be obtained pursuant to the Sale Order or other Order of the Bankruptcy Court, then the parties shall endeavor to obtain such consent pursuant to Sections 4.5, 7.1 and 10.5.

### **ARTICLE III BASIC TRANSACTION**

3.1 First Closing. At the First Closing, (a) Purchasers shall purchase and be assigned the Acquired Assets (with each Purchaser purchasing and being assigned the Acquired Assets of the Corresponding Seller), and (b) in consideration of the Acquired Assets, (i) Purchasers shall pay to Sellers, in the aggregate, 200,000 units of Intermediate Holdings (the “Intermediate Holdings Units”) and the Cash Amount (with (x) each Purchaser paying, and each Seller receiving, its Allocated Share of the Cash Amount and (y) Intermediate Holdings and its Subsidiaries paying their Allocated Share of the Intermediate Holdings Units to Sellers), (ii) Purchasers shall pay to Sellers, in the aggregate, 80% of the Debt Interests (the aggregate face value of the debt obligations plus any and all accrued and unpaid interest, fees and expenses and the Prepayment Premium (as defined in the Prepetition Term Loan Agreement) represented by such Debt Interests, together, the “First Credit Bid Amount”) (with each Purchaser paying, and each Seller receiving, its Allocated Share of such Debt Interests), and (iii) Purchasers shall assume, without duplication, the Assumed Obligations (with each Purchaser assuming the Assumed Obligations of the Corresponding Seller). The closing of the transactions contemplated by this Section 3.1 shall be referred to herein as the “First Closing.” If requested by Purchasers, Sellers shall negotiate and execute at the First Closing a transition services agreement in form

and substance reasonable satisfactory to Sellers and Purchasers. Notwithstanding anything in this Agreement to the contrary, the Allocated Shares set forth on the Schedule of Sellers and Purchasers (A) shall not be binding upon the Sellers for purposes of any plan filed in connection with the Chapter 11 Cases, (B) shall not, and shall not be interpreted to, have any effect on the distributions to Sellers' creditors, (C) shall be prepared, to the extent reasonably possible, in a manner consistent with any distributions to Sellers' creditors, with any plan filed in connection with the Chapter 11 Cases, and with the characterization of the transactions set forth in Section 3.5, and (D) shall be adjusted to the extent necessary to be consistent with any distributions to Sellers' creditors, any plan filed in connection with the Chapter 11 Cases, and with the characterization of the transactions set forth in Section 3.5.

3.2 Distributions. Immediately after the First Closing and on the Closing Date, Sellers shall, as applicable, effect certain distributions (the "Distributions") with respect to the Intermediate Holdings Units received by Sellers pursuant to Section 3.1, pursuant to which Sellers shall cause to be distributed to FB Parent all of the Intermediate Holdings Units received by Sellers pursuant to Section 3.1.

3.3 Second Closing. Immediately after the Distributions and on the Closing Date, (a) Holdings shall purchase the Intermediate Holdings Units from FB Parent, and (b) in consideration of the Intermediate Holdings Units, Holdings shall pay to FB Parent 20% of the Debt Interests (the aggregate face value of the debt obligations represented by such Debt Interests plus any and all accrued and unpaid interest, fees and expenses and the Prepayment Premium (as defined in the Prepetition Term Loan Agreement), the "Second Credit Bid Amount" and, together with the First Credit Bid Amount, the "Credit Bid Amount"). The closing of the transactions contemplated by this Section 3.3 shall be referred to herein as the "Second Closing."

3.4 Purchase Price. The aggregate purchase price for the Acquired Assets (the "Purchase Price") is equal to the sum of (a) the amounts paid by Purchasers pursuant to Sections 3.1 and 3.3 plus (b) Purchasers' assumption of the Assumed Obligations. Upon receipt by Sellers of the Credit Bid Amount, all obligations of Sellers under the DIP Credit Facility and the Prepetition Term Loan Facility shall be deemed satisfied in full and cancelled pursuant to the Sale Order. In lieu of the satisfaction and cancellation of the Prepetition Term Loan Facility, to the extent provided for in the Sale Order, Purchasers (or their designee) may take an assignment of the Prepetition Term Loan Facility from the holder thereof, and the amount paid by Purchasers for such assignment (not to exceed the amount owed by the Debtors under the Prepetition Term Loan Facility) shall be deducted from the Purchase Price, all of Debtors' obligations under the Prepetition Term Loan Facility shall become Assumed Obligations under Section 2.3(a) hereof, and any security interests or liens under the Prepetition Term Loan Facility against Excluded Assets shall be released.

3.5 Reorganization Pursuant to Section 368(a)(1)(G) of the Code. With respect to the transactions contemplated by this Agreement intended to constitute a G Reorganization, (A) this Agreement constitutes a "plan of reorganization" of FB Parent and its Subsidiaries and Holdings and its Subsidiaries solely for purposes of Sections 368 and 354 of the Code and (B) the transactions with respect to FB Parent and its Subsidiaries described herein, in combination with the subsequent liquidation of FB Parent and its Subsidiaries, are intended to constitute a reorganization of FB Parent and its Subsidiaries pursuant to Section 368(a)(1)(G) of the Code.

3.6 Allocation of Purchase Price. Purchasers shall, within ninety (90) days after the Closing Date, prepare and deliver to FB Parent a schedule allocating the Purchase Price for U.S. federal, and any applicable state, local and other applicable tax purposes among Sellers and then, if applicable, the portion of the Purchase Price allocated to such Seller shall be further allocated among the Acquired Assets of such Seller (such schedule, the “Allocation”), in accordance with Section 1060 of the Code, and, if applicable, Section 338 of the Code, and the Treasury regulations thereunder (and any similar provision of any applicable state, local, or foreign tax Law). If within thirty (30) days after the Sellers’ receipt of the Allocation, Sellers shall not have objected in writing to the Allocation, then the Allocation shall become the Final Allocation, as defined below. If Sellers raise any objection(s) in writing to the Allocation within thirty (30) days of the receipt thereof, Purchasers and Sellers shall negotiate in good faith to resolve such objection(s). If and to the extent the Parties are unable to agree on the contents of the Allocation, the allocation of the Purchase Price shall be determined within a reasonable time by an independent accounting firm of national repute mutually selected by Purchasers and Sellers. The fees and expenses of any such accounting firm shall be shared equally by Sellers and Purchasers. The allocation of the Purchase Price, as agreed upon by Purchasers and Sellers (as a result of either the Sellers’ failure to object to the Allocation or of good faith negotiations between Purchasers and Sellers) or determined by an independent accounting firm under this Section 3.6 (the “Final Allocation”), including the amount of the purchase price for income tax purposes, shall be binding upon Purchasers and Sellers. Purchasers and Sellers shall report and file all Tax Returns (including amended Tax Returns and claims for refund) in a manner that is consistent with the Final Allocation, and shall take no position contrary thereto or inconsistent therewith unless required by applicable Law. Purchasers and FB Parent shall cooperate in the filing of any forms (including U.S. Internal Revenue Service (“IRS”) Form 8023 under Section 338 of the Code and IRS Form 8594 under Section 1060 of the Code) with respect to the Final Allocation. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 3.6 shall survive the Closing without limitation. The Final Allocation (A) shall not be binding upon the Sellers for purposes of any plan filed in connection with the Chapter 11 Cases and (B) shall not, and shall not be interpreted to, have any effect on the distributions to Sellers’ creditors.

#### **ARTICLE IV CLOSING**

4.1 Closing. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, the closing of the transaction contemplated by this Agreement (the “Closing,” which shall consist of the First Closing, the Distributions and the Second Closing) will take place at the offices of Proskauer Rose LLP, Eleven Times Square, New York, NY 10036 at 10:00 a.m. prevailing Eastern time as soon as practicable after the date on which the conditions set forth in Article VIII have been satisfied or waived (other than those conditions which by their nature are to be satisfied at the Closing, but subject to satisfaction of such conditions at the Closing) but no later than three (3) days thereafter; or on or at such other date or place as Holdings and FB Parent may determine (the “Closing Date”).

4.2 Deliveries by Purchasers.

- (a) On the Closing Date, at the First Closing:



(i) Purchasers shall deliver to Sellers the Intermediate Holdings Units and Intermediate Holdings will record in its equity records the transfer of the Intermediate Holdings Units from Purchasers to Sellers;

(ii) Purchasers shall deliver to FB Parent, for the benefit of Sellers, in accordance with their respective Allocated Shares (but subject to the last sentence in Section 3.1), the Cash Amount by wire transfer of immediately available funds;

(iii) Purchasers shall pay to Sellers, in the aggregate, 80% of the Debt Interests;

(iv) Purchasers shall deliver to Sellers one (1) or more assignments and assumptions of the Assumed Obligations, in customary form mutually acceptable to Purchasers and Sellers (collectively, the "Assignment and Assumption Agreements"), duly executed by the applicable Purchaser or Purchasers;

(v) each of Holdings and Intermediate Holdings shall deliver an affidavit, sworn under penalty of perjury and dated as of the Closing Date, in form and substance required under the Treasury regulations issued pursuant to Sections 897 and 1445 of the Code, stating that each such Purchaser is not and has not been a United States real property holding corporation as defined in Section 897 of the Code; and

(vi) Purchasers shall deliver to Sellers such other documents or instruments as are required to be delivered by any Purchaser at the Closing pursuant to the terms hereof or that Sellers reasonably request prior to the Closing Date to effect the transactions contemplated hereby.

(b) On the Closing Date, at the Second Closing, Holdings shall pay to FB Parent 20% of the Debt Interests.

#### 4.3 Deliveries by Sellers.

(a) On the Closing Date, at the First Closing, Sellers shall deliver or procure delivery to Purchasers of:

(i) physical possession of all of the Acquired Assets capable of passing by delivery with the intent that title in such Acquired Assets shall pass by and upon delivery;

(ii) the Assignment and Assumption Agreements, each duly executed by the applicable Seller or Sellers;

(iii) one (1) or more bills of sale, in customary form mutually acceptable to Purchasers and Sellers, conveying in the aggregate all of the owned personal property of Sellers included in the Acquired Assets, each duly executed by the applicable Seller or Sellers;

(iv) Intellectual Property assignments in customary form mutually acceptable to Purchasers and Sellers each duly executed by the applicable Seller or Sellers and each in recordable form to the extent necessary to assign such rights;

(v) special warranty or limited warranty deeds (as customary in the applicable jurisdiction) with respect to each Acquired Owned Real Property, subject only to matters disclosed on the Title Commitment that are Permitted Liens;

(vi) an assignment and assumption of lease with respect to each of the Assumed Facility Leases;

(vii) a certified copy of the Sale Order for the Acquired Owned Real Property;

(viii) certificates of title and title transfer documents to all titled motor vehicles;

(ix) assignment and assumption agreements with respect to Sellers' Permits and warranties, whereby each Seller shall assign to the Corresponding Purchaser all of such Seller's rights in and to any Permits and warranties relating (directly or indirectly) to the Acquired Assets or the Business;

(x) such documentation as may be necessary to change the authorized signatories on any bank accounts or powers of attorney relating (directly or indirectly) to the Acquired Assets;

(xi) certified copies of the resolutions of the board of directors of each Seller authorizing the execution, delivery and performance of this Agreement and the other agreements contemplated hereby and the consummation of the transactions contemplated hereby and thereby;

(xii) an affidavit from each Seller, sworn under penalty of perjury and dated as of the Closing Date, in form and substance required under the Treasury regulations issued pursuant to Section 1445 of the Code, stating that such Seller is not a foreign person as defined in Section 1445 of the Code;

(xiii) copies of all Third Party approvals and governmental approvals obtained pursuant to Section 7.1;

(xiv) all of the Books and Records;

(xv) originals (or, to the extent originals are not available, copies) of all Assumed Executory Contracts (together with all amendments, supplements or modifications thereto);

(xvi) such other instruments as are reasonably necessary to vest in Purchasers good and marketable title in and to the Acquired Assets in accordance with the provisions hereof;

(xvii) upon request of Purchasers or Sellers, a transition services agreement, in form and substance reasonably acceptable to Sellers and Purchasers;

(xviii) the Mutual Release; and

(xix) such other documents or instruments as are required to be delivered by any Seller at the Closing pursuant to the terms hereof or that Purchasers reasonably request prior to the Closing Date to effect the transactions contemplated hereby.

(b) On the Closing Date, at the First Closing (or as promptly as practicable thereafter), Sellers shall pay the Cure Amounts for the Assumed Executory Contracts (which Cure Amounts shall be paid out of the Cash Amount received by Sellers).

(c) On the Closing Date, Sellers shall deliver to Purchasers distribution resolutions and/or agreements evidencing the Distributions, and Intermediate Holdings will record in its equity records the transfer of the Intermediate Holdings Units pursuant to the Distributions.

(d) On the Closing Date, at the Second Closing, FB Parent shall deliver to Holdings the Intermediate Holdings Units (which have been delivered to Sellers pursuant to the First Closing and distributed to FB Parent pursuant to the Distributions), and Intermediate Holdings will record in its equity records the transfer of the Intermediate Holdings Units from FB Parent to Holdings.

(e) On the Closing Date, Sellers shall deliver to Purchasers distribution resolutions and/or agreements evidencing the Distributions and Intermediate Holdings will record in its equity records the transfer of the Intermediate Holdings Units from FB Parent to Holdings.

4.4 Form of Instruments. To the extent that a form of any document to be delivered hereunder is not attached as an Exhibit hereto, such documents shall be in form and substance, and shall be executed and delivered in a manner, reasonably satisfactory to Purchasers and Sellers.

4.5 Further Assurances. From time to time prior to and after the Closing, Sellers and, as applicable, Purchasers, shall execute and deliver such documents and use their reasonable best efforts to take or cause to be taken all actions and do or cause to be done all things necessary, proper or advisable to consummate the transactions contemplated by this Agreement, including making, as reasonably requested by Purchasers or Sellers, all filings, applications, statements and reports to all authorities that are required to be made prior to the Closing Date by or on behalf of Sellers or Purchasers, respectively, or any of their respective Affiliates pursuant to any applicable Law in connection with this Agreement and the transactions contemplated hereby (including to put Purchasers in actual possession and operating control of the Acquired Assets, to effectuate, record or perfect the transfer of the Acquired Assets to Purchasers, to confirm the title of the Acquired Assets in Purchasers, to assist Purchasers in exercising rights relating thereto, to obtain all consents, approvals and authorizations of Third Parties, to make all filings with and give all notices to Third Parties which may be necessary or required in order to effectuate the transactions contemplated hereby, and to obtain landlords' estoppels and landlords' lenders'

waivers (such landlords' estoppels and landlords' lenders' waivers to be at Purchasers' sole cost and expense). Sellers shall use commercially reasonable efforts to fulfill or obtain the fulfillment of the conditions set forth in Sections 8.1 and 8.2 of this Agreement. From and after the Closing, Sellers shall use reasonable best efforts and shall take all actions reasonably requested by Purchasers, at Purchasers' sole cost and expense, to assist Purchasers to fulfill or obtain the fulfillment of the condition set forth on Schedule 8.2(k) and shall use reasonable best efforts to provide to Purchasers, at Purchasers' sole cost and expense, benefits, and enforce on behalf of Purchasers all rights, as reasonably requested by Purchasers with respect to the Contracts set forth on Schedule 8.2(j). Sellers shall provide notice of the transactions contemplated by this Agreement and the Chapter 11 Cases to all parties entitled to such notice, including all environmental authorities in jurisdictions applicable to Sellers and all other Persons with current or potential claims with respect to any Excluded Environmental Liabilities or other Liabilities or obligations arising under Environmental Laws or relating to Hazardous Substances.

4.6 Withholding. Notwithstanding anything herein to the contrary, Purchasers shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to each Seller such amounts as they are required to deduct and withhold with respect to the making of such payment under the Code and the rules and regulations promulgated thereunder, or any applicable provision of state, local or foreign Tax Law. To the extent that amounts are so withheld by Purchasers and timely and properly paid over to the proper Governmental Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to each Seller in respect of which such deduction and withholding was made by Purchasers.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLERS**

Except as set forth in the Company Reports filed with or furnished to the Securities and Exchange Commission (the "SEC") starting with the annual report on Form 10-K of FB Parent for the fiscal year ending December 29, 2012 and prior to August 8, 2013 (collectively, the "Filed Company SEC Documents") (excluding (a) any risk factor disclosures set forth under the heading "Risk Factors" and (b) any disclosure of risks including in any "forward looking statements" disclaimer or any other forward looking statements of risk that do not contain a reasonable level of detail about the specific risks of which the statements warn), Sellers jointly and severally represent and warrant to Purchasers on the date of this Agreement that the statements contained in this Article V are correct and complete.

5.1 Organization, Standing. Each Seller and each Foreign Subsidiary is a legal entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization and has all requisite corporate or similar power and authority and all Permits necessary to own, lease and operate its respective properties and assets and to carry on its business as presently conducted. Each Seller and each Foreign Subsidiary is qualified to do business and is in good standing or with active status as a foreign corporation in each other jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified or in good standing has not had and would not reasonably be expected to have, individually or in the

aggregate, a Material Adverse Effect. All jurisdictions in which Sellers and the Foreign Subsidiaries are qualified to do business are set forth on Schedule 5.1.

5.2 Subsidiaries. Schedule 5.2 sets forth, for each Subsidiary of FB Parent, (i) its name and jurisdiction of organization, and (ii) the number of authorized, issued and outstanding shares or equivalent thereof for each class of its capital stock or other equity interests and the holders thereof. All of the issued and outstanding shares of capital stock or other equity interests of each Subsidiary of FB Parent have been duly authorized and are validly issued, fully paid, and non-assessable. Except as set forth on Schedule 5.2, FB Parent or one (1) or more of its Subsidiaries hold of record and own beneficially all of the outstanding shares of each Subsidiary of FB Parent, free and clear of any restrictions on transfer, Liens, options, warrants, purchase rights, Contracts, commitments, equities, claims, and demands. There are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require FB Parent or any of its Subsidiaries to sell, transfer, or otherwise dispose of any capital stock or other equity interests of any of its Subsidiaries or that could require any Subsidiary of FB Parent to issue, sell, or otherwise cause to become outstanding any of its own capital stock or other equity interest (other than pursuant to this Agreement). There are no outstanding stock appreciation, phantom stock, profit participation, or similar rights with respect to any Subsidiary of FB Parent. There are no voting trusts, proxies, or other agreements or understandings with respect to the voting of any capital stock of any Subsidiary of FB Parent. No Seller and no Foreign Subsidiary is in default under or in violation of any provision of its charter or bylaws or other similar organizational documents. Neither FB Parent nor any of its Subsidiaries controls directly or indirectly or has any direct or indirect equity participation in any corporation, partnership, trust, or other business association that is not a Subsidiary of FB Parent. Except as set forth on Schedule 5.2, no Seller and no Foreign Subsidiary is a member of (nor is any portion of the Business conducted through) any partnership or a participation in any joint venture or similar arrangement. Except as set forth on Schedule 5.2, neither FB Parent nor any of its Subsidiaries owns or has any right to acquire, directly or indirectly, any outstanding capital stock of, or other equity interests in, any Person.

5.3 Validity of Agreement; Power. Subject to any necessary authorization from the Bankruptcy Court, each Seller has full power and authority to execute and deliver the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The board of directors (or similar governing body) of each Seller has duly approved the Transaction Documents to which such Person is a party and has duly authorized the execution and delivery of such Transaction Documents and the consummation of the transactions contemplated thereby. No other corporate or organizational proceedings on the part of any Seller are necessary to approve and authorize the execution and delivery of the Transaction Documents to which such Person is a party and the consummation of the transactions contemplated thereby. All Transaction Documents to which any Seller is a party have been duly executed and delivered by such Person, except such Transaction Documents that are required by the terms hereof to be executed and delivered by such Person after the date hereof, in which case such Transaction Documents will be duly executed and delivered by such Person at or prior to the Closing, and, subject to any necessary authorization from the Bankruptcy Court, all Transaction Documents constitute, or will constitute, as the case may be, the valid and binding agreements of Sellers, enforceable against Sellers in accordance with their terms.

5.4 No Conflicts or Violations. Except as set forth on Schedule 5.4 or any approvals required by the Bankruptcy Court or pursuant to the HSR Act, and except to the extent any of the following is not enforceable due to operation of the Sale Order, the execution, delivery and performance of the Transaction Documents and the consummation of the transactions contemplated thereby by Sellers do not and will not conflict with, result in any breach, default or violation of, give rise to a right of modification, termination or acceleration or loss of a material benefit under, result in the creation of any Lien or Liability under, require any authorization, consent, approval, exemption or other action by or notice or declaration to, or filing with, any Governmental Authority or other Person under, (i) any provision of the articles of incorporation or bylaws or other equivalent organizational document of any Seller or Foreign Subsidiary, (ii) any Material Contract to which any Seller or Foreign Subsidiary is a party to or by which it is bound or (iii) any determination or Order of any Governmental Authority or Law applicable to any Seller or Foreign Subsidiary or its property or assets.

5.5 Financial Statements and Related Matters.

(a) Set forth on Schedule 5.5(a) are copies of the following financial statements for FB Parent and its Subsidiaries: (i) unaudited consolidated and consolidating balance sheets as of June 29, 2013 (collectively, the "Latest Balance Sheet") and the related statements of income and cash flows for the six (6)-month period then ended, (ii) audited consolidated and consolidating balance sheets and statements of income and cash flows as of and for the fiscal year ended December 29, 2012, and (iii) audited consolidated and consolidating balance sheets and statements of income and cash flows as of and for the fiscal year ended December 31, 2011. Each of the foregoing financial statements (including in all cases the notes thereto, if any) is accurate and complete in all material respects, is consistent with the Books and Records (which, in turn, are accurate and complete in all material respects), presents fairly, in all material respects, Sellers' financial condition and results of operations as of the times and for the periods referred to therein, and has been prepared in accordance with GAAP, subject in the case of unaudited financial statements to changes resulting from normal year-end adjustments for recurring accruals (which shall not be material individually or in the aggregate) and to the absence of footnote disclosure.

(b) Schedule 5.5(b) sets forth, as of the date of this Agreement, all of the outstanding Indebtedness of the Foreign Subsidiaries. As of the Closing Date, there will not be any Indebtedness of the Foreign Subsidiaries except as set forth on Schedule 5.5(b) and except as may be incurred in compliance with Section 7.3.

(c) FB Parent has filed or furnished, as applicable, on a timely basis all registration statements, forms, reports and other documents required to be filed or furnished by it with the SEC pursuant to the Securities Act or the Exchange Act on or after January 1, 2012 and prior to August 8, 2013 (the "Company Reports"). Each of the Company Reports, at the time of its filing or being furnished, complied when filed or furnished as to form in all material respects with the applicable requirements of the Securities Act and the Exchange Act, as the case may be. As of their respective dates (or, if amended prior to the date hereof, as of the date of such amendment), the Company Reports did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances in which they were made, not misleading. As of

the date of this Agreement, there are no outstanding and unresolved comments received from the SEC or its staff with respect to any of the Company Reports.

5.6 Absence of Undisclosed Liabilities. To the Knowledge of Sellers, except as set forth on Schedule 5.6, no Foreign Subsidiary has any material Liabilities, except (i) executor obligations under Contracts described on Schedule 5.13(a) or under Contracts which are not required to be disclosed thereon (but not Liabilities for breaches thereof), (ii) Liabilities stated or adequately reserved against in the Liabilities side of the Latest Balance Sheet, (iii) Liabilities which have arisen after the date of the Latest Balance Sheet in the Ordinary Course of Business or otherwise in accordance with the terms and conditions of this Agreement (none of which is a material Liability for breach of contract, breach of warranty, tort or infringement or a claim or lawsuit or Liability under Environmental Laws) and (iv) Excluded Liabilities.

5.7 Accounts Receivable. Except as set forth on Schedule 5.7, each of the Accounts Receivable arising from services or sales by any Seller or Foreign Subsidiary, whether or not earned thereby on the date hereof or on the Closing Date, constitutes a bona fide receivable resulting from a bona fide sale to a customer in the Ordinary Course of Business, the amount of which was actually due on the date thereof, is not subject to any valid counterclaim or setoff other than normal cash discounts accrued in the Ordinary Course of Business, and is collectible net of any reserves for doubtful accounts on any applicable Books and Records computed in accordance with GAAP.

5.8 Accounts Payable and Other Accrued Expenses. Set forth on Schedule 5.8 is a list of all accounts payable and other accrued expenses of Sellers and the Foreign Subsidiaries as of September 7, 2013, together with the name of each payee, the relationship (if any) to Sellers, the date each such payment is due and the nature of the transaction in which it was incurred if other than a trade payable incurred in the Ordinary Course of Business.

5.9 Inventory. Except as set forth on Schedule 5.9, the Inventory of Sellers and the Foreign Subsidiaries (i) consists solely of materials and goods useable or saleable in the Ordinary Course of Business (taking into account the quantity and quality of the Inventory), (ii) is not materially defective, slow moving, obsolete or damaged, and (iii) is fit and merchantable for their particular use in all material respects. Except as set forth on Schedule 5.9, none of the Inventory is subject to any consignment, bailment, warehousing or similar agreement.

5.10 Title to Assets; Assets Necessary to Business.

(a) Sellers and the Foreign Subsidiaries have good and marketable title to, or a valid leasehold interest in or all rights to use, all assets reflected under the heading "assets" on the face of the Latest Balance Sheet, and on such balance sheet as it will be adjusted through the Closing Date to reflect transactions occurring in the Ordinary Course of Business since the date of the Latest Balance Sheet as may be effected in accordance with Section 7.3.

(b) To the Knowledge of Sellers, the assets of Sellers and the Foreign Subsidiaries are, in all material respects, in good operating condition and repair (ordinary wear and tear excepted) and are fit for use in the Ordinary Course of Business.

(c) Each asset that is material to the operation of the Business as presently conducted is an Acquired Asset.

(d) Subject to Bankruptcy Court approval, Sellers have the power and the right to sell, assign and transfer and Sellers will sell and deliver to Purchasers, and upon consummation of the transactions contemplated by this Agreement, Purchasers will acquire good and marketable title to the Acquired Assets, free and clear of all Liens other than Permitted Liens.

(e) The Transaction Documents, when duly executed and delivered by Sellers to Purchasers at the Closing, will effectively vest in Purchasers good and marketable title to the Acquired Assets, subject only to the Assumed Obligations and Permitted Liens.

#### 5.11 Real Property.

(a) Schedule 5.11(a) sets forth the address and description of all Owned Real Property. With respect to each Owned Real Property and except as set forth on Schedule 5.11(a): (i) the applicable Seller or Foreign Subsidiary has (A) good and marketable indefeasible fee simple title with respect to Owned Real Property located in the United States and (B) customary title with respect to Owned Real Property located in a jurisdiction outside of the United States, free and clear of all Liens, except Permitted Liens; (ii) there are no leases, subleases, licenses, concessions, or other agreements, written or oral, granting to any Person the right of use or occupancy of any portion of such Owned Real Property; (iii) there are no outstanding options, rights of first offer, or rights of first refusal to purchase such Owned Real Property (other than the rights of Purchasers pursuant to this Agreement), or any portion thereof or interest therein; and (iv) Sellers and the Foreign Subsidiaries are not a party to any agreement or option to purchase any real property or interest therein.

(b) Except as set forth on Schedule 5.11(b), no Seller or Foreign Subsidiary has received any written notice of any pending or threatened expropriation, condemnation or other proceedings in the nature of eminent domain in connection with any parcel of the Owned Real Property or the Leased Facilities.

(c) Schedule 5.11(c) sets forth the address of each Leased Facility and a true and complete list of all Facility Leases (including the title and date thereof and the parties thereto), including all amendments, modifications, extensions, renewals, guaranties, and other agreements with respect thereto. In addition, except as set forth on Schedule 5.11(c), (i) there are no occupancy rights, subleases or licenses presently affecting the Leased Facilities; (ii) Sellers have delivered to Purchasers true and complete copies of each of the Facility Leases, including all amendments, modifications, extensions, renewals, guaranties, and other agreements with respect thereto (or in the case of an oral lease, a written summary of the material terms of such lease), and none of such leases has been otherwise amended, modified or terminated; (iii) the Facility Leases are at present and on the date of the Closing shall be legal, valid, binding, enforceable and in full force and effect, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other Laws affecting creditors' rights generally from time to time in effect, and to general equitable principles, unless any such Facility Lease shall have expired in accordance with its terms (and not because of any termination or other acceleration of the stated



expiration date thereof); (iv) there is no option to purchase, right of first offer, right of first refusal or other provision granting any Seller or any other Person any right to acquire Sellers' interest in the Leased Facilities; (v) neither Sellers nor any other party to the Facility Lease is in material breach or default under such Facility Lease, and no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a material breach or default, or permit the termination, modification or acceleration of rent under such Facility Lease; and (vi) Sellers and the Foreign Subsidiaries have not subleased, licensed or otherwise granted any Person the right to use or occupy such Facility Lease or any portion thereof.

(d) To the Knowledge of Sellers, there are no material defects in the buildings, improvements and structures and fixtures located on or at the Acquired Owned Real Property or at the Assumed Leased Facilities which would materially impair the conduct of the Business by Purchasers immediately following the Closing. To the Knowledge of Sellers, the mechanical, electrical, plumbing, HVAC and other systems servicing the Acquired Owned Real Property and the Assumed Leased Facilities are in good working order and repair, ordinary wear and tear excepted, and there are no defects (latent, patent, or otherwise) in such systems which could reasonably be expected to materially impair the conduct of the Business by Purchasers immediately following the Closing.

(e) The Owned Real Property and the Leased Facilities comprise all of the real property used in, or otherwise related to, the Business.

#### 5.12 Intellectual Property.

(a) Schedule 5.12(a) sets forth a complete and correct list of all of the following Intellectual Property that is owned by any Seller or Foreign Subsidiary: (i) patents and patent applications, trademark and service mark registrations and applications, copyright registrations and applications, and internet domain names; (ii) material unregistered trademarks, service marks, copyrights and any other material unregistered Intellectual Property; and (iii) material computer software.

(b) Sellers and the Foreign Subsidiaries (i) own and possess, free and clear of all Liens (other than Liens set forth on Schedule 5.12(b) or Liens that will be discharged pursuant to the Sale Order), all right, title and interest in and to the Intellectual Property set forth on Schedule 5.12(a), and (ii) to the Knowledge of Sellers, own and possess all right, title and interest in and to, or have a valid and enforceable right to use (pursuant to a written license agreement set forth on Schedule 5.13(a), a Contract entered into in the Ordinary Course of Business or a license for commercially available, standard, off-the-shelf, unmodified software that is provided in executable form only and provided for Sellers' internal use only), in each case free and clear of all Liens (other than Liens set forth on Schedule 5.12(b) or Liens that will be discharged pursuant to the Sale Order), all of the other Intellectual Property necessary for or used in the conduct of the Business as presently conducted by Sellers and the Foreign Subsidiaries (together with all of Intellectual Property set forth on Schedule 5.12(a), collectively, the "Company Intellectual Property"). To the Knowledge of Sellers, all of the Company Intellectual Property is valid, subsisting and enforceable. Sellers have taken all actions necessary or commercially reasonable to maintain, protect, and enforce the Company Intellectual Property.

(c) Except as set forth on Schedule 5.12(c), to the Knowledge of Sellers, no claims have been made or threatened against any Seller or any Foreign Subsidiary contesting the validity, use, ownership or enforceability of any of the Company Intellectual Property. To the Knowledge of Sellers, no Seller or Foreign Subsidiary has infringed, misappropriated or otherwise conflicted with, the operation of the Business as presently conducted does not infringe, misappropriate or otherwise conflict with, and the operation of the Business as conducted prior to the Closing has not infringed, misappropriated, or otherwise conflicted with, any Intellectual Property of any Third Party. To the Knowledge of Sellers, there are no facts which indicate a likelihood of any of the foregoing and no Seller or Foreign Subsidiary has received during the past three (3) years any Notices regarding any of the foregoing (including any demands or offers to license any Intellectual Property from any Third Party).

(d) To the Knowledge of Sellers, no Third Party has infringed, misappropriated or otherwise conflicted with any of the Company Intellectual Property.

(e) Sellers and the Foreign Subsidiaries have taken commercially reasonable measures to implement policies and procedures consistent with industry-standard practices with respect to their current and former consultants, contractors and employees, to the extent that any of the foregoing have developed, created or modified any material Company Intellectual Property or have had access to any material confidential Company Intellectual Property, (i) assigning ownership to Sellers of Intellectual Property created, developed or modified by (A) such employees arising out of their employment or (B) such contractors or consultants engaged by Sellers arising out of their engagement; and (ii) requiring such employees, contractors and consultants to maintain the confidentiality of all Company Intellectual Property.

(f) Immediately subsequent to the Closing, the Company Intellectual Property and computer systems, including software, hardware, networks, interfaces, platforms and related systems owned or used by Sellers or the Foreign Subsidiaries (collectively, the “Company Systems”) will be owned by or available for use by Purchasers on terms and conditions substantially similar to those under which Sellers and the Foreign Subsidiaries owned or used the Company Intellectual Property and Company Systems immediately prior to the Closing. Sellers and the Foreign Subsidiaries own or have a valid and enforceable right to use all Company Systems, free and clear of all Liens (other than Liens set forth on Schedule 5.12(b) or that will be discharged pursuant to the Sale Order). Each Company System is adequate for its intended functions, operations, purposes and capabilities and is sufficient for the immediate and future needs of the Business as currently contemplated by Sellers.

(g) Except as set forth on Schedule 5.12(g), no other party to any Assumed Contract that provides a license to any Intellectual Property has requested or initiated an audit or other review or inspection of any Facilities or any Books and Records. Sellers have provided Purchasers with true and correct copies of all material licenses to Intellectual Property, in each case together with all amendments, waivers or other changes thereto.

### 5.13 Contracts.

(a) Except (i) as set forth on Schedule 5.13(a), (ii) as filed as an exhibit to a Filed Company SEC Document, or (iii) as contemplated by this Agreement, no Seller or Foreign Subsidiary is a party to or bound by, whether written or oral, any:

(i) Collective Bargaining Agreement;

(ii) settlement, conciliation or similar agreement which imposes any payment or other material obligations on any Seller or Foreign Subsidiary after the execution date of this Agreement;

(iii) management agreement or Contract for the employment of any officer, individual employee or other Person on a full-time, part-time, consulting or other basis (A) providing for annual cash or other compensation in excess of Seventy-Five Thousand Dollars (\$75,000), (B) providing for the payment of any cash or other compensation or benefits as a result of the execution of this Agreement or the consummation of the transactions contemplated hereby, or (C) otherwise restricting the ability to terminate the employment of any employee at any time for any lawful reason or for no reason without Liability;

(iv) Contract with any Government Authority;

(v) Contract relating to borrowed money or other Indebtedness or the mortgaging, pledging or otherwise placing a Lien on any material asset or group of material assets of Sellers or the Foreign Subsidiaries or any letter of credit arrangements, or any Guaranty therefor;

(vi) Contract under which any Seller or Foreign Subsidiary is a (A) lessee of or holds or operates any personal property owned by any other Person, except for any lease of personal property under which the aggregate annual rental payments do not exceed One Hundred Thousand Dollars (\$100,000) in any twelve-month period or (B) lessor of or permits any Person to hold, operate or occupy any property, real or personal, owned or controlled by such Seller or Foreign Subsidiary;

(vii) Contract or group of related Contracts (other than purchase and sale orders entered into in the Ordinary Course of Business) with the same party or group of Affiliated parties continuing over a period of more than six (6) months from the date or dates thereof, not terminable by any Seller or Foreign Subsidiary upon thirty (30) days or less notice without penalty or involving more than One Hundred Thousand Dollars (\$100,000);

(viii) Contract relating to the ownership of, investments in or loans and advances to any Person, including investments in joint ventures and minority equity investments;

(ix) assignment, license, royalty or other Contract with respect to any Intellectual Property, including any Contract under which any Seller or Foreign Subsidiary is a licensor or licensee (excluding immaterial royalty agreements and licenses for commercially available, standard, off-the-shelf, unmodified software that is provided in executable form only and provided for Sellers' internal use only), and Contract affecting any Seller's or Foreign Subsidiary's ability to use any Intellectual Property;

(x) Contract that contains any provision pursuant to which any Seller or Foreign Subsidiary is obligated to indemnify or make any indemnification payments to any Person (other than Contracts entered into in the Ordinary Course of Business where such obligation would not reasonably be expected to result in Liabilities in excess of One Hundred Thousand Dollars (\$100,000) per year);

(xi) material agent, sales representative, sales or distribution Contracts (other than purchase and sale orders entered into in the Ordinary Course of Business);

(xii) material Contract relating to the marketing or advertising of any Seller's or Foreign Subsidiary's products or services;

(xiii) power of attorney or other similar Contracts or grant of agency;

(xiv) Contract prohibiting any Seller or Foreign Subsidiary, now or in the future, from freely engaging in any business or competing anywhere in the world or restricting its use or disposition of any Intellectual Property, including any nondisclosure, non-competition, settlement, coexistence, standstill or confidentiality agreements;

(xv) Contract (A) providing for any Seller or Foreign Subsidiary to be the exclusive provider of any product or service to any Person or the exclusive recipient of any product or service of any Person or that otherwise involves the granting by any Person to the any Seller or Foreign Subsidiary of exclusive rights of any kind, (B) providing for any Person to be the exclusive provider of any product or service to any Seller or Foreign Subsidiary or (C) granting to any Person a right of first refusal or right of first offer on the sale of any part of the business of any Seller or Foreign Subsidiary;

(xvi) Contract providing for any Seller or Foreign Subsidiary to guarantee, grant or otherwise promise to any Person the sale or provision of any product or service at the best, lowest or otherwise most favored price or terms; and

(xvii) any other individual Contract that is otherwise material to the assets, operations or financial condition of Sellers or the Business, taken as a whole.

(b) All of the Contracts of the type described in Section 5.13(a) (including those not required to be disclosed because they are filed as an exhibit to a Filed Company SEC Document) are referred to herein as the "Material Contracts" and each, individually, a "Material Contract." Except as disclosed on Schedule 5.13(b), (i) to the Knowledge of Sellers, no Material Contract has been materially breached or canceled by the other party, and there is no anticipated material breach by any other party to any Material Contract, (ii) except for defaults that will be cured through payment of the Cure Amounts or arising solely as a consequence of the commencement of the Chapter 11 Cases, no Seller nor, to the Knowledge of Sellers, any other party thereto is in default or breach in any material respect under the terms of any Material Contract and, to the Knowledge of Sellers, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute a material default or breach thereunder, (iii) no Seller or Foreign Subsidiary has assigned, delegated or otherwise transferred to any Person any of its rights, title or interest under any Material Contract, and (iv) each Material Contract is legal, valid, binding, enforceable and in full force and effect and, subject to the terms of this

Agreement, will continue as such following the consummation of the transactions contemplated hereby.

(c) Sellers have provided or made available (in the Data Room or as an exhibit to a Filed Company SEC Document) to Purchasers true and correct copies of all Material Contracts, in each case together with all amendments, waivers or other changes thereto and Schedule 5.13(a) contains an accurate and complete description of all material terms of all oral Contracts referred to therein.

5.14 Insurance. Schedule 5.14 lists and describes all policies of insurance owned, held, or maintained by or for the benefit of any Seller or Foreign Subsidiary or insuring the property or assets of any Seller or Foreign Subsidiary, including the type and amount of coverage and the expiration dates of the policies and, with respect to claims in excess of \$50,000, the claims history for the past two years. Sellers have made available to Purchasers all policies of insurance owned, held, or maintained by or for the benefit of any Seller or Foreign Subsidiary or insuring the property or assets of any Seller or Foreign Subsidiary. Except as set forth on Schedule 5.14, (a) current premiums and any other obligations under such insurance have been paid and all such policies are valid and enforceable and in full force and effect on the date hereof and no Seller or Foreign Subsidiary is in default with respect to its obligations under any such insurance policies, and (b) no Seller or Foreign Subsidiary has received any Notice within the last ninety (90) days threatening suspension, revocation, modification or cancellation of any insurance policy or a material increase in any premium in connection therewith or informing any Seller or Foreign Subsidiary that any coverage listed on Schedule 5.14 will or may not be available in the future on substantially the same terms as now in effect. Except as set forth on Schedule 5.14, no Seller has been denied insurance coverage within the past three (3) years. Except as set forth on Schedule 5.14, no Seller or Foreign Subsidiary has any self-insurance or co-insurance programs. The reserves set forth on the Latest Balance Sheet are adequate to cover all anticipated Liabilities with respect to self-insurance or co-insurance programs listed on Schedule 5.14.

5.15 Taxes. Except as set forth on Schedule 5.15.

(a) Each Seller and each Foreign Subsidiary has filed all material Tax Returns that it was required to file. All such filed Tax Returns were correct and complete in all material respects. All material Taxes owed by any Seller and any Foreign Subsidiary and all material Taxes with respect to the Acquired Assets (in each case, whether or not shown on any Tax Return) have been paid. No Seller and no Foreign Subsidiary is the beneficiary of any extension of time within which to file any Tax Return. With respect to each Seller and each Foreign Subsidiary, no unresolved claim has been made within the past three (3) years by a Governmental Authority in a jurisdiction where such party does not file Tax Returns that such Seller or Foreign Subsidiary or the Business is or may be subject to taxation by that jurisdiction.

(b) Each Seller and each Foreign Subsidiary has withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other Third Party, and all IRS Forms W-2 and 1099 (or any other applicable form) required with respect thereto have been properly completed and timely filed.

(c) No Seller and no Foreign Subsidiary has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency other than as the result of extending the due date of a Tax Return which waiver or extension is still in effect.

(d) No Seller and no Foreign Subsidiary is a party to any Tax allocation or sharing agreement other than any agreement the principal subject matter of which is not Taxes. No Seller and no Foreign Subsidiary (i) has been a member of an Affiliated Group filing a consolidated federal income Tax Return or any state, local or non-U.S. equivalent thereof (other than an Affiliated Group the common parent of which was FB Parent) or (ii) has any Liability for the Taxes of any Person (other than any Seller) under Section 1.1502-6 of the Treasury Regulations (or any similar provision of state, local, or foreign Law), as a transferee or successor or, except, by Contract the principal subject matter of which is not Taxes, or otherwise.

(e) There are no Liens for Taxes other than Permitted Liens upon any of the Acquired Assets.

(f) Schedule 5.15(f) sets forth each non-U.S. Subsidiary of FB Parent and its entity classification for U.S. federal income tax purposes.

#### 5.16 Employee Benefit Plans.

(a) Schedule 5.16(a) sets forth a complete and accurate list of each Employee Benefit Plan. Sellers have provided or made available (in the Data Room or as an exhibit to a Filed Company SEC Document) to Purchasers true and complete copies of each Employee Benefit Plan and all material documents pursuant to which such Employee Benefit Plans are maintained, funded and administered (including all plan documents, amendments thereto, summary plan documents, trust documents, annual reports, actuarial reports, service agreements and group insurance Contracts). Except as set forth on Schedule 5.16(a), to the Knowledge of Sellers, each Employee Benefit Plan has been established, maintained, funded and administered in material compliance with its terms, all applicable requirements of ERISA, the Code, and other applicable Laws. Except as set forth on Schedule 5.16(a), to the Knowledge of Sellers, each Employee Benefit Plan that is intended to be qualified under Code § 401(a) is so qualified and has received a favorable determination letter from the IRS upon which it may rely, and no fact or event has occurred that could adversely affect the qualified status of such Employee Benefit Plan.

(b) Except as set forth on Schedule 5.16(b), none of Sellers, any of their Affiliates or any ERISA Affiliates maintains, contributes to or has any Liability or could have any potential Liability (including liability with respect to any partial “withdrawal” or a “complete withdrawal” within the meaning of Sections 4205 and 4203 of ERISA, respectively) under or with respect to (i) any “employee pension benefit plan” (as defined in Section 3(2) of ERISA) that is subject to Title IV or Section 302 of ERISA or Section 412 of the Code, or any “multiemployer plan” (as defined in Section 3(37) of ERISA), “multiple employer plan” (within the meaning of Section 210 of ERISA or Section 413(c) of the Code), or (iv) “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA). Except as set forth on Schedule 5.16(b), Sellers and the Foreign Subsidiaries do not have and have not had any Liability as a

consequence of at any time being treated as a single employer under Section 414 of the Code with any Person other than Sellers and the Foreign Subsidiaries.

(c) No event or condition has occurred in connection with which any Seller or any ERISA Affiliate could be reasonably likely to be subject to any material Liability, fine, excise tax, or Lien with respect to (i) any Employee Benefit Plan or any benefit or compensation plan, program, arrangement or agreement under ERISA, the Code or any other applicable Law or (ii) under any agreement or arrangement pursuant to or under which any Seller or any ERISA Affiliate is required to indemnify any Person against such Liability or have any joint and several Liability. There are no pending or, to the Knowledge of Sellers, threatened claims, suits, audits or investigations related to any Employee Benefit Plan (other than non-material, routine claims for benefits) that could become a Liability of Purchasers. No Seller or Foreign Subsidiary has incurred any material Liability to the Pension Benefit Guaranty Corporation, the IRS, or the Department of Labor with respect to any Employee Benefit Plan that has not been satisfied in full, nor, to the Knowledge of Sellers, does any condition exist that presents a material risk to any Seller or Foreign Subsidiary of incurring such a Liability. To the Knowledge of Sellers, with respect to each Employee Benefit Plan, there have been no material prohibited transactions as defined in Section 406 of ERISA or Section 4975 of the Code or any material breach of fiduciary duty (as determined under ERISA).

(d) Except as set forth on Schedule 5.16(d), the consummation of the transactions contemplated by this Agreement (alone or in connection with any subsequent event, including a termination of employment) will not (i) accelerate the vesting or payment of any benefit provided or made available under any Employee Benefit Plan, (ii) increase the amount of or forfeit any benefit provided or made available under any Employee Benefit Plan, or (iii) accelerate or increase the funding obligation under any Employee Benefit Plan.

(e) To the Knowledge of Sellers, Sellers and any ERISA Affiliates have complied with the health care continuation requirements of Part 6 of Subtitle B of Title I, Section 4980B of the Code and any similar state Law of ERISA (“COBRA”); and, except as set forth on Schedule 5.16(e), no Seller or ERISA Affiliate has any obligations under any Employee Benefit Plan, or otherwise, to provide post-employment or post termination health, life insurance or other welfare benefits to any Person, except as specifically required under COBRA.

(f) To the Knowledge of Sellers, with respect to each Employee Benefit Plan, all payments, premiums, contributions, distributions, reimbursements or accruals for all periods (or partial periods) ending prior to or as of the Closing Date shall have been timely made or properly accrued in accordance with the terms of the applicable Employee Benefit Plan, applicable Law and GAAP. None of the Assumed Employee Benefit Plans has any material unfunded Liabilities.

(g) Each “nonqualified deferred compensation plan” (as defined under Section 409A(d)(1) of the Code) maintained by any Seller or any Foreign Subsidiary has been maintained and operated in good faith compliance with Section 409A of the Code and applicable guidance thereunder.

5.17 Labor and Employment Matters. Except as set forth on Schedule 5.17:

(a) No Seller and no Foreign Subsidiary is a party to any Collective Bargaining Agreement or has any relationship with any union, labor organization, works council, trade union, or other employee representative;

(b) No union organizing or decertification activities are underway or, to the Knowledge of Sellers, threatened, no other question concerning representation exists, and no such matters have occurred within the last three (3) years;

(c) There is no labor strike, slowdown, work stoppage, walkout or other material labor dispute pending or, to the Knowledge of Sellers, threatened against any Seller or Foreign Subsidiary, and no such dispute has occurred within the last three (3) years. With respect to the transaction contemplated by this Agreement, any notice required under any Law or Collective Bargaining Agreement has been or prior to Closing will be given and all bargaining, notification, and consent obligations have been or prior to Closing will be satisfied. No Seller has implemented any plant closing or layoff of employees that could reasonably be expected to implicate the Worker Adjustment and Refraining Notification Act of 1988, as amended or any similar Laws (collectively, the “WARN Act”) without having complied with the WARN Act, and no such layoffs will be implemented without advance notice to Purchasers.

5.18 Personnel Matters. Schedule 5.18 contains an accurate and complete list of the names, job classifications, dates of hire, wage rates, base compensation, and any supplemental or bonus compensation (including any retention or stay bonus arrangements) for all Persons employed by or providing independent contract services to Sellers and the Foreign Subsidiaries as of September 6, 2013. To the Knowledge of Sellers, no key executive employee and no group of employees or independent contractors of any Seller or Foreign Subsidiary has any plans to terminate his, her or its employment or relationship with any Seller or Foreign Subsidiary.

5.19 Litigation; Orders. Except as set forth on Schedule 5.19, (a) there are no material Proceedings or Orders pending or, to the Knowledge of Sellers, threatened against or affecting any Seller or Foreign Subsidiary at law or in equity, in the United States or elsewhere, or before or by (or that could come before) any arbitrator or Governmental Authority (including any Proceedings with respect to the transactions contemplated by this Agreement), (b) no Seller or Foreign Subsidiary is subject to any material grievance or arbitration Proceedings under any Collective Bargaining Agreement or otherwise, and (c) no Seller or Foreign Subsidiary is subject to any Order of any Governmental Authority (or settlement enforceable therein), and no Seller or Foreign Subsidiary has received any opinion or memorandum or legal advice from legal counsel to the effect that it is exposed, from a legal standpoint, to any Liability or disadvantage which may be material to the Business.

5.20 Compliance with Law; Permits. Except as set forth on Schedule 5.20, each Seller and each Foreign Subsidiary, and each of its current and former officers, directors, partners, agents and employees, has, in all material respects, complied with and are in material compliance with, and are not in default in any respect with, all applicable Laws and Orders of any Governmental Authority relating to the operation of the Business, and no written notices have been received by, and no claims filed against, any Seller or Foreign Subsidiary alleging a material violation of any such Laws or Orders. Sellers and the Foreign Subsidiaries hold and are, in all material respects, in compliance with all Permits of all Governmental Authorities required



for the conduct of the Business and the ownership of their properties, and Schedule 5.20 sets forth a list of all such material Permits. No notices have been received by any Seller or Foreign Subsidiary alleging the failure to hold any material Permit.

5.21 Environmental Matters.

(a) Except as set forth on Schedule 5.21(a), to the Knowledge of Sellers, each Seller and each Foreign Subsidiary is and has for the three-year period prior to the Closing Date been in compliance with all Environmental Laws, which compliance has included obtaining and complying with all Permits required pursuant to Environmental Laws.

(b) Except as set forth on Schedule 5.21(b), no Seller or Foreign Subsidiary nor any predecessor or Affiliate thereof has received any Notice, report or other information regarding any actual or alleged violation of, or any Liabilities (including any investigatory, remedial or corrective obligation) under, Environmental Laws for the three-year period prior to the Closing Date, or that remain outstanding, unresolved or unsatisfied.

(c) Except as set forth on Schedule 5.21(c), there is no pending Claim asserting Liability against any Seller or Foreign Subsidiary or any predecessor or Affiliate thereof alleging that the foregoing Persons have, and, to the Knowledge of Sellers, no Seller or Foreign Subsidiary nor any predecessor or Affiliate thereof has, (i) treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, Released, or exposed any Person to, any substance, including any Hazardous Substances, or (ii) owned or operated any property or Facility contaminated by any substance, in either case so as to give rise to any current or future Liabilities, including any Liability for response costs, corrective action costs, personal injury, property damage, natural resources damages or attorney fees, or any material investigatory, corrective or remedial obligations, pursuant to CERCLA or any other Environmental Laws.

(d) Except as set forth on Schedule 5.21(d), to the Knowledge of Sellers, no Seller or Foreign Subsidiary nor any predecessor or Affiliate thereof has manufactured, produced, sold, marketed, installed or distributed products or items containing asbestos or other Hazardous Substances such as would give rise to Liability under Environmental Laws, and none of the foregoing Persons have any Liability with respect to the presence or alleged presence of asbestos or other Hazardous Substances in any product or item or at or upon any property or Facility.

(e) Sellers have provided or made available (in the Data Room or as an exhibit to a Filed Company SEC Document) to Purchasers true and correct copies of all environmental audits, reports and other documents materially bearing on environmental, health and safety matters relating to the current operations, properties or Facilities of the Business.

5.22 Affiliate Transactions. Except as disclosed on Schedule 5.22 (a), no Insider is a party to any agreement, Contract, commitment or transaction with any Seller or Foreign Subsidiary or has any interest in the Acquired Assets or any property, real or personal or mixed, tangible or intangible, of any Seller or Foreign Subsidiary.

5.23 Relationships with Customers and Suppliers. Schedule 5.23 sets forth a true and accurate list of (a) the names and addresses of the top twenty (20) customers of Sellers (on a

consolidated basis) (by dollar volume of sales to such customers) (such customers, the “Material Customers”) and (b) the names of the top ten (10) suppliers of Sellers (on a consolidated basis) (by dollar volume of purchases from such suppliers) (such suppliers, the “Material Suppliers”), in each case for the fiscal year ended December 29, 2012 and for the six (6)-month period ended June 29, 2013. Except as set forth on Schedule 5.23, to the Knowledge of Sellers, no Seller or Foreign Subsidiary has received any indication from any Material Customer or Material Supplier to the effect that such Material Customer or Material Supplier will stop, materially decrease the rate of, or materially change the terms (whether related to payment, price or otherwise) with respect to, buying or supplying as the case may be, materials, products or services from or to any such Seller or Foreign Subsidiary (whether as a result of the consummation of the transactions contemplated hereby or otherwise).

5.24 Product Warranty. All products manufactured, sold, leased, or delivered by any Seller or Foreign Subsidiary have been in material conformity with all applicable contractual commitments and all express warranties, and no Seller or Foreign Subsidiary has any material Liability for replacement or repair thereof or other damages in connection therewith.

5.25 Product Liability. No Seller or Foreign Subsidiary has any material Liability arising out of any injury to individuals or property as a result of the ownership, possession, or use of any product manufactured, sold, leased, or delivered by any Seller or Foreign Subsidiary.

5.26 Brokers. Except as set forth on Schedule 5.26, no Seller has incurred any Liability to any broker, finder or agent with respect to the payment of any commission regarding the consummation of the transactions contemplated hereby.

5.27 Absence of Certain Developments. Except as set forth on Schedule 5.27 and except as expressly contemplated by this Agreement, since the date of the Latest Balance Sheet, no Seller or Foreign Subsidiary has taken or omitted to take any action or suffered any condition or circumstance that would require the consent of Holdings pursuant to Section 7.3.

5.28 Bank Accounts Schedule. Schedule 5.28 lists all bank accounts, safety deposit boxes and lock boxes (designating each authorized signatory with respect thereto) for each Seller and Foreign Subsidiary.

5.29 Officers and Directors. Schedule 5.29 lists all officers, directors and equivalent senior executives and members of governing bodies of each Seller and Foreign Subsidiary.

5.30 Compliance with Customs and International Trade Laws. Except as set forth on Schedule 5.30, and without in any way limiting the representations and warranties otherwise provided in Article V of this Agreement:

(a) Sellers and their respective Affiliates are in material compliance with all applicable Customs and International Trade Laws, and to the Knowledge of Sellers, at no time during the past five (5) years have Sellers or any of their respective Affiliates committed any violation of the Customs and International Trade Laws, and to the Knowledge of Sellers, there are no unresolved questions or claims concerning any liability of Sellers or any of their respective Affiliates with respect to any such Laws.

(b) Neither Sellers nor, to the Knowledge of Sellers, any of their respective Affiliates is subject to any pending material civil or criminal investigation, litigation, audit, compliance assessment, focused assessment, penalty Proceeding or assessment, liquidated damages Proceeding or claim, forfeiture or forfeiture action, record-keeping inquiry, assessment of additional duty for failure to properly mark imported merchandise, notice to properly mark merchandise or return merchandise to Customs custody, claim for additional Customs duties or fees, denial Order, suspension of export privileges, government sanction, or any other action, Proceeding or claim by a Governmental Authority involving or otherwise relating to any alleged or actual violation of the Customs and International Trade Laws or relating to any alleged or actual underpayment of Customs duties, fees, Taxes or other amounts owed pursuant to the Customs and International Trade Laws, and to the Knowledge of Sellers, each Seller and their respective Affiliates has paid all Customs duties and fees, all other import duties and fees, and brokerage fees owed for merchandise imported by them or imported on their behalf into the United States.

(c) To the Knowledge of Sellers, neither Sellers nor any of their respective Affiliates has made or provided any false statement or omission to any Governmental Authority or to any purchaser of products, in connection with the importation of merchandise, the valuation or classification of imported merchandise, the duty treatment of imported merchandise, the eligibility of imported merchandise for favorable duty rates or other special treatment, country-of-origin marking, North American Free Trade Act (NAFTA) Certificates, marking and labeling requirements for textiles and apparel, other statements or certificates concerning origin, quota or visa rights, export licenses or other export authorizations, U.S.-content requirements, licenses or other approvals required by a foreign Governmental Authority, or any other requirement relating to the Customs and International Trade Laws.

(d) Neither Sellers nor, to the Knowledge of Sellers, any of their respective Affiliates nor any agent acting on behalf of Sellers or any of their respective Affiliates has made, either directly or indirectly, any payment, offer, gift, promise to give, or authorized or otherwise participated in, assisted in or facilitated any payment or gift that is prohibited by the United States Foreign Corrupt Practices Act.

(e) None of the products or materials imported by, for or on behalf of Sellers or any of their respective Affiliates for which final liquidation has not yet occurred is subject to or otherwise covered by an antidumping duty Order or countervailing duty Order that remains in effect or is subject to or otherwise covered by any pending antidumping or countervailing duty investigation by agencies of any Governmental Authority.

(f) No Seller or Foreign Subsidiary, nor any officer or director thereof, nor, to the Knowledge of Sellers, any agent acting on behalf of any Seller or Foreign Subsidiary has (i) been or is designated on any list of any U.S. Governmental Authority, including OFAC's Specially Designated Nationals and Blocked Persons List, the U.S. Department of Commerce's Denied Persons List, the Commerce Entity List, and the U.S. Department of State's Debarred List, (ii) participated in any transaction involving such designated Person or any country that is subject to U.S. sanctions administered by OFAC, (iii) exported (including deemed exportation) or re-exported, directly or indirectly, any good, technology or services in violation of any applicable U.S. export control or economic sanctions Laws administered by OFAC, the

U.S. Department of Commerce or the U.S. Department of State, or (iv) participated in any export, re-export or transaction connected with any purpose prohibited by U.S. export control and economic sanctions Laws, including, without limitation, support for international terrorism and nuclear, chemical or biological weapons proliferation.

5.31 Government Contracts. Sellers have complied with all material terms and conditions of, and all Laws relating to, each Government Contract, and Sellers have not received any notice from the U.S. Government or any prime contractor or subcontractor asserting that any Seller has materially breached or violated any Law, certification, representation, clause, provision or requirement relating to any Government Contract. Sellers have established and maintain adequate internal controls for compliance with all Government Contracts and all invoices or other demands for payment submitted by or on behalf of Sellers pursuant to any Government Contract were current, accurate and complete in all material respects as of their respective submission dates. Sellers have not (i) been suspended or debarred from bidding on government contracts by a Governmental Authority; (ii) been audited or investigated by any Governmental Authority with respect to any Government Contract; (iii) conducted or initiated any internal investigation or made a voluntary or mandatory disclosure to any Governmental Authority or other customer or prime contractor or higher-tier subcontractor with respect to any alleged or potential irregularity, misstatement or omission arising under or relating to a Government Contract; (iv) received from any Governmental Authority or other customer or prime contractor or higher-tier subcontractor any notice of breach, cure, show cause or default with respect to any Government Contract; or (v) had any Government Contract terminated by any Governmental Authority or other customer or prime contractor or higher-tier subcontractor for default or failure to perform in accordance with applicable standards.

5.32 Warranties are Exclusive. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR EQUITY, IN RESPECT OF ANY OF THEIR ASSETS (INCLUDING THE ACQUIRED ASSETS), LIABILITIES (INCLUDING THE ASSUMED OBLIGATIONS) OR OPERATIONS, INCLUDING WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR NON-INFRINGEMENT. ANY OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED AND NONE SHALL BE IMPLIED AT LAW OR EQUITY. PURCHASERS HEREBY ACKNOWLEDGE AND AGREE THAT PURCHASERS ARE PURCHASING THE ACQUIRED ASSETS ON AN "AS IS, WHERE IS" BASIS AFTER GIVING EFFECT TO THE TERMS CONTAINED HEREIN.

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES OF PURCHASERS**

Purchasers represent and warrant to Sellers on the date of this Agreement that the statements contained in this Article VI are correct and complete.

6.1 Organization. Each Purchaser and each Guarantor is a legal entity validly existing and in good standing under the Laws of the jurisdiction of its organization and has the full power and authority to execute, deliver and perform this Agreement and to consummate all transactions contemplated hereby.

6.2 Authority. The execution, delivery and performance by each Purchaser and each Guarantor of the Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of such Purchaser or such Guarantor and do not and will not violate any provisions of such Person's organizational documents, any applicable Law or any Contract or Order binding upon such Person. All Transaction Documents to which any Purchaser is a party, and in the case of Guarantors, this Agreement, constitute a valid and binding agreement of each Purchaser and each Guarantor, enforceable against such Person in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other Laws affecting creditors' rights generally from time to time in effect, and to general equitable principles.

6.3 Consents. No notice to, filing with, authorization of, exemption by, or consent (other than the approval of the Bankruptcy Court) of any Person is required in order for Purchasers and Guarantors to consummate the transactions contemplated hereby, other than pursuant to the HSR Act.

6.4 Ownership and Transfer of Intermediate Holdings Units. Purchasers are, or at the Closing will be, the record and beneficial owners of the Intermediate Holdings Units, free and clear of any and all Liens. Purchasers have, or at the Closing will have, the requisite corporate power and authority to sell, transfer, assign and deliver the Intermediate Holdings Units as provided in this Agreement, and such deliver will convey to Sellers good and marketable title to the Intermediate Holdings Units, free and clear of any and all Liens.

6.5 Availability of Funds. As of the Closing, Purchasers will have sufficient funds available to consummate the transactions contemplated by this Agreement and to provide adequate assurance of future performance by Purchasers under this Agreement and the Assumed Contracts.

6.6 Solvency. Assuming the Acquired Assets and the Assumed Obligations, taken together, do not, in and of themselves, render Purchasers Insolvent, and assuming the accuracy of the representations and warranties of Sellers set forth in Article V (without giving effect to any "materiality," "Material Adverse Effect" or "Knowledge" qualifiers included therein), as of the Closing and immediately after consummating the transactions contemplated by this Agreement and the other Transaction Documents, Purchasers will not (a) be insolvent (either because their financial condition is such that the sum of their debts is greater than the fair value of their assets or because the present fair value of their assets will be less than the amount required to pay their probable Liability on their debts as they become absolute and matured), (b) have unreasonably small capital with which to engage in their business, or (c) have incurred or plan to incur debts beyond their ability to repay such debts as they become absolute and matured ("Insolvent").

6.7 Investigation by Purchasers. Purchasers have conducted their own independent review and analysis of the Acquired Assets, the Assumed Obligations, and the Business. Purchasers have conducted their own independent review of all orders of, and all motions, pleadings, and other submissions to, the Bankruptcy Court in connection with the Chapter 11 Cases. In entering into this Agreement, Purchasers have relied solely upon their own investigation and analysis, and Purchasers acknowledge that none of Sellers, their Affiliates, or their respective representatives makes or has made any representation or warranty, either express

or implied, as to the accuracy or completeness of any of the information provided or made available to Purchasers, their Affiliates or their respective representatives, except for the representations and warranties contained in this Agreement (which are subject to the limitations and restrictions contained in this Agreement).

## **ARTICLE VII PRE-CLOSING COVENANTS**

7.1 Consents and Approvals. In furtherance of Section 4.5, except with respect to the Government Contracts, Sellers and, as applicable, Purchasers, shall, at their sole cost and expense, use reasonable best efforts (i) solely in the case of Sellers, to obtain all necessary consents and approvals, as reasonably requested by Purchasers, to consummate the purchase and sale of the Acquired Assets and the assignment of the Assumed Obligations, together with any other necessary consents and approvals to consummate the transactions contemplated hereby, including obtaining entry of the Bidding Procedures Order and Sale Order without modification except as Purchasers may consent, (ii) solely in the case of Sellers, to obtain, as requested by Purchasers, all required consents and approvals (if any) necessary to assign and transfer the Assumed Executory Contracts and Sellers' Permits to Purchasers at Closing and, to the extent that one (1) or more of Sellers' Permits or any Assumed Executory Contracts are not transferable, to assist Purchasers, at Purchasers' sole cost, in obtaining replacements therefor. In the event that any of Sellers' Permits or any Assumed Executory Contracts are not transferable or replacements therefor are not obtainable on or before the Closing, but such Permits, Assumed Executory Contracts, consents and approvals to transfer, or replacements therefor, are obtainable after the Closing, Sellers shall continue to use reasonable best efforts in cooperation with Purchasers after the Closing as may be required to obtain all required consents and approvals to transfer, or obtain replacements for, such Permits or Assumed Executory Contracts after Closing and shall do all things necessary to give Purchasers the benefits that would be obtained under such Permits and Assumed Executory Contracts, in each case at Purchasers' sole cost and expense. Purchasers shall give any other notices to, make any other filings with, and use reasonable best efforts to cooperate with Sellers to obtain, any other authorizations, consents and approvals in connection with the matters contemplated by this Section 7.1. Each of the parties shall give any other notices to, make any other required filings with, and use commercially reasonable best efforts to obtain, any other required authorizations, consents and approvals of any Governmental Authority in connection with the matters contemplated by this Agreement.

As soon as practicable, but in no event later than five (5) Business Days after the Effective Date, Holdings and FB Parent shall make the filings required to be made under the HSR Act in connection with the transactions contemplated by this Agreement. Holdings and FB Parent shall use their reasonable best efforts to supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act and to take all other reasonable actions necessary to cause the expiration or early termination of the applicable waiting periods under the HSR Act as soon as practicable and to avoid or eliminate each and every impediment under the HSR Act or any other antitrust competition or trade regulation Law by any United States or non-United States Government antitrust authority or any other party so as to enable the Parties to expeditiously close the transactions contemplated hereby no later than the Closing Date Deadline (the "HSR Approval"). In connection with the efforts referenced in this Section 7.1 to obtain all requisite approvals and authorizations for the

transactions contemplated by this Agreement under the HSR Act, each of Holdings and FB Parent shall use all reasonable best efforts to: (a) cooperate in all respects with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any legal proceeding initiated by a private party; (b) keep the other party informed in all material respects of any material communication received by such party from, or given by such party to, any Governmental Authority and of any material communication received or given in connection with any proceeding by a private party; and (c) except as otherwise prohibited by Law, permit the other party to review any material communication given by it to, and consult with each other in advance of and be permitted to attend any meeting or conference with, any Governmental Authority or, in connection with any proceeding by a private party, with any other Person, in each case regarding any of the transactions contemplated by this Agreement. The filing fees associated with the filing under the HSR Act described in this Section 7.1 shall be paid by the Purchasers.

7.2 Access to Information and Facilities. Sellers agree that, prior to the Closing Date, Purchasers, each lender to Purchasers, if any, and their respective representatives shall, upon reasonable notice and so long as such access does not unreasonably interfere with the business operations of any Seller, have reasonable access during normal business hours to all Facilities and shall be entitled to make such reasonable investigation of the properties, businesses and operations of Sellers (including conducting a physical inventory of the Inventory) and such examination of the Books and Records and financial condition of Sellers as they reasonably request and to make extracts and copies to the extent necessary of the Books and Records; provided that no investigation pursuant to this Section 7.2 shall affect any representations or warranties made herein or the conditions to the obligations of the respective parties to consummate the transactions contemplated by this Agreement.

7.3 Conduct of the Business Pending the Closing. Except as otherwise expressly contemplated by this Agreement or with the prior written consent of Holdings or except as described on Schedule 7.3, from the date hereof until the Closing Date, Sellers:

(a) shall not sell, lease, license, transfer, encumber, abandon, permit to lapse or otherwise dispose of any of their assets (including the capital stock of Affiliates), except for (A) the sale of Inventory in the Ordinary Course of Business, (B) dispositions of obsolete equipment in the Ordinary Course of Business, or (C) as may be required by applicable Law or any Governmental Authority in order to permit or facilitate the consummation of the transactions contemplated by this Agreement;

(b) shall conduct the Business in the Ordinary Course of Business (including timely payment of accounts payable, purchasing and maintaining appropriate levels of Inventory, maintenance of the Books and Records, performing all maintenance and repairs, making capital expenditures and collecting Accounts Receivable), in each case in a manner not materially inconsistent with the DIP Budget;

(c) shall not authorize, declare or pay any dividends on or make any distribution with respect to their outstanding shares of capital stock (whether in cash, assets, stock or other securities) other than to another Seller;

(d) shall not reclassify, redeem, or purchase or otherwise acquire, directly or indirectly, any of their capital stock or membership interests, or make any other change with respect to their capital structure;

(e) shall not issue, sell, pledge, dispose of or encumber, or authorize the issuance, sale, pledge, disposition or encumbrance of, any shares of their capital stock or other ownership interest or any securities convertible into or exchangeable for any such shares or ownership interest, or any rights, warrants or options to acquire or with respect to any such shares of capital stock, ownership interest or convertible or exchangeable securities or take any action to cause to be exercisable any otherwise unexercisable option under any existing stock option plan;

(f) shall use commercially reasonable efforts to preserve intact the Business;

(g) shall not (A) grant or announce any stock option, equity or incentive awards or the increase in the salaries, bonuses or other compensation and benefits payable to any of the employees, directors or other service providers of the Business; (B) hire any new employees to the Business, except in the Ordinary Course of Business consistent with past practice with respect to non-officer employees with an annual base and incentive compensation opportunity not to exceed Seventy-Five Thousand Dollars (\$75,000), (C) pay or agree to pay any pension, retirement allowance, termination or severance pay, bonus, stay bonus or other employee benefit not required by any existing Employee Benefit Plan to any employee, director or other service provider of the Business, whether past or present, (D) enter into or amend any Contracts of employment or any consulting, bonus, severance, retention, retirement or similar agreement except for agreements for newly hired non-officer employees in the Ordinary Course of Business consistent with past practice with an annual base and incentive compensation opportunity not to exceed Seventy-Five Thousand Dollars (\$75,000), (E) except as required to ensure that any Employee Benefit Plan is not then out of compliance with applicable Law, enter into or adopt any new, or materially increase benefits under or renew, amend or terminate any existing, Employee Benefit Plan or any Collective Bargaining Agreement, or (F) grant any increase in the compensation payable or to become payable to any employee, except such increases as are required by contract in effect as of the date hereof and disclosed on Schedule 5.13(a) or filed as an exhibit to a Filed Company SEC Document; provided that notwithstanding anything in this clause (g) to the contrary, the Sellers may increase the salaries of employees who currently make less than \$150,000 subject to (i) all such raises not to exceed \$250,000 in the aggregate and (ii) no such individual raise being more than the higher of \$10,000 and 10% of such employee's then current salary;

(h) shall not change in any material respects any financial accounting or cash management practices, policies or procedures (including accelerating any Accounts Receivable) or any of their methods of reporting income, deductions or other material items for financial accounting purposes, except as required by GAAP or applicable Law;

(i) shall not adopt any amendments to their articles of incorporation or bylaws or other applicable organizational documents;

(j) shall not create any new Subsidiary;



(k) shall not incur, assume, guarantee, prepay or otherwise become liable for, or modify in any material respect the terms of, any Indebtedness;

(l) shall not fail to pay any Tax when it becomes due and payable;

(m) shall not make or change any material election for Tax purposes, change an annual accounting period for Tax purposes, adopt or change any accounting method for Tax purposes, file any amended Tax Return, enter into any closing agreement, settle any Tax claim or assessment, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment, or take any other similar action relating to the filing of any Tax Return or the payment of any Tax, if the taking of any such action could reasonably be expected to increase the Tax liability of Purchasers for any taxable period (or portion thereof) beginning after the Closing Date (other than as the result of the reduction in any Tax attribute of any Seller);

(n) shall not modify, amend, terminate or waive any rights under any Material Contract, or any Contract that would be a Material Contract if in effect on the date of this Agreement, except in the Ordinary Course of Business;

(o) shall not enter into any Material Contracts, or terminate or reject (whether pursuant to Section 365 of the Bankruptcy Code or otherwise) any Contract;

(p) shall not enter into, amend, waive or terminate (other than terminations in accordance with their terms) any transaction with any Insider;

(q) shall not enter into any new line of business or discontinue any line of business;

(r) except as permitted or required pursuant to the DIP Facility, shall not settle, pay, discharge, waive or satisfy any litigation, investigation, arbitration, Proceeding or other claim, Liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), except for any such Proceedings, claims, Liabilities or obligations seeking monetary payments only that are not in excess of Fifty Thousand Dollars (\$50,000) individually or One Hundred Thousand Dollars (\$100,000) in the aggregate, excluding any amounts which may be paid under existing insurance policies (such Proceedings, claims, Liabilities or obligations, the "Permitted Settlements"); provided that the terms of any such Permitted Settlements shall require that such monetary payments be paid in cash in full prior to the Closing or solely by Sellers following the Closing;

(s) shall not (A) sell, transfer or otherwise dispose of, encumber, or take or fail to take any action that could reasonably be expected to result in any loss, lapse, abandonment, expiration, invalidity or unenforceability of, any material Intellectual Property; (B) disclose any material confidential information to any Person (except pursuant to an appropriate confidentiality agreement in the Ordinary Course of Business or with a prospective bidder in connection with the Auction which has executed an appropriate confidentiality agreement), or (C) enter into any agreement with any other Person that limits or restricts the ability of any Seller or Foreign Subsidiary to conduct certain activities or use or dispose of certain assets (including any Company Intellectual Property);

(t) shall not authorize, or make any commitment with respect thereto, any capital expenditure in excess of the amounts permitted pursuant to the DIP Facility; provided that such capital expenditures with respect to the Foreign Subsidiaries shall be paid in cash in full prior to the Closing and shall not provide for any payment Liability to be satisfied following the Closing;

(u) shall not fail to maintain in full force and effect material insurance policies covering any Seller or Foreign Subsidiary and its respective properties, assets and businesses, or the Business, in a form and amount consistent with past practice;

(v) shall not acquire (including by merger, consolidation, or acquisition of stock or assets) or make any investment in any interest in any corporation, partnership, limited liability company, association, trust or any other entity, group (as such term is used in Section 13 of the Exchange Act) or organization (including a Governmental Authority), or any division thereof or any assets thereof;

(w) shall maintain compliance in all material respects with all Laws of all Governmental Authorities that relate to Sellers, the Business or the Acquired Assets;

(x) except as provided in Section 10.1, shall not implement any plant closings or employee layoffs that could implicate the WARN Act;

(y) shall not terminate, discontinue, close or dispose of any Owned Real Property or Leased Facility or business operation of the Business;

(z) shall not agree, in writing or otherwise, or announce an intention, to take any of the foregoing actions; and

(aa) shall cause each Foreign Subsidiary to comply with this Section 7.3 as if such Foreign Subsidiary were a Seller.

#### 7.4 Notification of Certain Matters.

(a) Sellers shall give notice to Purchasers of (i) the occurrence or nonoccurrence of any event that would be likely to cause either (A) any representation or warranty of Sellers contained in this Agreement, or in connection with the transactions contemplated hereunder, to be untrue or inaccurate in any material respect at any time from the date hereof to the Closing or (B) directly or indirectly, any Material Adverse Effect, or (ii) any material failure of any Seller to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder. Notwithstanding the foregoing, the delivery of any notice pursuant to this Section 7.4(a) shall not (x) be deemed to amend or supplement any of the Disclosure Schedules contemplated hereby, (y) be deemed to cure any breach of any representation, warranty, covenant or agreement or to satisfy any condition, or (z) limit or otherwise affect the remedies available hereunder to the party receiving such notice.

(b) To the extent not already included, Sellers shall add Purchasers, and Purchasers' counsel, to Sellers' so-called "Rule 2002 notice list" and otherwise provide notice to

Purchasers of all matters that are required to be served on Sellers' creditors pursuant to the Bankruptcy Code and Rules.

#### 7.5 Bankruptcy Actions.

(a) On the Petition Date, Sellers filed with the Bankruptcy Court a motion for entry of the Bidding Procedures Order and approval of the transaction contemplated hereby (the "Sale Motion"). The Sale Motion shall be amended to seek, among other things, the Bankruptcy Court's approval of this Agreement, Sellers' performance under this Agreement and the assumption and the assignment of the Assumed Executory Contracts, and shall provide that Purchasers' promise to perform following the Closing all obligations under the Assumed Executory Contracts shall constitute the only required adequate assurance of future performance required pursuant to Section 365(f)(2) of the Bankruptcy Code.

(b) Sellers shall: (i) obtain entry of the Bidding Procedures Order by the Bidding Procedures Order Deadline Date, (ii) ensure that the Auction (to the extent required by the Bankruptcy Court), during which Sellers will solicit Qualified Bids from other prospective purchasers for the sale of the Acquired Assets, is held in accordance with the procedures set forth in the Bidding Procedures Order, (iii) obtain entry of the Sale Order by no later than the Sale Order Deadline, and (iv) consummate the Closing on or before the Closing Date Deadline.

(c) Sellers shall deliver or cause to be delivered to Purchasers for review and comment, as soon as commercially reasonable and in any event not less than two (2) Business Days prior to filing, all documents to be filed on behalf of Sellers with the Bankruptcy Court, including all motions, applications, petitions, schedules and supporting papers prepared by Sellers (including forms of Orders and Notices to interested parties) that relate to the transactions contemplated in this Agreement prior to the filing thereof in the Chapter 11 Cases. All motions, applications, petitions, schedules and supporting papers prepared by Sellers and relating (directly or indirectly) to the transactions contemplated by this Agreement to be filed on behalf of Sellers after the date hereof must be reasonably satisfactory in form and substance to Purchasers in their own discretion.

(d) Purchasers and Sellers each agree that they will promptly take such actions as are reasonably requested by the other to assist in obtaining entry of the Sale Order and the Bidding Procedures Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of providing necessary assurances of performance of their respective obligations under this Agreement and the Transaction Documents and demonstrating that Purchasers are a good faith buyer under Section 363(m) of the Bankruptcy Code.

7.6 Other Bids. Purchasers acknowledge that, pursuant to the Bidding Procedures Order, and after entry of the Bidding Procedures Order on the Bankruptcy Court's docket, Sellers will solicit bids from other prospective purchasers for the sale of all of the Acquired Assets in accordance with the procedures set forth in the Bidding Procedures Order; provided, however, that, following completion of the Auction until the Closing (in the event that Purchasers are selected as the winning bidder), no Seller shall, directly or indirectly, through any officer, director, employee, agent, professional or advisor, solicit any Alternative Transaction or

participate in any negotiations or discussions with respect to any Alternative Transaction, and no Seller shall, and Sellers shall cause their Affiliates not to, (i) execute an agreement with respect to an Alternative Transaction or (ii) seek or support Bankruptcy Court approval of a motion or Order inconsistent in any material respect with the transactions contemplated by this Agreement.

#### 7.7 Bankruptcy Matters.

(a) Sellers and Purchaser acknowledge that this Agreement and the sale of the Acquired Assets and the assumption and assignment of the Assumed Executory Contracts are subject to Bankruptcy Court approval. Sellers and Purchasers acknowledge that (i) to obtain such approval, Sellers must demonstrate that they have taken reasonable steps to obtain the highest and otherwise best offer possible for the Acquired Assets, and that such demonstration shall include giving notice of the transactions contemplated by this Agreement to creditors and interested parties as ordered by the Bankruptcy Court, and (ii) Purchasers must provide adequate assurance of future performance under the to-be-assigned Assumed Executory Contracts.

(b) In the event an appeal is taken or a stay pending appeal is requested, from either the Bidding Procedures Order or the Sale Order, Sellers shall immediately notify Purchasers of such appeal or stay request and shall promptly provide to Purchasers a copy of the related Notice of appeal or Order of stay. Sellers shall also provide Purchasers with written notice of any motion or application filed in connection with any appeal from either of such Orders.

(c) From and after the Effective Date, Sellers shall not take any action which is intended to (or is reasonably likely to), or fail to take any action the intent (or the reasonably likely result) of which failure to act is to, result in the reversal, voiding, modification or staying of the Bidding Procedures Order or this Agreement. If Purchasers are the Successful Bidder at the Auction, Sellers shall not take any action which is intended to (or is reasonably likely to), or fail to take any action the intent (or the reasonably likely result) of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order or this Agreement.

7.8 Real Property. From and after the date of this Agreement through (i) the effective date of assignment for the leases that are Designated Contracts assumed by Purchasers after the Closing, and (ii) the Closing for the Owned Real Property and all Facility Leases that are not Designated Contracts, except with respect to the Excluded Assets:

(a) Maintenance of Real Property. Sellers shall maintain the Owned Real Property and the Leased Facilities, including all of the improvements thereon, in substantially the same condition as of the date of this Agreement, ordinary wear and tear excepted, and shall not demolish or remove any of the existing improvements, or erect new improvements on the real property or any portion thereof, without the prior written consent of Holdings.

(b) Leases. Sellers shall not amend, modify, extend, renew or terminate any Facility Lease, and shall not enter into any new lease, sublease, license or other agreement for the use or occupancy of any real property, without the prior written consent of Holdings.

(c) Title Insurance and Surveys. Sellers shall use their commercially reasonable best efforts to assist Purchasers in obtaining, at Purchasers' sole cost and expense, the

Title Commitments, Title Policies and Surveys in form and substance reasonably satisfactory to Purchasers, including removing from title any Liens which are not Permitted Liens. Sellers shall provide the title insurance company selected by Purchasers with reasonable affidavit, escrow or other assurances requested by such title insurance company to issue the Title Policies.

7.9 503 Liabilities. From and after the date of this Agreement and through the Closing, Sellers shall pay the 503 Liabilities in the Ordinary Course of Business and in any event in accordance with their applicable terms.

7.10 Personnel Matters. On the Business Day prior to the Closing Date, Sellers shall deliver to Purchasers an updated Schedule 5.18 containing an accurate and complete list of the names, job classifications, dates of hire, wage rates, base compensation, and any supplemental or bonus compensation (including any retention or stay bonus arrangements) for all Persons employed by or providing independent contract services to Sellers and the Foreign Subsidiaries as of the Business Day prior to the Closing Date.

7.11 Chapter 11 Filings by Foreign Subsidiaries. Following a written request by Holdings no later than five (5) days prior to the Bid Deadline with respect to any Foreign Subsidiaries, Sellers shall cause such Foreign Subsidiary(ies) to file petitions for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court and as party(ies) to the Chapter 11 Cases and to execute and deliver to Purchasers a joinder to this Agreement, in form and substance acceptable Holdings, promptly, and in any event no later than ten (10) days following receipt of such written request. From and after such filing and the delivery of such joinder, any such Foreign Subsidiary shall constitute a “Seller” and shall cease to constitute a “Foreign Subsidiary” or an “Acquired Subsidiary” hereunder, Section 2.1(a)(xviii) shall be deemed amended accordingly, and Holdings shall have the right to amend the Schedule of Sellers and Purchasers to reflect such additional Seller and to designate a Corresponding Purchaser.

7.12 Restricted Cash. Following receipt by Sellers of any amounts constituting Restricted Cash, such amounts shall be set aside and held in trust by Sellers for delivery to Purchasers at the Closing.

## **ARTICLE VIII CONDITIONS TO CLOSING**

8.1 Conditions to Parties’ Obligations. The obligations of Purchasers and Sellers under this Agreement are subject to satisfaction of the following conditions precedent on or before the Closing Date, any one or more of which may be waived (but only in writing) by Holdings (on behalf of Purchasers) or FB Parent (on behalf of Sellers) (provided that no such waiver shall be deemed to have cured any breach of any representation, warranty or covenant made in this Agreement):

(a) Governmental Approvals. All authorizations, consents, filings and approvals, in each case from any Governmental Authority, necessary to permit the parties to perform the transactions contemplated hereby shall have been duly obtained, made or given, shall be in form and substance reasonably satisfactory to the parties, shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and

effect. All terminations or expirations of waiting periods imposed (and any extension thereof) by any Governmental Authority necessary for the transactions contemplated under this Agreement, if any, shall have occurred.

(b) No Order. No Order shall be issued by any Governmental Authority restraining or prohibiting the consummation of the transactions contemplated by this Agreement.

8.2 Conditions to Purchasers' Obligations. The obligations of Purchasers under this Agreement are subject to satisfaction of the following conditions precedent on or before the Closing Date, any one or more of which may be waived (but only in writing) by Holdings (provided that no such waiver shall be deemed to have cured any breach of any representation, warranty or covenant made in this Agreement):

(a) Accuracy of Representations and Warranties. Sellers shall make all of the representations and warranties set forth in Article V on and as of the Closing Date, and each such representation and warranty that is qualified by "material," "materiality," "Material Adverse Effect" or other terms of similar import ("Materiality Qualifiers") shall be true and correct as of the Closing Date in all respects, and each such representation and warranty that is not qualified by Materiality Qualifiers shall be true and correct as of the Closing Date in all material respects (in each case except for those representations and warranties made as of a specified date, which shall be true and correct in all respects as of that date if qualified by Materiality Qualifiers or shall be true and correct in all material respects as of that date if not qualified by Materiality Qualifiers); provided that failure to satisfy the condition set forth in this Section 8.2(a) cannot be caused by any changes, including deterioration, to the Lane Business, so long as (i) the Lane Business has, in the aggregate, been operated substantially in accordance with the DIP Budget, (ii) the Lane Business has, in the aggregate, been operated substantially in accordance with Section 7.3(b) and (iii) except for resignations, terminations for cause in the Ordinary Course of Business, as set forth on Schedule 5.17, or as provided in Section 10.1, employees of the Lane Business have not been terminated by Seller without Purchaser's consent.

(b) Performance of Covenants. Sellers shall have performed and complied in all material respects with the obligations and covenants required by this Agreement to be performed or complied with by Sellers on or prior to the Closing Date; provided that failure to satisfy the condition set forth in this Section 8.2(b) cannot be caused by any changes, including deterioration, to the Lane Business, so long as (i) the Lane Business has, in the aggregate, been operated substantially in accordance with the DIP Budget, (ii) the Lane Business has, in the aggregate, been operated substantially in accordance with Section 7.3(b) and (iii) except for resignations, terminations for cause in the Ordinary Course of Business, as set forth on Schedule 5.17, or as provided in Section 10.1, employees of the Lane Business have not been terminated by Seller without Purchaser's consent.

(c) No Proceeding. No Proceeding shall be pending before any Governmental Authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or involving a claim that consummation thereof would result in the violation of any Law of any Governmental Authority having appropriate jurisdiction.

(d) Officer's Certificate. Sellers shall deliver to Purchasers a certificate signed by each Seller, dated the date of the Closing Date, (in form and substance reasonably satisfactory to Purchasers), certifying that the conditions specified in Sections 8.1 and 8.2 have been satisfied as of the Closing;

(e) Bankruptcy Condition.

(i) The Bidding Procedures Order shall have been entered on the docket of the Bankruptcy Court no later than the Bidding Procedures Order Deadline Date. The Sale Order shall have been entered on the docket of the Bankruptcy Court no later than the Sale Order Deadline and shall have become a Final Order.

(ii) The Sale Order shall approve and authorize the assumption and assignment of the Assumed Executory Contracts, and the Assumed Executory Contracts that are not Designated Contracts shall have been actually assumed and assigned to Purchasers such that the Assumed Executory Contracts that are not Designated Contracts will be in full force and effect from and after the Closing with non-debtor parties being barred and enjoined from asserting against Purchasers, among other things, defaults, breaches or claims of pecuniary losses existing as of the Closing or by reason of the Closing.

(iii) The Bidding Procedures Order shall be in form and substance acceptable to Purchasers in their sole discretion.

(iv) Nothing in this Agreement shall preclude Purchasers or Sellers from consummating the transactions contemplated herein if Holdings, in its sole discretion, waives the requirement that the Sale Order or any other Order shall have become Final Orders. No notice of such waiver of this or any other condition to Closing need be given except to FB Parent, any official committee appointed in the Chapter 11 Cases and the United States Trustee, it being the intention of the parties hereto that Purchasers shall be entitled to, and is not waiving, the protection of Section 363(m) of the Bankruptcy Code, the mootness doctrine and any similar statute or body of law if the Closing occurs in the absence of Final Orders.

(f) Material Adverse Effect. Since the Petition Date, there shall not have occurred a Material Adverse Effect.

(g) Receipt of Required Consents. Sellers shall have delivered duly executed copies of all Third Party approvals listed on Schedule 8.2(g), each in form and substance reasonably satisfactory to Purchasers.

(h) Credit Bid Approval. The Bankruptcy Court shall have entered an Order, binding on all parties in interest in the Chapter 11 Cases (which Order may be the DIP Order or Sale Order) unconditionally allowing (i) a Claim by the DIP Lenders in an amount equal to the DIP Amount and (ii) a Claim by the Prepetition Term Loan Lenders in an amount equal to the Prepetition Term Loan Lenders' claims under the Prepetition Term Loan Agreement (including the Prepayment Premium), and authorizing and approving any credit bid or series of credit bids by the DIP Lenders and the Prepetition Term Loan Lenders contemplated by this Agreement pursuant to Section 363(k) of the Bankruptcy Code.

(i) Closing Deliveries. Sellers shall have delivered to Purchasers the items set forth in Section 4.3 of this Agreement.

(j) [Reserved]

(k) Certain Conditions. The condition set forth on Schedule 8.2(k) shall have been satisfied or waived in writing by Holdings.

8.3 Conditions to Sellers' Obligations. The obligations of Sellers under this Agreement are subject to the satisfaction of the following conditions precedent on or before the Closing Date, any one or more of which may be waived (but only in writing) by FB Parent (provided that no such waiver shall be deemed to have cured any breach of any representation, warranty or covenant made in this Agreement):

(a) Accuracy of Representations and Warranties. Purchasers shall make all of the representations and warranties set forth in Article VI on and as of the Closing Date, and each such representation and warranty that is qualified by Materiality Qualifiers shall be true and correct as of the Closing Date in all respects, and each such representation and warranty that is not qualified by Materiality Qualifiers shall be true and correct as of the Closing Date in all material respects (in each case except for those representations and warranties made as of a specified date, which shall be true and correct in all respects as of that date if qualified by Materiality Qualifiers or shall be true and correct in all material respects as of that date if not qualified by Materiality Qualifiers).

(b) Performance of Covenants. Purchasers shall have performed and complied in all material respects with the obligations and covenants required by this Agreement to be performed or complied with by Purchasers on or prior to the Closing Date.

(c) Officer's Certificate. Purchasers shall deliver to Sellers a certificate signed by each Purchaser, dated the date of the Closing Date (in form and substance reasonably satisfactory to Sellers), certifying that the conditions specified in Sections 8.1 and 8.3 have been satisfied as of the Closing;

(d) Bankruptcy Court Approval. The Bankruptcy Court shall have entered an order (which may be the Sale Order) approving the execution of this Agreement by Sellers and the consummation by Sellers of the transactions contemplated herein that is not subject to Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure.

(e) Closing Deliveries. Purchaser shall have delivered to Sellers the items set forth in Section 4.2 of this Agreement.

## **ARTICLE IX TERMINATION**

9.1 Termination. This Agreement may be terminated prior to the Closing as follows:

(a) by mutual written agreement of Holdings and FB Parent;



(b) by Holdings or FB Parent if there shall be in effect a Final Order restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(c) (i) by Holdings (provided that Purchasers are not then in material breach of any representation, warranty, covenant or other agreement contained herein), if there shall have been a material breach or misrepresentation of any of the representations or warranties or a material breach of any of the covenants set forth in this Agreement on the part of Sellers (for the avoidance of doubt, such breach not to include any breach, in and of itself, on the part of Sellers of the DIP Credit Agreement), which breach is not cured within ten (10) days following written notice to FB Parent or which breach is willful or deliberate; or (ii) by FB Parent (provided that Sellers are not then in material breach of any representation, warranty, covenant or other agreement contained herein), if there shall have been a material breach or misrepresentation of any of the representations or warranties or a material breach of any of the covenants set forth in this Agreement on the part of Purchasers, which breach is not cured within ten (10) days following written notice to Holdings or which breach is willful or deliberate; provided that Holdings shall not be permitted to terminate this Agreement due solely to any changes, including deterioration, to the Lane Business, so long as (i) the Lane Business has, in the aggregate, been operated substantially in accordance with the DIP Budget, (ii) the Lane Business has, in the aggregate, been operated substantially in accordance with Section 7.3(b) and (iii) except for resignations, terminations for cause in the Ordinary Course of Business, as set forth on Schedule 5.17, or as provided in Section 10.1, employees of the Lane Business have not been terminated by Seller without Purchaser's consent

(d) by Holdings (provided that no Purchaser is then in material breach of any representation, warranty, covenant or other agreement contained herein) if it shall have reasonably determined that one (1) or more conditions set forth in Section 8.2 has not been or cannot be fulfilled or satisfied prior to the date specified in such condition (if such condition specifies a date other than the Closing Date by which such condition must be satisfied) or the Closing Date Deadline;

(e) by FB Parent (provided that no Seller is then in material breach of any representation, warranty, covenant or other agreement contained herein) if Sellers shall have reasonably determined that one (1) or more conditions set forth in Section 8.3 has not been or cannot be fulfilled or satisfied prior to the date specified in such condition (if such condition specifies a date other than the Closing Date by which such condition must be satisfied) or the Closing Date Deadline; and

(f) by FB Parent if any Seller (i) designates any Person other than Purchasers as the Successful Bidder of the Auction, (ii) seeks or supports Bankruptcy Court approval of an Alternative Transaction (other than to or by Purchasers) or (iii) executes and delivers a written agreement or understanding of any kind with respect to an Alternative Transaction;

(g) by Holdings or FB Parent, if the Bankruptcy Court enters an order approving any Alternative Transaction (other than the sale of the Business and the Acquired Assets to Purchasers);

(h) [Intentionally Omitted];

(i) by Holdings (i) as a result of the failure of the Bankruptcy Court to have entered the Bidding Procedures Order by no later than the Bidding Procedures Order Deadline Date (or such later date as Holdings may determine in its sole discretion) (provided that Holdings may not terminate this Agreement pursuant to this Section 9.1(i)(i) if Holdings is then in material breach of any provision of this Agreement and such breach is the primary cause of such failure), or (ii) if following the entry of the Bidding Procedures Order but prior to the entry of the Sale Order, the Bidding Procedures Order ceases to be in full force and effect, or is revoked, rescinded, vacated, materially modified, reversed or stayed, or otherwise rendered ineffective by a court of competent jurisdiction;

(j) by Holdings as a result of the failure of Sellers to have held the Auction by no later than the Auction Deadline Date (or such later date as Holdings may determine in its sole discretion) (provided that Holdings may not terminate this Agreement pursuant to this Section 9.1(j) if Holdings is then in material breach of any provision of this Agreement and such breach is the primary cause of such failure);

(k) by Holdings (i) as a result of the failure of the Bankruptcy Court to enter the Sale Order by no later than the Sale Order Deadline (provided that Holdings may not terminate this Agreement pursuant to this Section 9.1(k)(i) if Holdings is then in material breach of any provision of this Agreement and such breach is the primary cause of such failure), or (ii) on or after the date the Sale Order ceases to be in full force and effect, or is revoked, rescinded, vacated, materially modified, reversed or stayed, or otherwise rendered ineffective by a court of competent jurisdiction;

(l) by Holdings on any day on or after the Closing Date Deadline if the Closing shall not have been consummated by such date (or by such later date as shall be mutually agreed to by Holdings and FB Parent in writing), unless the Closing has not occurred due to a material failure of Purchasers to perform or observe their obligations as set forth in this Agreement required to be performed or observed by them on or before the Closing Date;

(m) by FB Parent on any day on or after the Closing Date Deadline if the Closing shall not have been consummated by such date (or by such later date as shall be mutually agreed to by Holdings and FB Parent in writing), unless the Closing has not occurred due to a material failure of Sellers to perform or observe their obligations as set forth in this Agreement required to be performed or observed by them on or before the Closing Date;

(n) by Holdings ten (10) Business Days following a Default or Event of Default (as defined in the DIP Credit Agreement) under the DIP Facility (unless cured or waived by the DIP Lenders and, with respect to this Agreement, by Holdings) whereby the DIP Lenders accelerate the amounts due under the DIP Facility (and specifically excluding any full refinancing of the DIP Facility); provided that (i) this termination right shall not include a Default or Event of Default and associated acceleration due to a non-intentional technical breach of the DIP Budget and (ii) if the DIP Facility is terminated pursuant to a Default or Event of Default occurring because of a breach of the DIP Budget, neither the Purchaser nor their Affiliates shall acquire the Acquired Assets pursuant to the exercise of remedies under the DIP

Credit Agreement or applicable Law and instead shall consummate such transaction pursuant to this Agreement subject to the satisfaction or waiver of all conditions to closing set forth in Article VIII of this Agreement in accordance with their terms; or

(o) by Holdings if the Chapter 11 Cases is dismissed or converted into a case under Chapter 7 of the Bankruptcy Code and neither such dismissal nor conversion expressly contemplates the transactions provided for in this Agreement, or a trustee is appointed for Sellers and such trustee rejects the transactions contemplated by this Agreement.

## 9.2 Breakup Fee and Expense Reimbursement.

(a) Upon the first to occur of the date any Seller consummates (i) an Alternative Transaction or (ii) a Chapter 11 plan (other than a “liquidating” plan, except one in connection with or as a result of an Alternative Transaction or one in lieu thereof which accomplishes a comparable result) pursuant to the Bankruptcy Code, Sellers, jointly and severally, shall immediately pay (in cash) to Holdings a breakup fee in an amount equal to \$4,000,000 (the “Breakup Fee”); provided, however, that the Breakup Fee shall not be payable to Purchasers if this Agreement has been terminated by FB Parent pursuant to Section 9.1(c)(ii).

(b) If this Agreement is terminated for any reason other than by FB Parent pursuant to Section 9.1(c)(ii), Sellers, jointly and severally, shall immediately upon demand from time to time pay (in cash) to Holdings an amount equal to the aggregate Fees and Expenses (the “Expense Reimbursement”).

(c) Sellers’ obligation to pay the Breakup Fee and the Expense Reimbursement pursuant to this Section 9.2 shall survive termination of this Agreement and shall constitute a super-priority administrative expense of Sellers (which shall be a super-priority administrative expense claim senior to all other administrative expense claims and payable out of Sellers’ cash or other collateral of Sellers under Section 364(c)(1) of the Bankruptcy Code) (subject to the Carve-Out).

(d) The parties acknowledge that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement and constitute liquidated damages and not a penalty, and that, without these agreements, Purchasers would not have entered into this Agreement.

9.3 Effect of Termination or Breach. If this Agreement is terminated in accordance with Section 9.1 (a) this Agreement shall become null and void and of no further force and effect, except (i) for the provisions of Section 9.2 and this Section 9.3, which shall expressly survive any such termination, (ii) solely in the case of a termination by FB Parent pursuant to Section 9.1(c)(ii), for the provisions of Section 11.21 in accordance with the terms and conditions thereof, (iii) for the provisions of Sections 11.1, 11.2, 11.5-11.13 and 11.16 hereof, and (iv) that the termination of this Agreement for any cause shall not relieve any party hereto from any Liability which at the time of termination had already accrued to any other party hereto or which thereafter may accrue in respect of any act or omission of such party prior to such termination; and (b) if this Agreement is terminated for any reason other than the termination of this Agreement by FB Parent pursuant to Section 9.1(c)(ii), Sellers shall not be entitled to any

damages, losses, or payment from any Purchaser, and no Purchaser shall have any further Liability of any kind to Sellers, any of their Affiliates, or any Third Party on account of this Agreement.

## ARTICLE X ADDITIONAL COVENANTS

10.1 Employees. Subject to Seller's compliance with the DIP Budget and Schedule 7.3 of this Agreement, and except for employees under employment agreements with Sellers, immediately following Closing substantially all employees actively employed or engaged principally in the Business as of immediately prior to Closing shall be offered employment by Purchasers (such employees who receive an accept such offer of employment and commence active employment with Purchasers, the "Rehired Employees") on terms and conditions of employment (including compensation and benefits) as determined by Purchasers in their sole discretion, it being understood that immediately prior to the Closing, the employment of all employees of the Business shall cease. Nothing contained in this Agreement shall confer upon any Rehired Employee any right to any term or condition of employment or to continuance of employment by Purchasers or any of their Affiliates, nor shall anything herein interfere with the right of Purchasers or any of their Affiliates to terminate the employment of any employee, including any Rehired Employee, at any time, with or without notice and for any or no reason, or restrict Purchasers or any of their Affiliates in modifying any of the terms or conditions of employment of any employee, including any Rehired Employee, after the Closing.

10.2 Employee Benefit Plans. Except for the sponsorship and Liabilities of and related to the Assumed Employee Benefit Plans and Liabilities specifically assumed under Section 2.3(a)(iii) or 2.3(a)(iv), Purchasers shall not assume any Employee Benefit Plan or any Liability thereunder or related thereto, and Purchasers shall provide only those benefits to Rehired Employees as of or after the Closing as Purchasers shall determine. With respect to all claims by or benefits due to current and former employees, officers, directors or contractors of any Seller whenever arising under or in connection with any Employee Benefit Plan, other than an Assumed Employee Benefit Plan or specifically assumed under Section 2.3(a)(iii) or 2.3(a)(iv), whether insured or otherwise (including life insurance, medical and disability programs, retirement and pension plans), Sellers shall, at their own expense, honor, process, administer or pay or cause their respective insurance carriers (as applicable) to honor, process, administer or pay such claims or benefits, regardless of whether such claims are made or such benefits are due before or after the Closing, in accordance with the terms and conditions of such Employee Benefit Plans without regard to the employment by Purchasers of any such employees after the Closing. Sellers shall be responsible for complying with COBRA with respect to their and their ERISA Affiliates' employees (including their qualified beneficiaries) by reason of any such individual's qualifying event (within the meaning of COBRA) occurring at or prior to the Closing. To the extent required under applicable Law, Purchasers shall be responsible for providing COBRA health continuation coverage with respect to each "M&A qualified beneficiary" (as defined in Treasury Regulation Section 54.4980B-9, Q&A-4(a)) at such time and in accordance with Treasury Regulation 54.4980B-9, Q&A-8(c). On or immediately prior to the Closing Date, Sellers shall, or shall cause one of their ERISA Affiliates to, fully vest the unvested account balances of the employees in the Business who participate in any Employee Benefit Plan that is a defined contribution plan intended to be qualified under Section 401(a) of

the Code (the “Seller 401(k) Plan”). Each such employee shall be given the opportunity to receive a distribution of his or her account balance (in cash, but also including any promissory notes for associated participant loans) from the Seller 401(k) Plan and elect to roll over such account into any defined contribution plan intended to qualify under Section 401(a) of the Code that may be established by Purchasers on or after the Closing Date for such employees. Nothing contained in this Agreement, express or implied: (a) shall be construed to establish, amend, or modify any benefit or compensation plan, program, agreement or arrangement; (b) shall alter or limit the ability of Sellers, Purchasers or any of their Affiliates to amend, modify or terminate any benefit or compensation plan, program, agreement or arrangement at any time assumed, established, sponsored or maintained by any of them; (c) is intended to or does confer upon any Person (including employees, retirees, or dependents or beneficiaries of employees or retirees) any rights as a third party beneficiary of this Agreement; or (d) shall be construed to create any right in any employee or former employee of Sellers or their Affiliates or any other Person to employment or continued employment for any specified period or to a particular term or condition of employment with Purchasers or their Affiliates or compensation or benefits of any nature or kind whatsoever.

10.3 WARN Act. Purchasers will indemnify and hold Sellers harmless from any WARN Act Liability with respect to any employees (i) employed by Purchasers after the Closing under the WARN Act due solely to Purchasers’ actions or omissions occurring after the Closing Date or (ii) not hired by Purchasers pursuant to Section 10.1.

10.4 Payroll Reporting and Withholding. Purchasers shall adopt the “standard procedure” for preparing and filing IRS Forms W-2 (Wage and Tax Statements), as described in Revenue Procedure 2004-53. Under this procedure, each Purchaser who employs Rehired Employees, as the successor employer of the Corresponding Seller, shall provide IRS Forms W-2 to all Rehired Employees employed by such Purchaser reflecting all wages paid and Taxes withheld by such Purchaser as the successor employer for the portion of the calendar year beginning on the day after the Closing Date. Sellers as the predecessor employer shall provide IRS Forms W-2 to all Rehired Employees reflecting all wages paid and Taxes withheld by Sellers for the portion of the calendar year ending on the Closing Date. Purchasers shall adopt the “standard procedure” of Rev. Proc. 2004-53 for purposes of IRS Forms W-4 (Employee’s Withholding Allowance Certificate) and W-5 (Earned Income Credit Advance Payment Certificate). Under this procedure, Sellers shall keep on file the IRS Forms W-4 and W-5 provided by the Rehired Employees for the period required by applicable Law concerning record retention. Purchasers shall obtain new IRS Forms W-4 and W-5 with respect to each Rehired Employee.

10.5 Certain Consents. If a consent of a Third Party which is required in order to assign any Acquired Asset (or claim, right or benefit arising thereunder or resulting therefrom) is not obtained prior to the Closing Date, or if an attempted assignment would be ineffective or would adversely affect the ability of any Seller to convey its interest in question to Purchasers, Sellers will cooperate with Purchasers and use commercially reasonable efforts in any lawful arrangement to provide that Purchasers shall receive the interests of any Seller in the benefits of such Acquired Asset. If any consent or waiver is not obtained before the Closing Date and the Closing is nevertheless consummated, each Seller agrees to continue to use commercially

reasonable efforts to obtain, at Purchasers' request and expense, all such consents as have not been obtained prior to such date.

10.6 Name Changes. On or within three (3) days after the Closing Date, each Seller shall take all necessary action to change its name and the names of all Affiliates of Sellers to a name that does not include the word "Furniture Brands," "Broyhill," "HDM," "Maitland-Smith," "Lane," "Thomasville" or any other name or mark included in the Company Intellectual Property (including any name set forth on the signature pages to this Agreement) or any translations, adaptations, derivations or combinations of any of the foregoing or any name or mark confusingly similar thereto (collectively, the "Restricted Names"). Sellers shall promptly notify Holdings of such name changes and the new names chosen by each Seller and all Affiliates of Seller, as applicable, and shall provide Holdings with evidence, reasonably satisfactory to Holdings, of such name changes. From and after Closing, Sellers and all Affiliates of Sellers shall cease all use of any Restricted Name, including by removing all Restricted Names from, or otherwise destroying, all letterhead, stationary, signage and tangible assets included in the Excluded Assets except that the foregoing shall not apply to the use of any Restricted Name solely (i) as required for the Chapter 11 Cases or to pursue rights and claims against third parties, (ii) in connection with filing of tax returns, insurance claims and any other necessary filings, and (iii) in connection with publishing any notices required by the Bankruptcy Court.

10.7 Accounts Receivable; Collections. After the Closing, Sellers shall permit, and hereby authorize, Purchasers to collect, in the name of Sellers, all Accounts Receivable and other amounts receivable as described in Section 2.1(a)(ii) and to endorse with the name of any applicable Seller for deposit in Purchasers' account any checks or drafts received in payment thereof. Sellers shall promptly deliver to Purchasers any cash, checks or other property that they may receive after the Closing in respect of any Accounts Receivable or other asset constituting part of the Acquired Assets. Purchasers shall promptly deliver to Sellers any cash, checks or other property that they may receive after the Closing in respect of any Excluded Assets (including without limitation, any cash, checks or other property constituting Excluded Assets that are in the bank accounts, safety deposit boxes, lock boxes and the like transferred to the Purchasers).

10.8 Confidentiality. Following the Closing, Sellers shall maintain as confidential and shall not use or disclose (except as required by Law or as authorized in writing by Holdings in advance) (a) any confidential or proprietary information or materials relating to the Business, operations and affairs of Sellers (other than to the extent related to the Excluded Assets and Excluded Liabilities), and (b) any materials developed by Purchasers or any of their representatives (including their accountants, advisors, environmental, labor, employee benefits and any other consultants, lenders and legal counsel). Except as otherwise permitted and provided above, in the event any Seller is required by Law to disclose any such confidential information, such Seller shall, to the extent permitted by Law, promptly notify Purchasers in writing, which notification shall include the nature of the legal requirement and the extent of the required disclosure, and shall cooperate with Purchasers to obtain a protective order and otherwise preserve the confidentiality of such information consistent with applicable Law at Purchasers' sole cost and expense. Information subject to the confidentiality obligations in this Section 10.8 does not include any information which (x) at the time of disclosure is generally available to or known by the public (other than as a result of any Seller's disclosure in breach of

this Agreement), or (y) with respect to materials described in clause (b) of the first sentence of this Section, becomes available to Sellers on a non-confidential basis from a Person who is not known to be bound by a confidentiality agreement with Purchasers or their Affiliates, or who is not otherwise prohibited from transmitting the information to Sellers.

#### 10.9 Taxes.

(a) Purchasers shall bear and timely pay any sales, use, purchase, transfer, deed, fixed asset, stamp, documentary stamp or other similar Taxes, excluding any income or similar Tax, and recording charges due and payable with respect to the transactions contemplated by this Agreement (collectively "Transfer Taxes"), and Purchasers shall prepare any Tax Returns required to be filed in connection with any Transfer Taxes. Purchasers and Sellers shall cooperate in timely making all filings, returns, reports and forms as may be required to comply with the provisions of applicable Law in connection with the payment of any Transfer Taxes.

(b) Purchasers and Sellers shall cooperate in providing each other with appropriate resale exemption certification and other similar tax and fee documentation in connection with the transactions contemplated by this Agreement.

(c) Purchasers and Sellers shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns and any audit, litigation or other Proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information that are reasonably relevant to any such audit, litigation or other Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. All costs and expenses incurred in connection with this Section 10.9(c) shall be borne by the party that is subject to such Proceeding.

(d) Personal property Taxes, real property Taxes and other similar Taxes (the "Proration Items") with respect to the Acquired Assets for any Straddle Period shall be prorated as of the Closing Date on a per diem basis between Purchasers and Sellers. The amount of the Proration Items attributable to the portion of the Straddle Period ending on the Closing Date shall be equal to the amount of Tax for the period multiplied by a fraction, the numerator of which shall be the number of days from the beginning of the period through and including the Closing Date and the denominator of which shall be the number of days in the period. The amount of all such Proration Items shall be estimated as of the Closing Date and paid over to Purchasers or Sellers at the Closing; provided, however, that final payments with respect to the Proration Items that are not able to be calculated as of the Closing Date shall be calculated and paid over as soon as practicable after the Closing Date but no later than five (5) Business Days after determination of such additional amounts.

(e) Sellers shall prepare and timely file (or cause to be prepared and timely filed) all Tax Returns required to be filed with respect to Sellers for Pre-Closing Tax Periods in a manner consistent with past practices (except as otherwise required by Law), and shall provide Holdings opportunity for review and comment and shall obtain Holdings' written approval (not to be unreasonably withheld, conditioned or delayed) prior to filing any such Tax Return.

(f) The parties hereto intend that the transactions contemplated by this Agreement, in combination with the subsequent liquidation of Sellers, other than any transaction identified by Holdings in writing delivered to Sellers no later than three (3) days prior to the Closing Date (the transactions contemplated by this Agreement in combination with such liquidation, other than such identified transactions, collectively, the “Relevant Transactions”), be treated for federal income tax and other applicable income tax purposes as: reorganizations of each Seller that is a U.S. entity pursuant to Section 368(a)(1)(G) of the Code to the extent legally permissible (“G Reorganizations”).

(g) With respect to each Relevant Transaction (i) Sellers shall use their reasonable best efforts, and Purchasers shall use reasonable best efforts to assist Sellers, to effectuate such treatment and the parties shall prepare and file all applicable income Tax Returns in a manner consistent with the foregoing and shall not take any action or position inconsistent with, or fail to take any necessary action in furtherance of, such treatment (subject to Section 10.9(i)); (ii) the parties agree that this Agreement shall constitute a “plan” of Sellers and Purchasers for purposes of Sections 368 and 354 of the Code; and (iii) the board of directors or board of managers of FB Parent and Holdings shall, by resolution, approve the execution of this Agreement and expressly recognize its treatment as a “plan” of Sellers and Purchasers for purposes of Sections 368 and 354 of the Code, and the treatment of the Relevant Transactions as G Reorganizations for U.S. federal income Tax purposes. In addition, Sellers shall provide Purchasers with any information or documents that Purchasers reasonably request and shall direct Sellers’ advisors or agents to cooperate fully with Purchasers and to provide Purchasers with any information or documents that Purchasers reasonably request from them.

(h) To the extent that the transactions contemplated by this Agreement are unable to constitute G Reorganizations, the parties hereto hereby agree, and Purchasers and Sellers hereby consent, to treat the sale of the Acquired Assets by the relevant Purchasers as taxable asset sales for all Tax purposes, to consummate the transactions set forth herein on such basis and to report consistently herewith.

(i) No party shall take any position with respect to the transactions contemplated by the Agreement that is inconsistent with the position determined in accordance with this Section 10.9, unless, and then only to the extent, otherwise required to do so by a final, non-appealable order from a court of competent jurisdiction; provided, that the Allocated Shares set forth on the Schedule of Sellers and Purchasers (A) shall not be binding upon the Sellers for purposes of any plan filed in connection with the Chapter 11 Cases, (B) shall not, and shall not be interpreted to, have any effect on the distributions to Sellers’ creditors, (C) shall be prepared, to the extent reasonably possible, in a manner consistent with any distributions to Sellers’ creditors, with any plan filed in connection with the Chapter 11 Cases, and with the characterization of the transactions set forth in Section 3.5 and (D) shall be adjusted to the extent necessary to be consistent with any distributions to Sellers’ creditors, any plan filed in connection with the Chapter 11 Cases, and with the characterization of the transactions set forth in Section 3.5.

(j) Each Seller shall liquidate, as determined for U.S. federal income Tax purposes and to the satisfaction of Holdings, as promptly as reasonably practicable after the



Closing Date but no later than July 1 of the year following the year in which the Closing Date occurs.

#### 10.10 Winding-Down and Liquidation of Sellers.

(a) Following payment by Sellers of the Cure Amounts payable at the Closing, the remaining portion of the Cash Amount received by Sellers under this Agreement shall be set aside and held in trust by Sellers to pay Cure Amounts with respect to any Designated Contract that becomes an Assumed Executory Contract pursuant to Section 2.6(c) (the “Cure Reserve”); provided that the Cure Reserve need not exceed the aggregate Cure Amounts for all such Designated Contracts set forth on Schedule 2.6(c). On the date that any Designated Contract becomes an Assumed Executory Contract pursuant to Section 2.6(c), an amount equal to the Cure Amount with respect to such Designated Contract shall be released from the Cure Reserve and paid by Seller to the applicable party. On the date that any Designated Contract becomes an Excluded Contract pursuant to Section 2.6(c), an amount equal to the Cure Amount with respect to such Designated Contract shall be released from the Cure Reserve and shall thereafter be set aside and held in trust by Sellers in the Wind-Down Reserve. After expiration of the Contract Retention Period, any remaining portion of the Cure Reserve shall be released from the Cure Reserve and shall thereafter be set aside and held in trust by Sellers in the Wind-Down Reserve.

(b) Following payment by Sellers of the Cure Amounts payable at the Closing, the remaining portion of the Cash Amount received by Sellers under this Agreement, net of the Cure Reserve from time to time, or such amount otherwise mutually agreeable to Purchasers and Sellers, shall be set aside and held in trust by Sellers to pay allowed administrative and priority claims through the effective date of Sellers’ Chapter 11 plan (the “Wind-Down Reserve”); provided, that Sellers are authorized to satisfy such claims from the Wind-Down Reserve as such amounts become due. Any residual cash amounts after satisfaction of all administrative and priority claims shall be released from the Wind-Down Reserve to Sellers’ estates.

10.11 Post-Closing Access to Information and Facilities. Purchasers agree that, following the Closing, Sellers and their respective representatives shall, upon reasonable notice and so long as such access does not unreasonably interfere with the business operations of any Purchaser, have reasonable access during normal business hours to (a) Purchasers’ personnel and (b) all Books and Records for periods prior to the Closing, and Purchasers shall exercise reasonable efforts to preserve such Books and Records, subject to compliance with applicable Law, until the earlier of (i) the fifth (5th) anniversary of the Closing or (ii) the date the Bankruptcy Court enters an Order closing the Chapter 11 Cases. Such access to Business Records shall include access to any such information in electronic form to the extent reasonably available. For a period ending on the earlier of (x) three (3) years following the Closing or (y) the date the Bankruptcy Court enters an Order closing the Chapter 11 Cases, prior to destroying any Books and Records for periods prior to the Closing, Purchasers shall notify Sellers, no less than thirty (30) days in advance of any such proposed destruction of their intent to destroy such Books and Records, and Purchasers will permit Sellers to retain such Books and Records at Sellers’ sole expense. Purchasers shall, at Sellers’ sole expense, render all reasonable assistance that Sellers may reasonably request in (a) bringing or defending litigation or claims and/or (b)

facilitating the administration of the Chapter 11 Cases, the administration of and/or realization on the Excluded Assets or Excluded Liabilities, and other administrative activities, and shall make available to Sellers, for and at reasonable times, Purchasers' personnel most knowledgeable about the matter in question. Any information received or accessed by Sellers under this Section 10.11 shall be subject to the provisions of Section 10.8. Notwithstanding the foregoing, nothing herein shall require Purchasers to provide access or disclose any information to Sellers or any of their representatives if such access or disclosure would waive any legal privilege.

## **ARTICLE XI MISCELLANEOUS**

11.1 Non-Survival of Representations and Warranties. The representations and warranties respectively made by Sellers and Purchasers in this Agreement and in any certificate delivered hereunder will expire as of the Closing. Subsequent to Closing, no claim with respect to any breach of any representation or warranty contained in this Agreement may be pursued or maintained (either hereunder or otherwise) against any other party. The parties hereto agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive the Closing hereunder, and each party hereto shall be liable to the other after the Closing for any breach thereof.

### 11.2 Expenses.

(a) Except as otherwise provided herein, each party hereto shall bear its own costs and expenses, including attorneys' fees, with respect to the transactions contemplated hereby. Notwithstanding the foregoing, in the event of any Proceeding to interpret or enforce this Agreement, the prevailing party in such Proceeding (i.e., the party who, in light of the issues contested or determined in the Proceeding, was more successful) shall be entitled to have and recover from the non-prevailing party such costs and expenses (including all court costs and reasonable attorneys' fees) as the prevailing party may incur in the pursuit or defense thereof.

(b) The parties hereto agree that if any claims for commissions, fees or other compensation, including brokerage fees, finder's fees, or commissions are ever asserted against Purchasers or Sellers in connection with this transaction, all such claims shall be handled and paid by the party whose actions form the basis of such claim (with counsel reasonably satisfactory to the party(ies) entitled to indemnification), and such party shall indemnify and hold the other harmless from and against any and all such claims or demands asserted by any Person, firm or corporation in connection with the transaction contemplated hereby.

11.3 Amendment. This Agreement may not be amended, modified or supplemented except by a written instrument signed by FB Parent (on behalf of itself and Sellers) and Holdings (on behalf of itself and the other Purchasers); provided that any amendment, modification or supplement to Section 11.21 shall also require the written consent of Guarantors; provided, further, that Holdings may, without the consent of FB Parent, amend the Schedule of Sellers and Purchasers as permitted by Section 7.11 and/or to reflect any assignment made in compliance with Section 11.10 hereof.

11.4 Waivers. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing by FB Parent, in the case of a waiver by any Seller, or Holdings, in the case of any waiver by any Purchaser, and no waiver in any one (1) or more instances shall be deemed to be a further or continuing waiver of any such condition or breach of other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.

11.5 Notices. All notices, requests, demands and other communications permitted or required to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed conclusively to have been given (a) when personally delivered, (b) when sent by facsimile (with hard copy to follow) during a Business Day (or on the next business day if sent after 5:00 p.m. local time of the recipient or on any non-Business Day), (c) when sent by electronic mail (with hard copy to follow) during a Business Day (or on the next Business Day if sent after 5:00 p.m. local time of the recipient or on any non-Business Day), (d) one (1) Business Day after being sent by reputable overnight express courier (charges prepaid), or (e) three (3) Business Days following mailing by certified or registered mail, postage prepaid and return receipt requested. Unless another address is specified in writing, notices, requests, demands and communications to the parties shall be sent to the addresses indicated below (it being understood that the copies to counsel set forth below shall not constitute notice):

To FB Parent or Sellers: Furniture Brands International, Inc.  
1 North Brentwood Blvd.  
St. Louis, MO 63105  
Attn: General Counsel  
Fax: (828) 438-2475  
E-mail: mgraham@furniturebrands.com

with copies to: Paul Hastings LLP  
75 East 55th Street  
New York, NY 10022  
Attn: Leslie Plaskon  
Fax: (212) 230-5137  
E-mail: leslieplaskon@paulhastings.com  
Attn: Luc Despins  
Fax: (212) 230-7771  
E-mail: lucdespins@paulhastings.com  
Attn: Amit Mehta  
Fax: (312) 499-6119  
E-mail: amitmehta@paulhastings.com

To any Purchaser or Guarantor: KPS Capital Partners, LP  
485 Lexington Avenue  
31st Floor  
New York NY 10017  
Attn: Raquel Vargas Palmer

Fax: (212) 867-7980  
Email: rpalmer@kpsfund.com

with copies to:

Proskauer Rose LLP  
70 West Madison Street  
Chicago, IL 60602  
Fax: (312) 962-3551  
Attn: Mark K. Thomas  
Email: mthomas@proskauer.com  
Attn: Peter J. Young  
Email: pyoung@proskauer.com

11.6 Counterparts; Electronic Execution. This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, may be executed in one (1) or more counterparts, all of which shall constitute one and the same instrument. Any such counterpart, to the extent delivered by means of a facsimile machine or by .pdf, .tif, .gif, .jpeg or similar attachment to electronic mail (any such delivery, an “Electronic Delivery”) shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto, each other party hereto or thereto shall reexecute the original form of this Agreement and deliver such form to all other parties. No party hereto shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent such defense relates to lack of authenticity.

11.7 Headings. The headings preceding the text of the Articles and Sections of this Agreement and the Exhibits and the Schedules are for convenience only and shall not be deemed part of this Agreement.

11.8 SUBMISSION TO JURISDICTION; WAIVER OF TRIAL BY JURY. THE PARTIES HEREBY AGREE THAT ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, SUITS, AND PROCEEDINGS RELATING TO THIS AGREEMENT OR THE OTHER AGREEMENTS CONTEMPLATED HEREIN SHALL BE FILED AND MAINTAINED ONLY IN THE BANKRUPTCY COURT, AND THE PARTIES HEREBY CONSENT TO THE JURISDICTION OF SUCH COURT. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY LITIGATION, ACTION, PROCEEDING, CROSS-CLAIM, OR COUNTERCLAIM IN ANY COURT (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF, RELATING TO OR IN CONNECTION WITH (I) THIS AGREEMENT OR THE VALIDITY, PERFORMANCE, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF OR (II) THE ACTIONS OF THE PARTIES IN THE NEGOTIATION, AUTHORIZATION, EXECUTION, DELIVERY, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

11.9 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the Delaware (regardless of the Laws that might otherwise govern

under applicable Delaware principles of conflicts of Law) as to all matters, including matters of validity, construction, effect, performance and remedies.

11.10 Binding Nature; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without prior written consent of the other parties; except (a) that any Purchaser may assign any of its rights and obligations hereunder to any Affiliate or Subsidiary of any Purchaser (whether wholly owned or otherwise) or to its lender and, following the Closing, in whole or in part to any successor-in-interest to any Person acquiring all or any portion of the Business or the Acquired Assets; and (b) as otherwise expressly provided in this Agreement. Sellers hereby agree that Purchasers may grant a security interest in their rights and interests hereunder to its lenders, and Sellers will sign a consent with respect thereto if so requested by Purchaser or their lender, and that the terms of this Agreement shall be binding upon any subsequent trustee appointed under Chapter 11 or Chapter 7 of the Bankruptcy Code. Notwithstanding anything to the contrary set forth herein, the rights and interests of Sellers under this Agreement shall inure to the benefit of any trustee appointed under Chapter 11 or Chapter 7 of the Bankruptcy Code and/or any liquidating trust or any other entity appointed as a successor to Sellers pursuant to a confirmed plan under Chapter 11 of the Bankruptcy Code.

11.11 No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and nothing contained herein, express or implied, is intended to confer on any Person other than the parties hereto or their successors and permitted assigns, any rights, remedies, obligations, claims, or causes of action under or by reason of this Agreement.

11.12 Severability. Each provision of this Agreement is integral and of essence to the Agreement. If any provision of this Agreement is held to be prohibited by or invalid under applicable Law, or is stricken or revised by any court with jurisdiction over the transactions contemplated by this Agreement, then this Agreement shall be deemed invalid, void and terminated in all respects unless the parties hereto agree otherwise in writing.

11.13 Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to this Agreement to express their mutual intent, and no rule of strict construction shall be applied against any party. Any reference to any federal, state, local or foreign statute or Law shall be deemed also to refer to all rules and Laws promulgated thereunder, unless the context requires otherwise. Whenever a party's consent, approval or satisfaction is required under this Agreement, the decision as to whether or not to consent or approve or be satisfied shall be in the sole and exclusive discretion of such party, and such party's decision shall be final and conclusive.

11.14 Public Announcements. Except as required by Law or by the applicable rules of any national stock exchange or in connection with the Chapter 11 Cases, neither Sellers nor Purchasers shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of FB Parent and Holdings relating to the contents and manner of presentation and publication thereof, which approval will not be unreasonably withheld, delayed or conditioned. Prior to making any public disclosure required by applicable Law or stock exchange rule, the disclosing parties shall give

the other party (Holdings, on behalf of Purchasers, or FB Parent, on behalf of Sellers, as the case may be) a copy of the proposed disclosure and reasonable opportunity to comment on the same. Notwithstanding the foregoing, Purchasers shall not be restricted from making any public announcements or issuing any press releases after the Closing.

11.15 Disclosure Schedules. The information disclosed in any Schedules provided pursuant to Article V delivered by Sellers to Purchasers (collectively, the “Disclosure Schedules”) shall be deemed to relate to and to qualify only the particular representation or warranty set forth in the corresponding numbered Section in this Agreement and shall not be deemed to relate to or to qualify any other representation or warranty except to the extent the applicability of such disclosure to such other representation or warranty is readily apparent on the face of the disclosure. Nothing in the Disclosure Schedules shall be deemed adequate to disclose an exception to a representation or warranty made herein, however, unless the Disclosure Schedules identify the exception with reasonable particularity and describe the relevant facts in reasonable detail. The mere listing (or inclusion of a copy) of a document or other item shall not be deemed adequate to disclose an exception to a representation or warranty made herein (unless the representation or warranty has to do with the existence of the document or other item itself).

11.16 Entire Understanding. This Agreement, the Exhibits and the Schedules set forth the entire agreement and understanding of the parties hereto in respect to the transactions contemplated hereby and the Agreement, the Exhibits and the Schedules supersede all prior agreements, arrangements and understandings relating to the subject matter hereof and are not intended to confer upon any other Person any rights or remedies hereunder.

11.17 Closing Actions. All deliveries, payments and other transactions and documents relating to the Closing shall be interdependent, and none shall be effective unless and until all are effective (except to the extent that the party entitled to the benefit thereof has waived satisfaction or performance thereof as a condition precedent to the Closing).

11.18 Conflict Between Transaction Documents. The parties hereto agree and acknowledge that to the extent any terms and provisions of this Agreement are in any way inconsistent with or in conflict with any term, condition or provision of any other agreement or document referred to herein, this Agreement shall govern and control.

11.19 Final Schedules. Notwithstanding anything to the contrary, Purchasers and Sellers acknowledge that as of the date of this Agreement the Schedules other than Schedules 2.6(f), 7.3 and 8.2(k) have not been finalized (such Schedules not finalized, the “Postponed Schedules”). Purchasers acknowledge that Purchasers have no right to terminate this Agreement under this Section 11.19 as a result of the finalization and delivery of the Postponed Schedules, including as a result of not being satisfied with the contents of the Postponed Schedules; provided, that the foregoing shall not limit any of Purchasers’ termination rights under Article IX. Sellers agree to use reasonable efforts to provide Purchasers with the final Postponed Schedules as soon as possible after the date hereof, but in any event on or prior to five (5) Business Days after the Effective Date.

11.20 Time Periods. Unless specified otherwise, any action required hereunder to be taken within a certain number of days shall be taken within that number of calendar days (and not Business Days); provided, however, that if the last day for taking such action falls on a day that is not a Business Day, the period during which such action may be taken shall be automatically extended to the next Business Day.

11.21 Guaranty. Guarantors hereby unconditionally and irrevocably guaranty, as primary obligors and not as surety, severally in accordance with Guarantors' respective percentage shares (the "Guaranty Percentages") set forth on the Schedule of Guarantors, the due and punctual payment and performance by Purchasers (and any permitted assignees thereof) of all of their obligations to Sellers pursuant to the terms of this Agreement (the "Guaranteed Obligations"); accordingly, for the avoidance of doubt, this guaranty is one of payment and performance and not one of collection. The foregoing sentence is an absolute, unconditional and continuing guaranty of the full and punctual discharge and performance of the Guaranteed Obligations. Should Purchasers default in the discharge or performance of all or any portion of the Guaranteed Obligations, the obligations of Guarantors hereunder shall become immediately due and payable to Sellers. Sellers agree that in no event shall Guarantors be required to pay any amount to Sellers or any other Person hereunder in respect of or in connection with this Agreement other than as expressly set forth in this Section 11.21. Notwithstanding anything to the contrary set forth herein, all obligations of Guarantors pursuant to this Section 11.21 shall terminate immediately and automatically upon the earliest to occur of (i) the Closing, (ii) any termination of this Agreement other than by FB Parent pursuant to Section 9.1(c)(ii), or (iii) the date that is 30 days after the termination of this Agreement by FB Parent pursuant to Section 9.1(c)(ii), except as to any claim asserted in writing against Guarantors prior to such date (in which case the obligations of Guarantors hereunder shall terminate when such claim is finally resolved or otherwise satisfied). Notwithstanding anything that may be expressed or implied in this Section 11.21 or any document or instrument delivered in connection herewith, by their acceptance of the benefits of this Section 11.21, Sellers further agree that none of them has any right of recovery against, and no personal liability shall attach to, any Guarantor, any former, current or future, direct or indirect, director, officer, employee, agent or affiliate of any Guarantor, any former, current or future, direct or indirect, holder of any equity interests or securities of any Guarantor (whether such holder is a limited or general partner, member, stockholder or otherwise), any former, current or future assignee of any Guarantor or any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder, affiliate, controlling person, representative or assignee of any of the foregoing (each such Person, a "Related Person"), through any Purchaser, any Guarantor or otherwise, whether by or through any attempted piercing of the corporate, limited liability company or limited partnership veil, by or through a claim by or on behalf of any Purchaser against any Guarantor or any Related Person, or otherwise, except for the rights against Guarantors as expressly provided in this Section 11.21 or those against Purchasers arising under this Agreement. Recourse against Guarantors under this Section 11.21 shall be the sole and exclusive remedy of Sellers and all of their respective Affiliates and Subsidiaries against any Guarantor or any Related Person (including Purchasers) in respect of any liabilities or obligations arising under or in connection with this Agreement or the transactions contemplated hereby, including by piercing the corporate, limited liability company or limited partnership veil or by a claim by or on behalf of any Purchaser. Sellers hereby covenant and agree that none of them shall, and each of them shall cause each other Seller to not institute, directly or indirectly, and shall cause its and their

respective affiliates and subsidiaries to not institute, any proceeding or bring any other claim arising under, or in connection with, this Agreement or the transactions contemplated hereby, against any Guarantor or any Related Person, except for claims of Sellers against Guarantors under this Section 11.21 or against Purchasers under this Agreement. Nothing set forth in this Section 11.21 shall confer or give or shall be construed to confer or give to any Person (including any Person acting in a representative capacity) other than Sellers any rights or remedies against any Person, including any Guarantor, except as expressly set forth in this Section 11.21. In the event that any Seller or any Affiliate thereof asserts in any Proceeding any theory of liability against any Guarantor or any Related Person with respect to the transactions contemplated by this Agreement other than the Liability of such Guarantor under this Section 11.21, then (i) the obligations of Guarantors under this Section 11.21 shall terminate *ab initio* and be null and void, (ii) if any Guarantor has previously made any payments under this Section 11.21, it shall be entitled to recover such payments from Sellers, and (iii) no Guarantor shall have any liability to Sellers or any of their respective Affiliates with respect to the transactions contemplated by this Agreement.

[SIGNATURE PAGES FOLLOW]



IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be executed and delivered on the date first written above.

**FB PARENT:**

**FURNITURE BRANDS INTERNATIONAL,  
INC.**

By: \_\_\_\_\_  
Name:  
Its:

**OTHER SELLERS:**

**LANE FURNITURE INDUSTRIES, INC.**

By: \_\_\_\_\_  
Name:  
Its:

**ACTION TRANSPORT, INC.**

By: \_\_\_\_\_  
Name:  
Its:

**LANEVENTURE, INC.**

By: \_\_\_\_\_  
Name:  
Its:

**LANE HOME FURNISHINGS RETAIL, INC.**

By: \_\_\_\_\_  
Name:  
Its:

**FURNITURE BRANDS RESOURCE  
COMPANY, INC.**

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

Name:

Its:

**FURNITURE BRANDS HOLDINGS, INC.**

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

Name:

Its:

**FURNITURE BRANDS OPERATIONS, INC.**

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

Name:

Its:

**BROYHILL FURNITURE INDUSTRIES, INC.**

By: \_\_\_\_\_  
Name:  
Its:

**BROYHILL RETAIL, INC.**

By: \_\_\_\_\_  
Name:  
Its:

**BROYHILL HOME FURNISHINGS, INC.**

By: \_\_\_\_\_  
Name:  
Its:

**HDM FURNITURE INDUSTRIES, INC.**

By: \_\_\_\_\_  
Name:  
Its:

**HDM RETAIL, INC.**

By: \_\_\_\_\_  
Name:  
Its:

**MAITLAND-SMITH FURNITURE  
INDUSTRIES, INC.**

By: \_\_\_\_\_  
Name:  
Its:

**THOMASVILLE FURNITURE INDUSTRIES,  
INC.**

By: \_\_\_\_\_  
Name:  
Its:

**THOMASVILLE RETAIL, INC.**

By: \_\_\_\_\_  
Name:  
Its:

**THOMASVILLE HOME FURNISHINGS, INC.**

By: \_\_\_\_\_  
Name:  
Its:

**HOLDINGS:**

**FBN ACQUISITION HOLDINGS, LLC**

on behalf of itself and its designees,

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

Name: Raquel Palmer

Its: Authorized Signatory

**GUARANTORS** (solely for purposes of Section 11.21):

**KPS SPECIAL SITUATIONS FUND III, LP**  
(solely for purposes of Section 11.21)

By: KPS Investors III, LP  
Its: general partner

By: KPS Capital Partners, LLC  
Its: general partner

By: \_\_\_\_\_  
Name: Raquel Palmer  
Its: Authorized Signatory

**KPS SPECIAL SITUATIONS FUND III (A),  
L.P.** (solely for purposes of Section 11.21)

By: KPS Investors III, Ltd.  
Its: general partner

By: \_\_\_\_\_  
Name: Raquel Palmer  
Its: Vice President

**KPS SPECIAL SITUATIONS FUND III  
(SUPPLEMENTAL), LP** (solely for purposes of  
Section 11.21)

By: KPS Investors III (AIV), LP  
Its: general partner

By: KPS Investors III (AIV), Ltd.  
Its: general partner

By: \_\_\_\_\_  
Name: Raquel Palmer  
Its: Vice President

**KPS SPECIAL SITUATIONS FUND III  
(SUPPLEMENTAL – AIV), LP** (solely for  
purposes of Section 11.21)

By: KPS Investors III (AIV), LP  
Its: general partner

By: KPS Investors III (AIV), Ltd.  
Its: general partner

By: \_\_\_\_\_  
Name: Raquel Palmer  
Its: Vice President

**Schedule of Sellers and Purchasers**

<b><u>Sellers</u></b>	<b><u>Purchasers</u></b>	<b><u>Allocated Share</u></b> <sup>1</sup>		
		<b><u>Cash</u></b>	<b><u>Intermediate Holdings Units</u></b>	<b><u>Debt Interests</u></b>
Furniture Brands International, Inc., a Delaware corporation	Intermediate Holdings			
Furniture Brands Resource Company, Inc., a Delaware corporation	Opco			
Furniture Brands Holdings, Inc., a Delaware corporation	Opco			
Furniture Brands Operations, Inc., a Delaware corporation	Opco			
Broyhill Furniture Industries, Inc., a North Carolina corporation	Opco			
Broyhill Retail, Inc., a Delaware corporation	Opco			
Broyhill Home Furnishings, Inc., a Delaware corporation	Opco			
HDM Furniture Industries, Inc., a Delaware corporation	Opco			
HDM Retail, Inc., a Delaware corporation	Opco			
Maitland-Smith Furniture Industries, Inc., a Delaware corporation	Opco			

<sup>1</sup> Allocated Shares to be determined in proportion to the relative value of assets to be sold/acquired by each Seller/Purchaser.



<u>Sellers</u>	<u>Purchasers</u>	<u>Allocated Share<sup>1</sup></u>		
		<u>Cash</u>	<u>Intermediate Holdings Units</u>	<u>Debt Interests</u>
Thomasville Furniture Industries, Inc., a Delaware corporation	Opco			
Thomasville Retail, Inc., a Virginia corporation	Opco			
Thomasville Home Furnishings, Inc., a Delaware corporation	Opco			

**Schedule of Guarantors**

[Intentionally Omitted]

**EXHIBIT B**

~~EXECUTION VERSION~~

ASSET PURCHASE AGREEMENT

dated as of ~~September 28~~ [\_\_\_\_\_] , 2013

among

FURNITURE BRANDS INTERNATIONAL, INC.,

THE OTHER SELLERS NAMED HEREIN,

~~FB GROUP~~ ~~FBN ACQUISITION HOLDINGS LLC~~, ~~FB INTERMEDIATE HOLDINGS~~  
LLC,

~~FB BH INTERMEDIATE HOLDINGS LLC~~,

~~FB LANE INTERMEDIATE HOLDINGS LLC~~ ON BEHALF OF ITSELF AND,

THE OTHER PURCHASERS NAMED HEREIN

AND

THE GUARANTORS NAMED HEREIN  
(SOLELY FOR PURPOSES OF SECTION 11.21)

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made and entered into as of ~~September 28~~ [\_\_\_\_], 2013 (the “Effective Date”), by and among Furniture Brands International, Inc., a Delaware corporation (“FB Parent”), the Subsidiaries of FB Parent set forth on the Schedule of Sellers and Purchasers (together with FB Parent, each a “Seller” and, collectively, “Sellers”), ~~FB Group FBN Acquisition Holdings LLC, a Delaware limited liability company (“Holdings”), FB Intermediate Holdings LLC, a Delaware limited liability company (“Intermediate Holdings”), FB BH Intermediate Holdings LLC, a Delaware limited liability company (“Broyhill Intermediate Holdings”), FB Lane Intermediate Holdings LLC, a Delaware limited liability company (“Lane Intermediate LLC~~ or its designees (“Holdings”), the Subsidiaries of ~~Intermediate Holdings, Broyhill Intermediate Holdings and Lane Intermediate Holdings~~ Holdings who are formed after the date of this Agreement and who join this Agreement and are set forth on the Schedule of Sellers and Purchasers (together with Holdings, and Intermediate Holdings, Broyhill Intermediate Holdings and Lane Intermediate Holdings, each a “Purchaser” and, collectively, (as defined below) the “Purchasers”), and, solely for purposes of Section 11.21, the Persons set forth on the Schedule of Guarantors (each a “Guarantor” and, collectively, “Guarantors”).

~~Certain Sellers and certain Purchasers made and entered into that certain Asset Purchase Agreement, dated as of September 9, 2013 (the “Prior Agreement”). Pursuant to Sections 9.1(a) and 11.3 of the Prior Agreement, Sellers and Purchasers desire to amend and restate the Prior Agreement and the exhibits and schedules thereto in their entirety as set forth herein, effective as of the Effective Date.~~

In consideration of the mutual covenants, agreements and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions. Unless otherwise defined herein, terms used herein shall have the meanings set forth below:

“503 Liabilities” has the meaning set forth in Section 2.3(a)(ii) hereof.

“Accounts Receivable” means all accounts and notes receivable (whether current or non-current) in respect of goods shipped, products sold or services rendered prior to the Closing Date.

~~“Accounts Receivable Adjustment Excess” has the meaning set forth in Section 3.7 hereof.~~

“Acquired Assets” has the meaning set forth in Section 2.1(a) hereof.

~~“Acquired Lane Assets” has the meaning set forth in Section 2.1(a)(xvii) hereof.~~

“Acquired Owned Real Property” has the meaning set forth in Section 2.1(a)(vi).

“Affiliate” of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether by contract, through the ownership of voting securities or otherwise.

“Affiliated Group” means an “affiliated group” as defined in Section 1504 of the Code (or any analogous combined, consolidated or unitary group defined under state, local or foreign income Tax Law) of which any Seller or Foreign Subsidiary is or has been a member.

“Agreement” means this Asset Purchase Agreement, including all of the Exhibits and the Schedules hereto, as the same may be amended from time to time in accordance with its terms.

“Allocated Share” means the percentage shares of the Cash Amount, 80% of the Debt Interests, ~~Intermediate Holdings Units, Broyhill Intermediate Holdings Units and/or Lane and~~ Intermediate Holdings Units set forth opposite a Purchaser’s or a Seller’s name on the Schedule of Sellers and Purchasers. Holdings may update the Allocated Share percentages set forth on the Schedule of Sellers and Purchasers at any time prior to the Closing.

“Allocation” has the meaning set forth in Section 3.6 hereof.

“Alternative Transaction” means a transaction or series of transactions (other than by Purchasers or their Affiliates), whether by merger, consolidation, business combination, sale of equity interests or assets, tender offer, foreclosure or plan of reorganization or liquidation or otherwise, involving (i) the sale or other disposition of ten percent (10%) or more of the Acquired Assets, (ii) the sale of ten percent (10%) or more of the outstanding shares of capital stock or equity interests of any Seller or (iii) a similar transaction or business combination involving one or more Third Parties and any Seller (but excluding ~~any Lane Sale and~~ sales of Inventory in the Ordinary Course of Business); provided, however, that the items set forth on Schedule 7.3 shall be excluded from the definition of “Alternative Transaction.”

“Assignment and Assumption Agreements” has the meaning set forth in Section 4.2(a)(iv) hereof.

“Assumed Contracts” has the meaning set forth in Section 2.1(a)(xii).

“Assumed Employee Benefit Plans” has the meaning set forth in Section 2.1(a)(xiii).

“Assumed Equipment Leases” has the meaning set forth in Section 2.1(a)(viii).

“Assumed Executory Contracts” means the Assumed Contracts and the Assumed Leases.

“Assumed Facility Leases” has the meaning set forth in Section 2.1(a)(vii).

“Assumed Leased Facilities” means the Leased Facilities identified in the Assumed Facility Leases.

“Assumed Leases” has the meaning set forth in Section 2.1(a)(viii).

“Assumed Obligations” has the meaning set forth in Section 2.3(a) hereof.

“Assumption Notice” has the meaning set forth in Section ~~2.6~~2.6(d) hereof.

“Auction” means the auction conducted by Sellers pursuant to the Bidding Procedures Order for substantially all of the Acquired Assets in the event a Qualified Bid is timely received prior to the Bid Deadline (as defined in the Bidding Procedures Order).

“Auction Deadline Date” means ~~the date that is ninety five (95) days following the Petition Date~~ December 10, 2013 or such earlier date as may be agreed upon in accordance with the Bidding Procedures Order.

“Avoidance Actions” means any causes of action arising under Chapter 5 of the Bankruptcy Code and any similar state law claims.

“Bankruptcy Code” means Title 11 of the United States Code.

“Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware.

“Bid Deadline” means ~~the date that is ninety (90) days following the Petition Date~~ December 6, 2013 or such earlier date as may be agreed upon in accordance with the Bidding Procedures Order.

“Bidding Procedures Order” means the order of the Bankruptcy Court, in the form attached hereto as Exhibit A or such other form consented to by Purchasers in their sole discretion.

“Bidding Procedures Order Deadline Date” means ~~the date that is thirty five (35) days following the Petition Date~~ October 24, 2013.

“Books and Records” means all records and lists of the Business, including (i) all inventory, merchandise, analysis reports, marketing reports, research and development materials and creative material pertaining to the Acquired Assets, the Facilities or the Business, (ii) all records relating to customers, suppliers or personnel of Sellers or of the Business (including customer lists, mailing lists, e-mail address lists, recipient lists, sales records, correspondence with customers, customer files and account histories, supply lists and records of purchases from and correspondence with suppliers), (iii) all records relating to all product, business and marketing plans of Sellers or of the Business, (iv) all accounting records, Tax records and Tax Returns and (v) all books, ledgers, files, reports, plans, drawings and operating records of every kind; provided, however, that “Books and Records” shall not include the originals of any Seller’s minute books, stock books, Tax Returns or any other Books and Records Sellers are required by Law to retain but shall include copies thereof books and records that are Excluded Assets as set forth in Section 2.2(a)(vii) and Section 2.2(a)(xiv) other than copies of such books and records as provided in Section 2.2(a)(vii) and Section 2.2(a)(xiv).

“Borrowers” means Furniture Brands International, Inc., Broyhill Furniture Industries, Inc., HDM Furniture Industries, Inc., Lane Furniture Industries, Inc., Maitland-Smith Furniture Industries, Inc. and Thomasville Furniture Industries, Inc.

“Breakup Fee” has the meaning set forth in Section 9.2(a) hereof.

~~“Broyhill Business” means the “Broyhill” division or business of FB Parent and its Subsidiaries.~~

~~“Broyhill Intermediate Holdings” has the meaning set forth in the preamble hereto.~~

~~“Broyhill Intermediate Holdings Units” has the meaning set forth in Section 3.1 hereof.~~

“Business” means the activities carried on by Sellers and the Foreign Subsidiaries, including the development, design, manufacture, sourcing, production, licensing, marketing, sale and distribution of home furnishings and home decorative accessories.

“Business Day” means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in the State of Delaware are authorized by Law to close.

~~“Cash Amount” means the excess, if any, of (i) \$260,000,000 over (ii) the Credit Bid Amount.~~

~~In addition, if a Lane Sale is consummated prior to the Closing, then (A) the Cash Amount shall be reduced by the Lane Net Proceeds, and (B) the Cash Amount shall be subject to upward or downward adjustment to reflect any post-closing adjustments in the consideration paid pursuant to the Lane Sale, with the amount of the adjustment to the Cash Amount to be paid by Holdings or FB Parent, as applicable, to the other promptly, and in any event within five (5) Business Days following any such adjustment and payment pursuant to the Lane Sale and written certification thereof from FB Parent to Holdings. If a Lane Sale is not consummated prior to the Closing, then the Cash Amount shall be subject to adjustment pursuant to Section 3.7.~~

“Cash Amount” means the excess, if any, of (i) \$280,000,000 over (ii) the Credit Bid Amount.

“Carve-Out” has the meaning set forth in the DIP Credit Agreement.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.) and any Laws promulgated thereunder.

“Chapter 11 Cases” means the cases commenced by Sellers under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court.

“Claim” has the meaning set forth in Section 101(5) of the Bankruptcy Code.

“Closing” has the meaning set forth in Section 4.1 hereof.

“Closing ~~Accounts Receivable~~ Date” has the meaning set forth in Section 3.7 hereof. ~~“Closing Inventory” has the meaning set forth in Section 3.7 hereof.~~

~~“Closing Date” has the meaning set forth in Section 4.1 hereof.~~

“Closing Date Deadline” means ~~the date that is one hundred five (105) days following the Petition Date.~~ December 23, 2013 or such earlier date as may be agreed upon in accordance with the Bidding Procedures Order.

“COBRA” has the meaning set forth in Section 5.16(e) hereof.

“Code” means the United States Internal Revenue Code of 1986, as amended.

“Collective Bargaining Agreement” means any Contract or other binding agreement or arrangement (written or oral) with any labor union or organization, works council or other employee representative.

“Company Intellectual Property” has the meaning set forth in Section 5.12(b) hereof.

“Company Reports” has the meaning set forth in Section 5.5(c) hereof.

“Company Systems” has the meaning set forth in Section 5.12(f) hereof.

“Contract” means any agreement, license, contract, commitment or other binding arrangement or understanding, whether written or oral, and, with respect to any Contract to which any Seller is a party, such contract which any Seller is permitted under the Bankruptcy Code to assume and assign other than an Employee Benefit Plan.

“Contract Retention Period” has the meaning set forth in Section 2.6(c) hereof.

“Corresponding Purchaser” means, with respect to any particular Seller, the Purchaser set forth opposite such Seller’s name on the Schedule of Sellers and Purchasers.

“Corresponding Seller” means, with respect to any particular Purchaser, the Seller set forth opposite such Purchaser’s name on the Schedule of Sellers and Purchasers.

“Credit Bid Amount” has the meaning set forth in Section 3.3 hereof.

“Cure Amount” means any costs of cure as required by Section 365 of the Bankruptcy Code with respect to (i) any Assumed Executory Contract, or (ii) any Designated Contract that becomes an Assumed Executory Contract pursuant to Section 2.6(c), in the amount set forth next to such Designated Contract on Schedule 2.6(c).

“Cure Reserve” has the meaning set forth in Section ~~10.10(a)~~10.10(b) hereof.

“Customs and International Trade Laws” means any Law, executive order, permit, license, award, or other decision or requirement having the force or effect of Law, of any Governmental Authority, concerning the importation of merchandise, the export or re-export of products (including technology and services), the terms and conduct of international transactions, and the making or receiving of international payments, including the Tariff Act of 1930, as amended, and other Laws and programs administered or enforced by U.S. Customs and Border Protection (“Customs”), U.S. Immigration and Customs Enforcement, and their predecessor



agencies, the Export Administration Act of 1979, as amended, the Export Administration Regulations, the International Emergency Economic Powers Act, as amended, the Trading With the Enemy Act, as amended, the Arms Export Control Act, the International Traffic in Arms Regulations, any other export control regulations administered by an agency of the U.S. government, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), as amended, executive orders of the President regarding embargoes and restrictions on transactions with designated entities (including countries, terrorists, organizations and individuals), the embargoes and restrictions administered by the U.S. Office of Foreign Assets Control, the Money Laundering Control Act of 1986, as amended, requirements for the marking of imported merchandise, prohibitions or restrictions on the importation of merchandise made with the use of slave or child labor, the Foreign Corrupt Practices Act, as amended, the antiboycott regulations administered by the U.S. Department of Commerce, the antiboycott regulations administered by the U.S. Department of the Treasury, legislation and regulations of the U.S. and other countries implementing the North American Free Trade Agreement and other free trade agreements to which the U.S. is a party, the antidumping and countervailing duty Laws, and Laws adopted by the Governmental Authorities of other countries concerning the ability of U.S. persons to own businesses or conduct business in those countries, restrictions by other countries on holding foreign currency or repatriating funds, or otherwise relating to the same subject matter as the U.S. statutes and regulations described above.

“Data Room” means (i) Sellers’ “Project Whispering Pines” electronic data room located at <https://services.intralinks.com> as of ~~the date which is three five (35)~~ Business Days ~~after following~~ the Effective Date, to which Purchasers have been granted access; (ii) the “FTP” site provided by Sellers and Miller Buckfire & Co. LLC located at <ftp://files2.millerbuckfire.net> (or such location to which the contents of such “FTP” site are transferred and to which Purchasers are granted access as soon as reasonably practicable following such transfer) as of ~~the date which is three five (35)~~ Business Days ~~after following~~ the Effective Date, to which Purchasers have been granted access; and (iii) the electronic folders located at <http://fbnet/SharedServices/Legal/FBNContractRepository/Shared%20Documents/Forms/AllItems.aspx> as of ~~the date which is three five (35)~~ Business Days ~~after following~~ the Effective Date, to which Purchasers have been granted access, in each case to the extent the items disclosed therein as of such date remain therein through the Closing Date.

“Debt Interests” means all rights and obligations of any kind of the lenders under the DIP Facility and the Prepetition Term Loan Facility, in each case as of the Closing Date.

“Designated Contracts” has the meaning set forth in Section 2.6(c) hereof.

“Designated Remaining Executory Contract Obligations” has the meaning set forth in Section 2.6(c) hereof.

“DIP Amount” means the sum of all outstanding obligations of any kind under the DIP Facility as of the Closing Date.



“DIP Budget” means the budget attached as Exhibit A to the DIP Credit Agreement.

“DIP Credit Agreement” means that certain Senior Secured Super-Priority Debtor in Possession Credit Agreement, dated as of ~~September 11~~ [\_\_\_\_], 2013, among the Borrowers, as borrowers, the other credit parties party thereto, each lender from time to time party thereto, and ~~NexBank SSB~~ Bank of America, N.A., as administrative agent and collateral agent, as amended or otherwise modified prior to the Closing Date and as further amended or otherwise modified from time to time in accordance with the terms thereof.

“DIP Facility” means the credit facility governed by the DIP Credit Agreement and the DIP Order.

“DIP Lenders” means the lenders under the DIP Credit Agreement.

“DIP Order” means, collectively, those certain interim or final orders entered by the Bankruptcy Court approving the DIP Facility.

“Disclosure Schedules” means the Schedules delivered pursuant to Article V hereof.

“Distributions” has the meaning set forth in Section 3.2 hereof.

“Effective Date” has the meaning set forth in the preamble hereto.

“Electronic Delivery” has the meaning set forth in Section 11.6 hereof.

“Employee Benefit Plan” means any “employee benefit plan” (as defined in ERISA §3(3)) and each other benefit or compensation plan, program, agreement or arrangement maintained, sponsored, or contributed or required to be contributed to by any Seller or any ERISA Affiliate (within the 6 years preceding the date hereof) or with respect to which any Seller or any ERISA Affiliate (within the 6 years preceding the date hereof) has any Liability.

“Environmental Laws” means, whenever in effect, all federal, state, provincial, local and foreign statutes, Laws (including CERCLA and analogous state Laws), ordinances, directives and other provisions having the force or effect of law, all judicial and administrative Orders and determinations, all contractual obligations and all common law, in each case concerning public health and safety, worker health and safety, or pollution or protection of the environment.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and all Laws issued thereunder.

“ERISA Affiliate” means any Person that, at any relevant time, is or was considered to be a single employer with any Seller for purposes of Code § 414.

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Excluded Assets” has the meaning set forth in Section 2.2(a) hereof.

“Excluded Contracts” has the meaning set forth in Section 2.2(a)(v) hereof.

“Excluded Environmental Liabilities” means any Liability (including any investigatory, corrective or remedial obligation) with respect to or concerning any environmental, health or safety matter, including any arising under Environmental Laws or relating to Hazardous Substances, and relating to (i) Sellers or any predecessor or Affiliate of any Seller, (ii) the ownership or operation of the Acquired Assets or the operation of the Business prior to the Closing, (iii) any Excluded Asset, (iv) any property, facility, or location other than the Acquired Owned Real Property and the Assumed Leased Facilities, (v) any fines, penalties, or other sanctions imposed by any Governmental Authority or other Person in connection with any actual or alleged violation of or failure to comply with Environmental Laws by Sellers or any predecessor or Affiliate of any Seller, or otherwise with respect to the Acquired Assets prior to Closing, or (vi) any operations, events, facts, conditions, or circumstances occurring or existing on or prior to the Closing Date, including any Release, threatened Release, use, handling, manufacturing, distribution, treatment, storage, disposal, or arrangement for disposal of, or any exposure of any Person to, Hazardous Substances occurring or existing on or prior to the Closing Date (whether or not constituting a breach of any representation or warranty herein and whether or not set forth on any Disclosure Schedule).

“Excluded Equipment Leases” has the meaning set forth in Section 2.2(a)(iv) hereof.

“Excluded Facility Leases” has the meaning set forth in Section 2.2(a)(iii) hereof.

“Excluded Leases” has the meaning set forth in Section 2.2(a)(iv) hereof.

“Excluded Liabilities” has the meaning set forth in Section 2.4(a) hereof.

“Exhibits” means the exhibits attached hereto.

“Expense Reimbursement” has the meaning set forth in Section 9.2(b) hereof.

“Facilities” means collectively the premises at which Sellers and the Foreign Subsidiaries operate.

“Facility Leases” means all right, title and interest of Sellers and the Foreign Subsidiaries in all leases, subleases, licenses, concessions and other agreements (written or oral) and all amendments, modifications, extensions, renewals, guaranties and other agreements with respect thereto, including the right to all security deposits and other amounts and instruments deposited by or on behalf of any Seller or Foreign Subsidiary thereunder, pursuant to which a Seller or Foreign Subsidiary holds a leasehold or subleasehold estate in, or is granted the right to use or occupy, a Leased Facility.

“FB Parent” has the meaning set forth in the preamble hereto.

“Fees and Expenses” means all actual reasonable and documented out-of-pocket fees, costs, and expenses of Purchasers and their Affiliates incurred in connection with the transactions contemplated by this Agreement, including reasonable attorneys’ fees and other professional fees, and reasonable due diligence, transportation, negotiation, duplication, appraisal, audit (including per diems), consultant, search, filing and recording fees, costs and expenses; provided, however, that Fees and Expenses shall not include financing fees payable to Purchasers’ lenders.

“Filed Company SEC Documents” has the meaning set forth in Article V hereof.

“Final Order” means an Order as to which no appeal, motion for rehearing or reconsideration or a petition for writ of certiorari is pending.

“First Closing” has the meaning set forth in Section 3.1 hereof.

“First Credit Bid Amount” has the meaning set forth in Section 3.1 hereof.

“Foreign Subsidiaries” means Furniture Brands Asia, Ltd., Furniture Brands Hangzhou Co., Ltd., Furniture Brands Canada ULC, Furniture Brands de Mexico S. de R.L. de C.V., Maitland-Smith Asia Holdings Limited, Maitland-Smith Export (L) Bhd., Maitland-Smith Cebu, Inc., Decorative Hardware Solutions (L) Bhd., P.T. Maitland-Smith, and Maitland-Smith, Limited.

“G Reorganizations” has the meaning set forth in Section 10.9(f) hereof.

“GAAP” means, as of the applicable time, United States generally accepted accounting principles, consistently applied.

“Government Contract” means any Contract (including any prime contract, subcontract, letter contract, purchase order, task order, delivery order, teaming agreement or letter of intent) that is (i) between any Seller and a Governmental Authority or (ii) entered into by any Seller as a subcontractor (at any tier) in connection with a Contract between another Person and a Governmental Authority.

“Governmental Authority” means any federal, state, local, municipal, foreign, supranational or other governmental or quasi-governmental authority of any nature (including any governmental agency, branch, bureau, commission, department, official or entity and any court or other tribunal), or any administrative, executive, judicial, legislative, police, regulatory or taxing authority, or arbitral body.

“Guaranteed Obligations” has the meaning set forth in Section 11.21 hereof.

“Guarantor” and “Guarantors” has the meaning set forth in the preamble hereto.

“Guaranty” means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon the Indebtedness, obligation or other Liability of any other Person (other than by endorsements of

instruments in the ordinary course of collection), or guaranties of the payment of dividends or other distributions upon the shares of any other Person.

“Guaranty Percentages” has the meaning set forth in Section 11.21 hereof.

“Hazardous Substances” means any wastes, pollutants, contaminants or chemicals, any industrial, toxic or otherwise hazardous materials, substances or wastes, any explosive or radioactive substances, and any other substance, material or waste with respect to which Liability or standards of conduct may be imposed under applicable Law, including petroleum and petroleum related substances, products, by products and wastes, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon, urea, formaldehyde, mold, lead based paint, noise, odor and radiation.

“Holdings” has the meaning set forth in the preamble hereto.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder and any similar foreign Laws.

“Indebtedness” means, with respect to any Person as of any date of determination, without duplication: (i) all obligations of such Person for borrowed money or in respect of loans or advances, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or debt securities, (iii) all obligations in respect of letters of credit and bankers’ acceptances issued for the account of such Person, (iv) all obligations arising from cash/book overdrafts, (v) all obligations arising from deferred compensation arrangements, (vi) all obligations of such Person secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien (other than Permitted Liens) on property owned or acquired by such Person, (vii) all Guaranties of such Person in connection with any of the foregoing, (viii) all capital lease obligations, (ix) all deferred rent, (x) all indebtedness for the deferred purchase price of property or services with respect to which a Person is liable, contingently or otherwise, as obligor or otherwise (other than trade payables incurred in the Ordinary Course of Business which are not past due), (xi) all obligations under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (xii) all obligations (determined on the basis of actual, not notional, obligations) with respect to interest rate protection agreements, interest rate swap agreements, foreign currency exchange agreements, or other interest or exchange rate hedging agreements or arrangements, (xiii) with respect to the Foreign Subsidiaries, all other liabilities classified as non-current liabilities in accordance with GAAP as of the date of determination of such Indebtedness, and (xiv) all fees, accrued and unpaid interest, premiums or penalties related to any of the foregoing.

“Insider” means, any officer, director, governing body member, significant stockholder, partner or Affiliate, as applicable, of any Seller or of any predecessor or Affiliate of any Seller, or any individual related by marriage or adoption to any such individual or any entity in which any such Person owns any beneficial interest.

“Insolvent” has the meaning set forth in Section 6.66.7.

“Intellectual Property” means all of the following in any jurisdiction throughout the world: (i) patents, patent applications and patent disclosures, together with all reissues, continuations, continuations in part, revisions, divisionals, extensions and reexaminations thereof, (ii) trademarks, service marks, designs, trade dress, logos, slogans, trade names, internet domain names, corporate names, all applications, registrations and renewals in connection therewith, and all translations, adaptations, derivations and combinations of any of the foregoing, together with all goodwill associated with any of the foregoing, (iii) copyrights, mask works and copyrightable works, and all applications, registrations and renewals in connection therewith, (iv) trade secrets and confidential information (including formulations, ideas, research and development, information, know-how, inventions, technology, formulas, compositions, manufacturing and production processes and techniques, technical data, financial and marketing plans, customer and supplier lists and information, designs, drawings, plans, proposals and specifications), (v) computer software and systems (including source code, executable code, data, databases and related documentation), websites, URLs, email addresses, and telephone numbers, (vi) copies and tangible embodiments of any of the foregoing in whatever form or medium and (vii) other proprietary and intellectual property rights.

“Intermediate Holdings” ~~has the meaning set forth in the preamble hereto~~ means a Subsidiary of Holdings to be formed following the date of this Agreement.

“Intermediate Holdings Units” has the meaning set forth in Section 3.1 hereof.

“Inventory” means all inventory of any kind or nature, whether or not prepaid, and wherever located, held or owned by any Seller or by the Business, including all raw materials, work in process, semi-finished and finished products, replacement and spare parts, packaging materials, operating supplies, in-transit or consigned inventory, and fuels and other and similar items.

~~“Inventory Adjustment Excess” has the meaning set forth in Section 3.7 hereof.~~

“IRS” has the meaning set forth in Section 3.6 hereof.

“Knowledge of Sellers” means, as of the date of measurement, the actual knowledge after reasonable inquiry of Ralph Scozzafava, Vance Johnston and Meredith Graham.

“Lane Business” means the “Lane” division or business of FB Parent and its Subsidiaries.

~~“Lane Entities” means Lane Furniture Industries, Inc. and its Subsidiaries.~~

~~“Lane Intermediate Holdings” has the meaning set forth in the preamble hereto.~~

~~“Lane Intermediate Holdings Units” has the meaning set forth in Section 3.1 hereof.~~

~~“Lane Net Proceeds” means the aggregate consideration paid or payable in a Lane Sale, net of all third-party costs, fees and expenses reasonably incurred by FB Parent and its Subsidiaries in connection therewith up to an aggregate amount not to exceed \$1,000,000; provided that the Lane Net Proceeds shall be (i) calculated net of any “break-up fees” or “expense reimbursement” to be paid to a stalking horse bidder with respect thereto (other than, in the case of “expense reimbursement,” amounts payable to Purchasers or their Affiliates), and (ii) increased by the amount of each of the following (without duplication), to the extent assumed by the purchasers in~~

~~the Lane Sale: (A) administrative expense claims (including those arising under Section 503(b)(9) of the Bankruptcy Code), (B) cure costs, (C) to the extent contemplated by the DIP Budget, amounts approved for payment pursuant to any "first day" orders entered by the Bankruptcy Court, and (D) to the extent contemplated by the DIP Budget, priority claims (as defined in Section 507 of the Bankruptcy Code).~~

~~"Lane Sale" means the disposition of the Lane Business to a third-party Person (including pursuant to an agency relationship) at a price and on other terms reasonably acceptable to FB Parent; provided that (i) in no case shall the Acquired Lane Assets be disposed in the Lane Sale, and (ii) the inclusion in the Lane Sale of any properties, assets and rights, if any, that relate to the Lane Business but that are not held by the Lane Entities, or that are held by the Lane Entities and used by any other Seller, and any terms related thereto, shall be acceptable to Holdings in its sole discretion.~~

"Latest Balance Sheet" has the meaning set forth in Section 5.5(a) hereof.

"Law" means any law, statute, regulation, code, constitution, ordinance, treaty, rule of common law, or Order of, administered or enforced by or on behalf of, any Governmental Authority.

"Leased Facilities" means any land, buildings, structures, improvements, fixtures or other interest in real property which any Seller has the right to use, or which is used or intended to be used by any Seller or used or intended to be used in, or otherwise related to, the Business and leased pursuant to a Facility Lease.

"Liability" means any obligation or liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether determined or determinable, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due and regardless of when asserted), including any liability for Taxes, product liability or infringement liability.

"Lien" or "Liens" means any lien (statutory or otherwise), hypothecation, encumbrance, security interest, interest, mortgage, pledge, restriction, charge, instrument, license, preference, priority, security agreement, easement, covenant, encroachment, option, right of recovery, right of preemption, right of first refusal or other Third Party right, or Order of any Governmental Authority, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, (iii) any claim based on any theory that any Purchaser is a successor, transferee or continuation of any Seller or the Business, and (iv) any leasehold interest, license or other right, in favor of a Third Party or a Seller, to use any portion of the Acquired Assets), whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown; provided, however, that Liens shall not include non-exclusive licenses to Intellectual Property.

"Material Adverse Effect" means any event, effect, change, circumstance, condition or matter that, individually or in the aggregate, is or could reasonably be expected to be materially adverse to, or materially impairs the value of, the Acquired Assets or results in a material adverse effect or change in the operation or condition (financial or otherwise) of the



Acquired Assets or the Business, taken as a whole, without regard to the duration or persistence of such event, effect, change, circumstance, condition or matter, or which materially impairs the ability of Sellers to perform their obligations under this Agreement or has a material adverse effect on or prevents or materially delays the consummation of the transactions contemplated hereby, in each case excluding the impact of any events, effects, changes, circumstances, conditions or matters arising from or relating to any of the following, alone or in combination: (a) changes or effects that generally affect the industries in which Sellers operate, (b) changes in securities markets or general economic (including changes in interest rates), regulatory or political conditions in the United States of America or in any country in which Sellers operate (including terrorism or the escalation of any war whether declared or undeclared or other hostilities), (c) changes in any Laws affecting Sellers or regulatory, political, economic or business conditions (or, in each case, any interpretation thereof), (d) the failure, in and of itself, of Sellers to meet any internal projections or forecasts (it being understood that other than as specifically excluded herein, the facts or occurrences giving rise to or contributing to such failure may be deemed to constitute, or be taken into account in determining whether there has been or will be, a Material Adverse Effect), (e) any publicly available statement made by Purchasers or any of their Affiliates concerning Sellers, or any employees, customers or suppliers of Sellers, or otherwise relating to the transactions contemplated by the Transaction Documents, (f) actions by taken or omitted to be taken at the request or with the express consent of Purchasers ~~or~~ (g) acts of God, natural disasters or calamities, or (h) any changes, including deterioration, to the Lane Business, so long as (i) the Lane Business has, in the aggregate, been operated substantially in accordance with the DIP Budget, (ii) the Lane Business has, in the aggregate, been operated substantially in accordance with Section 7.3(b) and (iii) except for resignations, terminations for cause in the Ordinary Course of Business, as set forth on Schedule 5.17, or as provided in Section 10.1, employees of the Lane Business have not been terminated by Seller without Purchaser's consent; provided, however, that any change, effect, event, circumstance, or development referred to in subparagraphs (a), (b), (c) or (g) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur only to the extent that such change, effect, event, circumstance or development has a disproportionate effect on Sellers compared to other participants in the industry in which Sellers conduct their business; provided that the act of filing the Chapter 11 Cases in and of itself shall not constitute a Material Adverse Effect.

“Material Contract” has the meaning set forth in Section 5.13(b) hereof.

“Material Customers” has the meaning set forth in Section 5.23 hereof.

“Material Suppliers” has the meaning set forth in Section 5.23 hereof.

“Materiality Qualifiers” has the meaning set forth in Section 8.2(a).

“Miscellaneous Excluded Contracts” has the meaning set forth in Section 2.2(a)(v) hereof.

“Multiemployer Plan” means any “multiemployer plan” (as defined in ERISA Section 3(37)) that any Seller or any ERISA Affiliate contributes to or has any obligation to

contribute to or with respect to which any Seller or any ERISA Affiliate has any Liability (including withdrawal liability as defined in Section 4201 of ERISA).

“Mutual Release” means the mutual release whereby the Sellers release any claims that they may have against the Acquired Subsidiaries, and the Acquired Subsidiaries release any claims that they may have against the Sellers.

“Notice” means any summons, citation, directive, Order, claim, litigation, proceeding, letter or other communication, written or oral, actual or threatened, from the United States Environmental Protection Agency or any other Governmental Authority, or any other Person, entity or any individual, and shall include the imposition of any Lien on property owned, leased, occupied or used by any Seller or the Business pursuant to any Environmental Law.

“Order” means any award, decision, decree, order, injunction, ruling, judgment, or consent of or entered, issued, made or rendered by any Governmental Authority.

“Ordinary Course of Business” means the operation of the Business by Sellers in the usual and ordinary course (including with respect to quantity and frequency), subject to the commencement of the Chapter 11 Cases and the actions taken with respect thereto.

“Owned Real Property” means all land, together with all buildings, structures, fixtures and other improvements located thereon owned by Sellers and the Foreign Subsidiaries.

“Permits” means licenses, permits, approvals, franchises, bonds, accreditations, certificates of occupancy, authorizations, operating permits, registrations, plans and the like.

“Permitted Lien” means, with respect to each Owned Real Property: (A) zoning, building codes and other land use Laws regulating the use or occupancy of such real property or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over such real property which are not violated by the current use or occupancy of such real property or the operation of the Business thereon; (B) easements, covenants, conditions, restrictions and other similar matters of record affecting title to such real property which do not or would not materially impair the use or occupancy of such real property in the operation of the Business conducted thereon; (C) statutory Liens for current Taxes, assessments and other Governmental Entity charges that are not yet due and payable; and (D) mechanics’, materialmen’s, warehouseman’s, landlords’ and similar Liens to the extent relating solely to Assumed Obligations.

“Permitted Settlements” has the meaning set forth in Section 7.3(r) hereof.

“Person” means any corporation, partnership (including any limited partnership and any limited liability partnership), joint venture, limited liability company, organization, trust, entity, authority or natural person.

“Petition Date” means September 9, 2013, which is the date of the filing of the Chapter 11 petitions of Sellers.



“Post-Closing Tax Period” means any taxable period beginning after the Closing Date and the portion of any Straddle Period beginning after the Closing Date.

“Postponed Schedules” has the meaning set forth in Section 11.19 hereof.

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

“Prepetition Term Loan Agreement” means that certain Term Loan Agreement, dated as of September 25, 2012, by and among the Borrowers, as borrowers, the other credit parties party thereto, the Prepetition Term Loan Lenders, NexBank SSB, as administrative agent and collateral agent thereunder, and any other Persons party thereto, as amended or otherwise modified prior to the Closing Date and as further amended or otherwise modified from time to time in accordance with the terms thereof and including any refinancing under the DIP Facility with respect thereto; provided that if the Purchasers or their Affiliates are not the Prepetition Term Loan Lenders as of the Closing, the use of Prepetition Term Loan Agreement, Prepetition Term Loan Facility and Prepetition Term Loan Lenders shall be deemed stricken from this Agreement and any amounts associated therewith either shall be paid by Purchasers in cash to the Sellers at the Closing or shall be paid as part of the Credit Bid Amount if the Prepetition Term Loan Agreement was refinanced under the DIP Facility.

“Prepetition Term Loan Facility” means the credit facility governed by the Prepetition Term Loan Agreement.

“Prepetition Term Loan Lenders” means the lenders under the Prepetition Term Loan Agreement.

~~“Prior Agreement” has the meaning set forth in the preamble hereto.~~

“Proceeding” means any action, claim, charge, complaint, dispute, demand, grievance, action, litigation, audit, investigation, review, inquiry, arbitration, liability, damage, suit in equity or at law, administrative, regulatory or quasi-judicial proceeding, account, cost, expense, setoff, contribution, attorney’s fee or cause of action of whatever kind or character.

“Proration Items” has the meaning set forth in Section 10.9(d) hereof.

“Purchase Price” has the meaning set forth in Section 3.4 hereof.

“Purchaser” and “Purchasers” have the meanings set forth in the preamble hereto.

“Qualified Bid” has the meaning as shall be ascribed to such term in the Bidding Procedures Order.

“Rehired Employees” has the meaning set forth in Section 10.1 hereof.

“Rejection Effective Date” has the meaning set forth in Section 2.6(d) hereof.

“Rejection Notice” has the meaning set forth in Section 2.6(c) hereof.

“Related Person” has the meaning set forth in Section 11.21 hereof.

“Release” means any release, emission, disposal, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, dumping, leaching or migration into the environment (including the abandonment, discarding or disposal of any barrels, containers or other closed receptacles containing any Hazardous Substances) or any structure, facility or property.

“Relevant Transactions” has the meaning set forth in Section 10.9(f) hereof.

“Restricted Cash” means any and all cash or marketable securities (i) reserved for the purpose of collateralizing letters of credit, or (ii) received by any Seller representing or received in respect of insurance recoveries in respect of any assets (other than assets relating exclusively to Excluded Assets ~~but specifically including relating to any Acquired Lane Assets~~).

“Restricted Names” has the meaning set forth in Section 10.6 hereof;.

“Rule” or “Rules” means the Federal Rules of Bankruptcy Procedure.

“Sale Motion” has the meaning set forth in Section 7.5(a) hereof.

“Sale Order” means the Final Order of the Bankruptcy Court, substantially in the form of Exhibit B or such other form consented to by Purchasers in their sole discretion, to be entered by the Bankruptcy Court pursuant to Sections 363, 365 and 1146(c) of the Bankruptcy Code, which Final Order, amongst other approvals, approves the sale of the Business and the Acquired Assets to Purchasers free and clear of all Liens pursuant to Section 363(f) of the Bankruptcy Code.

“Sale Order Deadline” means ~~the date that is one hundred (100) days following the Petition Date~~ December 12, 2013 or such earlier date as may be agreed upon in accordance with the Bidding Procedures Order.

“Scheduled Contracts” has the meaning set forth in Section 2.6(a) hereof.

“Schedules” means the schedules attached hereto (including the Disclosure Schedules).”

“SEC” has the meaning set forth in Article V hereof.

“Second Closing” has the meaning set forth in Section 3.3 hereof.

“Second Credit Bid Amount” has the meaning set forth in Section 3.3 hereof.

“Securities Act” means the United States Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Seller” and “Sellers” have the meanings set forth in the preamble hereto.

“Seller 401(k) Plan” has the meaning set forth in Section 10.2 hereof.

“Straddle Period” means a taxable period that includes but does not end on the Closing Date.

“Subsidiary” means, with respect to any Person, any corporation a majority of the total voting power of shares of stock of which that are entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one (1) or more of the other Subsidiaries of that Person or a combination thereof, or any partnership, limited liability company, association or other business entity a majority of the partnership or other similar ownership interest of which is at the time owned or controlled, directly or indirectly, by that Person or one (1) or more of the other Subsidiaries of that Person or a combination thereof. For purposes of this definition, a Person is deemed to have a majority ownership interest in a partnership, limited liability company, association or other business entity if such Person is allocated a majority of the gains or losses of such partnership, limited liability company, association or other business entity or is or controls the managing director or general partner of such partnership, limited liability company, association or other business entity.

“Successful Bidder” has the meaning as shall be ascribed to such term in the Bidding Procedures Order.

“Surveys” means a survey for each Owned Real Property prepared by a licensed surveyor satisfactory to Purchasers, and conforming to the ALTA/ACSM Minimum Detail Requirements for Urban Land Title Surveys, including Table A Items requested by Purchaser, and such other standards as Purchasers and the title insurance company selected by Purchasers require, certified to Purchasers, Purchasers’ lender(s) and such title insurance company.

~~“Target Accounts Receivable” has the meaning set forth in Section 3.7 hereof.~~

~~“Target Inventory” has the meaning set forth in Section 3.7 hereof.~~

“Tax” and, with correlative meaning, “Taxes” mean with respect to any Person (i) all federal, state, local, county, foreign and other taxes, assessments or other government charges, including any income, alternative or add-on minimum tax, estimated, gross income, gross receipts, sales, use, ad valorem, value added, transfer, capital stock, franchise, profits, license, registration, recording, documentary, intangibles, conveyancing, gains, withholding, payroll, employment, social security (or similar), unemployment, disability, excise, severance, stamp, occupation, premium, property (real and personal), environmental or windfall profit tax, customs duty or other tax, governmental fee or other like assessment, charge or tax of any kind whatsoever, together with any interest, penalty, addition to tax or additional amount imposed by any Governmental Authority (domestic or foreign), whether such Tax is disputed or not, (ii) Liability for the payment of any amounts of the type described in clause (i) above imposed on any other Person as a result of being party to any agreement to indemnify such other Person (other than any such agreement the principal subject matter of which is not indemnification of any amounts of the type described in clause (i)), or being a successor or transferee of such other Person, or (iii) Liability for the payment of any amounts of the type described in clause (i) imposed on any other Person arising as a result of being (or ceasing to be) a member of any Affiliated Group (or being included (or required to be included) in any Tax Return relating thereto).

“Tax Return” means any report, return, declaration, claim for refund or other information or statement supplied or required to be supplied by any Person relating to Taxes, including any schedules or attachments thereto and any amendments thereof.

“Taxing Authority” means, with respect to any Tax, the Governmental Authority that imposes such Tax and the agency, court or other Person or body (if any) charged with the interpretation, administration or collection of such Tax for such Governmental Authority.

“Third Party” means any Person other than Sellers, Purchasers or any of their respective Affiliates.

“Title Commitments” means a commitment for an ALTA Owner’s Title Insurance for each Owned Real Property issued by a title insurance company selected by Purchasers, together with a copy of all documents referenced therein.

“Title Policies” means title insurance policies from a title insurance company selected by Purchasers insuring Purchasers’ fee simple title to each Owned Real Property as of the Closing Date (including all recorded appurtenant easements insured as separate legal parcels) with gap coverage from Sellers through the date of recording, subject only to Permitted Liens, in such amount as Purchasers reasonably determine to be the value of the real property insured thereunder and approved by Sellers (which approval shall not be unreasonably withheld, conditioned or delayed).

“Transaction Documents” means this Agreement, and all other agreements, instruments, certificates and other documents to be entered into or delivered by any party in connection with the transactions contemplated to be consummated pursuant to this Agreement.

“Transfer Taxes” has the meaning set forth in Section 10.9(a) hereof.

“United States” or “U.S.-” means the United States of America.

“United States Foreign Corrupt Practices Act” means the Foreign Corrupt Practices Act of 1977, as amended, and all Laws issued thereunder.

“WARN Act” has the meaning set forth in Section 5.17(c) hereof.

“Wind-Down Reserve” has the meaning set forth in Section 10.10(b).

1.2 Rules of Construction. Unless the context otherwise clearly indicates, in this Agreement:

- (a) the singular includes the plural;
- (b) “includes” and “including” are not limiting;
- (c) “may not” is prohibitive and not permissive;
- (d) “neither,-” “nor, ~~“any,~~” “any,” “either” and “or” are not exclusive; and

(e) any capitalized terms used in any Schedule or Exhibit attached hereto and not otherwise defined therein shall have the meanings set forth in this Agreement.

**ARTICLE II**  
**PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES**

2.1 Purchase and Sale of Assets;

(a) Subject to the terms and conditions set forth in this Agreement, at the Closing, each Seller shall sell, contribute, convey, assign, transfer and deliver to the Corresponding Purchaser, free and clear of all Liens (other than Permitted Liens), whether arising prior to, on or subsequent to the Petition Date, and each Purchaser shall purchase, acquire and take assignment and delivery from the Corresponding Seller, for the consideration and in the manner specified in Article III, of all rights, titles and interests of every kind and nature of such Seller (including indirect and other forms of beneficial ownership) in and to all of the properties, assets and rights (contractual or otherwise) of such Seller as of the Closing Date, other than the Excluded Assets, whether tangible or intangible, real or personal and wherever located and by whomever possessed, whether or not listed below but including for the avoidance of doubt all of the following properties, assets and rights of such Seller (all of the assets to be sold, assigned, transferred and delivered pursuant to this Section 2.1(a) shall be referred to herein as the “Acquired Assets”):

(i) all Restricted Cash;

(ii) all Accounts Receivable and all claims, including deposits, advances, prepaid and other current assets, rights under warranties and guaranties, rights in respect of promotional allowances, vendor rebates and other refunds, causes of action, rights of recovery, rights of set-off and rights of recoupment of every kind and nature (whether known or unknown or contingent or non-contingent); the right to receive and retain mail, Accounts Receivable payments and other communications of such Seller; and the right to bill and receive payment for products shipped or delivered and services performed but unbilled or unpaid as of the Closing;

(iii) any rights, claims or causes of action (excluding for Tax refunds) of such Seller against third parties (excluding against any Taxing Authority) arising out of events occurring prior to the Closing Date (including, for the avoidance of doubt, those arising out of events occurring prior to the Petition Date) and relating to the Acquired Assets or the Assumed Liabilities, including any rights under or pursuant to any and all warranties, representations and guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to such Seller, other than the Avoidance Actions set forth in Section 2.2(a)(i) and the rights, claims, counterclaims, demands and causes of action set forth in Sections 2.2(a)(xvii) and (xix);

(iv) all bank accounts, safety deposit boxes, lock boxes and the like (but excluding any cash and cash equivalents other than Restricted Cash);

(v) all Inventory;

(vi) the Owned Real Property set forth on Schedule 2.1(a)(vi), and any part or parcel thereof (the “Acquired Owned Real Property”);

(vii) all of such Sellers’ rights existing under the Facility Leases set forth on Schedule 2.1(a)(vii) (the “Assumed Facility Leases”), including all rights to security deposits held pursuant thereto;

(viii) the equipment leases set forth on Schedule 2.1(a)(viii) (the “Assumed Equipment Leases” and, together with the Assumed Facility Leases, the “Assumed Leases”);

(ix) all tangible personal property, including all machinery, equipment (including all transportation and office equipment), vehicles, computers, mobile phones, personal digital assistants, fixtures, trade fixtures, computer equipment, hardware, peripherals, information technology infrastructure, telephone systems, furniture, office supplies, production supplies, spare parts, other miscellaneous supplies, and other tangible personal property of any kind owned by such Seller, wherever located, including all such items which are located in any building, warehouse, office or other space leased, owned or occupied by such Seller or any other space where any of such Sellers’ properties or any other assets may be situated;

(x) all Intellectual Property owned, licensed, used or held for use by such Seller (including all of the Intellectual Property set forth on Schedule 5.12(a)), along with all income, royalties, damages and payments due or payable to such Seller as of the Closing or thereafter, including damages and payments for past, present or future infringements or misappropriations thereof or other conflicts therewith, the right to sue and recover for past, present or future infringements or misappropriations thereof or other conflicts therewith, and any and all corresponding rights that, now or hereafter, may be secured throughout the world, including all copies and tangible embodiments of any such Intellectual Property in such Seller’s possession or control;

(xi) all Company Systems;

(xii) all rights of such Seller under all outstanding purchase orders for the delivery or receipt of good and services, incurred in the ordinary course of business consistent with past practice, and the Contracts of such Seller set forth on Schedule 2.1(a)(xii) (such purchase orders and Contracts, the “Assumed Contracts”), including all security deposits thereunder, all contractual rights of such Seller to indemnification, exculpation, advancement or reimbursement of expenses thereunder, and all rights to proceeds under insurance policies to the extent relating to the Acquired Assets;

(xiii) all rights of Sellers under all of the Employee Benefit Plans identified in Schedule 2.1(a)(xiii) (the “Assumed Employee Benefit Plans”), including all pre-payments, deposits and refunds thereunder, and any assets maintained pursuant thereto or in connection therewith;

(xiv) all Books and Records and all advertising, marketing and promotional materials and all other printed or written materials;



(xv) all Permits, licenses, certifications and approvals from all permitting, licensing, accrediting and certifying agencies or other Persons, including all of the rights, interests and benefits accruing under such Permits, licenses, certifications and approvals and all pending applications therefor, and the rights to all data and records of such Seller held by such permitting, licensing and certifying agencies;

(xvi) all goodwill as a going concern and all other intangible property of such Seller;

~~(xvii) all of the properties, assets and rights of the Lane Entities, including those set forth on Schedule 2.1(a)(xvii) (such properties, assets and rights set forth on Schedule 2.1(a)(xvii), the "Acquired Lane Assets");~~

~~(xvii) [Reserved];~~

~~(xviii) Subject to Section 7.11, all of the outstanding equity interests of any Foreign Subsidiary the equity interests of which are held directly by a Seller and which is set forth on Schedule 2.1(a)(xviii) (the "Acquired Subsidiaries"); and~~

(xix) all such other properties, assets and rights (contractual or otherwise) of such Seller as of the Closing Date, whether tangible or intangible, real or personal and wherever located and by whomever possessed which are not otherwise expressly set forth above as Acquired Assets and are not Excluded Assets.

## 2.2 Excluded Assets.

(a) Notwithstanding anything to the contrary in this Agreement, the following assets of Sellers shall be retained by Sellers and are not being sold or assigned to Purchasers hereunder (all of the following are referred to collectively as the "Excluded Assets"):

(i) all Avoidance Actions (including the proceeds thereof);

(ii) all Owned Real Property of Sellers other than the Acquired Owned Real Property, including the Owned Real Property set forth on Schedule 2.2(a)(ii);

(iii) all Facility Leases of Sellers other than the Assumed Facility Leases (the "Excluded Facility Leases"), including the Facility Leases set forth on Schedule 2.2(a)(iii);

(iv) all equipment leases of Sellers other than the Assumed Equipment Leases (the "Excluded Equipment Leases" and, together with the Excluded Facility Leases, the "Excluded Leases"), including the equipment leases set forth on Schedule 2.2(a)(iv);

(v) all Contracts of Sellers other than the Assumed Contracts, including those set forth on Schedule 2.2(a)(v) (the "Miscellaneous Excluded Contracts" and, together with the Excluded Leases, the "Excluded Contracts");

(vi) all assets, rights, pre-payments, deposits and refunds maintained pursuant to or in connection with any Employee Benefit Plan or any other employee benefit plan sponsored by Sellers or their Affiliates, other than the Assumed Employee Benefit Plans;

~~(vii) — originals of each Seller's minute books, stock books and Tax~~

Returns;

(vii) all of Sellers' certificates of incorporation and other organizational documents, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock books, stock certificates and other documents relating to the organization, maintenance and existence of any Seller as a corporation or other entity; provided, copies of such materials shall be Acquired Assets;

(viii) the equity securities or other ownership interest in each Seller;

~~(ix) — if a Lane Sale is consummated, the equity securities or other ownership interest in each Lane Entity, all of the properties, assets and rights that relate solely to the Lane Business, and all other properties, assets and rights, if any, that are sold in the Lane Sale (in each case, other than the Acquired Lane Assets);~~

(ix) all of Sellers' intercompany claims and accounts, other than those against any Acquired Subsidiary that are released pursuant to the Mutual Release;

(x) all cash (including checking account balances, certificates of deposit and other time deposits and petty cash), other than Restricted Cash, and all cash equivalents and marketable and other securities;

(xi) all other assets listed on Schedule 2.2(a)(xi);

(xii) all Tax refunds, rebates, credits and similar items relating to any taxable period, or portion of any taxable period, ending on or prior to the Closing Date; ~~and~~

(xiii) all insurance policies and all cash surrender values and other rights associated therewith (provided that any and all claims, causes of action, receivables and other rights of recovery and rights of recoupment under any such insurance policies to the extent relating to the Acquired Assets shall be Acquired Assets);

(xiv) all financial statements, corporate or other entity filings and Tax Returns and all books and records (including working papers) related thereto, all documents and agreements relating to the Chapter 11 Cases, all documents that are protected by the attorney-client or other recognized privilege and that do not relate to the Acquired Assets described in Section 2.1(a)(i) through (xviii), and any confidential personnel and medical records pertaining to employees and other books and records that the Sellers are required by Law to retain (provided, that unless prohibited by Law or protected by the attorney-client or other recognized privilege, copies of such materials shall be provided to Purchasers);

(xv) any loans or notes payable to any Seller from any employee of any Seller;



(xvi) all security deposits and utility deposits (in each case, other than with respect to the Assumed Executory Contracts), any instruments, bonds, other prepaid assets, unbilled costs and fees, tax assets and accounts, in each case to the extent they relate to any Excluded Asset or any Excluded Liability;

(xvii) any and all rights, claims, counterclaims, demands and causes of action of any Seller against any current or former directors, officers, agents, advisors, consultants, lawyers, accountants or other professionals of Sellers;

(xviii) all rights of the Sellers under this Agreement and the other Transaction Documents; and

(xix) all rights, claims, counterclaims, causes of actions, demands, prepaid expenses, deposits, refunds and that relate solely to the Excluded Assets and the Excluded Liabilities.

### 2.3 Assignment and Assumption of Liabilities.

(a) Subject to the terms and conditions set forth in this Agreement, including Section 2.4 hereof, each Purchaser shall assume from the Corresponding Seller and thereafter be responsible for the payment, performance or discharge of only the following Liabilities of such Seller (all such Liabilities assumed pursuant to this Section 2.3(a) shall be referred to herein as the “Assumed Obligations”):

(i) all obligations under the Assumed Executory Contracts arising after the Closing Date;

(ii) except as may arise from a breach by Sellers of Section 7.117.9, administrative expense claims of Sellers (including trade payable obligations in an amount not to exceed \$6,900,000-10,000,000 in the aggregate) to the extent they arise following the Petition Date, relate solely to the Acquired Assets and are allowed pursuant to section 503(b)(1) of the Bankruptcy Code (but expressly excluding any and all obligations with respect to current or former employees which obligations are addressed in Section 2.3(a)(iv)) (the “503 Liabilities”);

(iii) the sponsorship and obligations of the Assumed Employee Benefit Plans, other than any Liabilities associated with such Assumed Employee Benefit Plans arising in connection with any breach of any representation, warranty or covenant hereunder;

(iv) all Liabilities relating to or arising out of the employment of the employees of Sellers (~~other than the employees of the Lane Business if a Lane Sale is consummated~~) to the extent they are ~~allowed administrative expense claims pursuant to section 503(b)(1) of~~ employees of Sellers actively employed or engaged principally in the Business as of immediately prior to the Closing and to the extent that such employees become Rehired Employees (other than Liabilities arising under any individual employment agreements or pursuant to any key employee incentive or retention plans approved by the Bankruptcy Code Court which shall remain Excluded Liabilities)—arising in the ordinary course of business consistent with past practice ~~and attributable to periods following the Petition Date~~—(and with respect to severance obligations, in accordance with Sellers’ plans in place as of the Petition

Date), but specifically excluding pension Liabilities and/or any payroll accrued through the Closing; provided that, in furtherance and not in limitation of the foregoing, to the extent any employee of Seller becomes a Rehired Employee, Purchaser shall: (a) provide such Rehired Employees with unused vacation time, sick leave time and other paid time off accrued prior to the Closing; and (b) grant such Rehired Employees a credit for the amount of months and years of service of such Rehired Employee prior to the Closing Date for purposes of eligibility, vesting of benefits, calculation of severance pay, determination of vacation time, sick leave, or other approved or statutory leave of absence;

(v) the Designated Remaining Executory Contract Obligations; ~~and~~

(vi) any Transfer Taxes (as defined below); and

(vii) all obligations under product or service warranties and all obligations to repair products or accept product returns, provided by or agreed to by Sellers or any predecessor or Affiliate of any Seller arising out of or relating to services or products developed, designed, manufactured, sourced, produced, marketed, sold or distributed prior to the Closing in the ordinary course of business consistent with past practice.

(b) Section 2.3(a) shall not limit any claims or defenses Purchasers may have against any party. The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any Third Party against Purchasers or Sellers as compared to the rights and remedies which such Third Party would have had against Sellers absent the Chapter 11 Cases and had Purchasers not assumed the Assumed Obligations.

#### 2.4 No Other Liabilities Assumed.

(a) No Purchaser shall be the successor to any or all of Sellers, and each Seller acknowledges and agrees that, pursuant to the terms and provisions of this Agreement, no Purchaser will (and Purchasers would not enter into this Agreement or seek to acquire the Acquired Assets but for the clear understanding that no Purchaser will) assume, or in any way be liable or responsible for, any claim or Liability (whether known or unknown), whether existing on the Closing Date or arising thereafter and whether relating to or arising out of the Business, the Excluded Assets, the Acquired Assets or otherwise (including Liabilities relating to the pre-petition or post-petition operation of the Business, the Excluded Assets or the Acquired Assets (and the use thereof)), and whether or not listed below, including any Indebtedness, Employee Benefit Plan, Collective Bargaining Agreement or other Liability of any Seller or any predecessor or Affiliate of any Seller whatsoever or any ERISA Affiliate, other than the Assumed Obligations (any such obligations, the "Excluded Liabilities"); provided that, in furtherance and not in limitation of the foregoing, the Assumed Obligations do not include, and Purchasers are expressly not assuming, any of the following Liabilities (each of which constitutes an Excluded Liability, whenever or wherever arising but the Excluded Liabilities specifically exclude the 503 Liabilities):

(i) all claims against or Liabilities that relate to any of the Excluded Assets, including executory Contracts and unexpired Facility Leases that are not Assumed Executory Contracts subject to Section 2.6;

(ii) except as set forth in Section 10.9(a), all Liabilities of any Seller for Taxes (with respect to the Business or the Acquired Assets or the Assumed Liabilities or otherwise but excluding any Transfer Taxes), including Taxes that may arise as a result of (x) any claim, audit, investigation, assessment, or adjustment for any amount of Tax proposed, asserted, or assessed by any taxing authority, court or other Governmental Authority against any Seller or (y) the sale of the Acquired Assets or the assumption of the Assumed Obligations, the distribution of the Intermediate Holdings Units, ~~the Broyhill Intermediate Holdings Units and the Lane Intermediate Holdings Units~~ by Sellers pursuant to Section 3.2, the transfer of the ~~Intermediate Holdings Units, the Broyhill Intermediate Holdings Units and the Lane~~ Intermediate Holdings Units by FB Parent to Holdings, and the related discharge of debt, in each case pursuant to this Agreement;

(iii) all Liabilities for Taxes (other than Transfer Taxes) imposed on or with respect to the Acquired Assets or the Business for any Pre-Closing Tax Period;

(iv) all accounts payable of Sellers or any predecessor or Affiliate of Sellers arising prior to the Closing;

(v) all Liabilities in respect of Indebtedness of Sellers or any predecessor or Affiliate of any Seller;

(vi) all Excluded Environmental Liabilities (regardless of whether such Liabilities accrue or attach to Sellers or to Purchasers in the first instance);

(vii) except as expressly otherwise provided in 2.3(a)(iv) or Sections 10.1 through 10.3, all Liabilities pursuant to the WARN Act relating to any action or inaction of Sellers prior to ~~or upon~~ the Closing except as set forth in Sections 10.1 or 10.3;

(viii) except as otherwise set forth herein, all Liabilities of Sellers resulting from, caused by or arising out of, or which relate to, directly or indirectly, the conduct of Sellers (or any of their current or former officers, directors, employees or agents) anywhere or ownership or lease of any properties or assets or any properties or assets previously used by Sellers at any time, or other actions, omissions or events occurring prior to the Closing and which (x) constitute, may constitute or are alleged to constitute a tort, breach of contract or violation of any Law or (y) relate to any and all Proceedings against Sellers whether past, present, future, known or unknown, liquidated or unliquidated, accrued or unaccrued, pending or threatened, including the Proceedings set forth on Schedule 5.19;

(ix) except as otherwise set forth herein, all Liabilities arising out of any Proceeding commenced against Sellers or any predecessor or Affiliate of any Seller;

(x) all Liabilities under any Assumed Executory Contract which arises out of or relates to any breach that occurred prior to the Closing;

(xi) all Liabilities arising out of or relating to any infringement or misappropriation of, or other conflict with, the Intellectual Property of any Third Party arising out of or related to the conduct of the Business or any act or omission of any Seller or any predecessor or Affiliate of any Seller prior to the Closing;

(xii) all Liabilities arising out of, or relating to, any indemnification obligations of any Seller, including indemnification obligations pursuant to supply agreements, service agreements, purchase agreements, leases and any other type of Contract, and Liabilities to indemnify, reimburse or advance amounts to any officer, director, employee or agent of Sellers;

(xiii) except as expressly otherwise provided in Sections 2.3(a)(iii) or 2.3(a)(iv) or Sections 10.1 through 10.3, all Liabilities with respect to the employees or former employees, or both (or their representatives), of any Seller, including payroll, wages, salaries, bonuses, commissions, benefits, retention or stay bonus arrangements, other compensation, sick leave, worker's compensation, unemployment benefits, pension benefits, employee stock option or profit sharing plans, health care plans or benefits, or any other employee plans or benefits or other compensation of any kind to any employee, and obligations of any kind, including Liabilities arising under any Collective Bargaining Agreement, or employment, severance, retention or termination agreement with any employee, consultant or contractor (or their representatives) of any Seller;

(xiv) except as expressly otherwise provided in Sections 2.3(a)(iii) or 2.3(a)(iv) or Sections 10.1 through 10.3, all Liabilities relating to or arising under or in connection with any Employee Benefit Plan, any "employee benefit plan" (as defined in Section 3(3) or ERISA) or any other benefit or compensation plan, program, agreement or arrangement at any time maintained, sponsored or contributed or required to be contributed to by any Seller or any ERISA Affiliate, or with respect to which any Seller or any ERISA Affiliate has any Liability;

(xv) Except as expressly otherwise provided in Section 2.3(a)(vii), all Liabilities arising out of or relating to services, ~~products or product or service warranties of Sellers or any predecessor or Affiliate of any Seller to the extent provided,~~ or products of Sellers or any predecessor or Affiliate of any Seller to the extent developed, designed, manufactured, sourced, produced, marketed, sold or distributed prior to the Closing;

(xvi) all Liabilities of any Seller to any current, former or prospective shareholder or other equity interest holder of any Seller, including all Liabilities of Sellers related to the right to or issuance of any capital stock or other equity securities;

(xvii) all Liabilities for any legal, accounting, investment banking, reorganization, restructuring (including bankruptcy administrative expenses), brokerage or similar fees or expenses incurred by any Seller in connection with, resulting from or attributable to the transactions contemplated by this Agreement, the Chapter 11 Cases or otherwise;

(xviii) any Cure Amounts with respect to the Assumed Executory Contracts and the Designated Contracts;

(xix) except for the Designated Remaining Executory Contract Obligations, all Liabilities of Sellers arising out of, or relating to, any Designated Contract, unless and until such Designated Contract is assumed by Purchasers;

~~(xx) — if a Lane Sale is consummated, all Liabilities related to the Lane Business, except for Assumed Liabilities to the extent related to the Acquired Lane Assets;~~

(xx) all of Sellers' intercompany claims and accounts against any Acquired Subsidiary;

(xxi) all Liabilities of Sellers or any predecessor or Affiliate of any Seller based upon such Person's acts or omissions occurring after the Closing; and

(xxii) all Liabilities of Sellers to Purchasers, their Affiliates, and their Affiliates' agents, advisors and representatives, whether under the Transaction Documents or otherwise.

(b) The parties acknowledge and agree that disclosure of any Liability on any Schedule to this Agreement or otherwise shall not create an Assumed Obligation or other Liability of Purchasers, except where such disclosed obligation has been expressly assumed by Purchasers as an Assumed Obligation.

#### 2.5 Revisions to Schedules to Sections 2.1 to 2.4.

(a) Other than with respect to the items ~~set~~ forth on Schedule 7.3, notwithstanding anything in this Agreement to the contrary, Purchasers may revise the Schedules to Sections 2.1 to 2.4 at any time on or before three (3) Business Days prior to the Bid Deadline to include in the definition of Acquired Assets or Excluded Liabilities or exclude in the definition of Excluded Assets or Assumed Obligations, as applicable, any asset or property, or any portion, part or parcel of any such asset or property (other than Scheduled Contracts, which shall be governed by Section 2.6), or any Liability, not otherwise included therein or excluded therefrom, as the case may be, and, as a result thereof, Sellers agree to give required notice to any Third Party that should receive notice with respect to such asset or property or as otherwise reasonably requested by Purchasers; ~~provided that Purchasers may not remove the assets set forth on Schedules 2.2(a)(ii), 2.2(a)(v) or 2.2(a)(xi) as of the Effective Date; provided, further,~~ that such exclusion or inclusion, as the case may be, shall not have the effect of increasing the amount of Excluded Liabilities unless Purchasers assume the obligations with respect thereto. Notwithstanding anything in this Agreement to the contrary, other than with respect to the items set forth on Schedule 7.3, Purchasers may revise the Schedules to Sections 2.1 to 2.4 at any time on or before three (3) Business Days prior to the Closing Date in order to exclude from the definition of Acquired Assets or Excluded Liabilities or include in the definition of Excluded Assets or Assumed Obligations, as applicable, any asset or property, or any portion, part or parcel of any such asset or property (other than Scheduled Contracts, which shall be governed by Section 2.6), or any Liability, not otherwise included therein or excluded therefrom, as the case may be; ~~provided that Purchasers may not remove the assets set forth on Schedules 2.2(a)(ii), 2.2(a)(v) or 2.2(a)(xi) as of the Effective Date; provided, further that~~ such exclusion or inclusion, as the case may be, shall not have the effect of increasing the amount of Excluded Liabilities unless Purchasers assume the obligations with respect thereto.

(b) For purposes of clarification, nothing in this Section 2.5 shall limit Purchasers' rights under Section 2.6.



2.6 Sellers' Actions With Respect to Contracts.

(a) Sellers' Obligation to Maintain Scheduled Contracts Until Closing. From and after the Effective Date, Sellers shall not reject or alter (or attempt to alter) the terms of any executory Contracts or unexpired leases to which any Seller is a party (collectively, the "Scheduled Contracts") unless otherwise agreed to in writing by Holdings or as provided below in Section 2.6(e) of this Agreement. Sellers shall provide timely and proper written notice of the motion seeking entry of the Sale Order to all parties to Scheduled Contracts and take all other actions necessary to cause such Scheduled Contracts to be assumed by Sellers and assigned by each Seller to the Corresponding Purchaser pursuant to Section 365 of the Bankruptcy Code to the extent that such Scheduled Contracts are Assumed Executory Contracts at Closing or are assumed and assigned to Purchasers pursuant to Section 2.6(c) of this Agreement.

(b) Excluding or Adding Assumed Executory Contracts Prior to Closing. At the Closing, each Seller shall, pursuant to the Sale Order and the Assignment and Assumption Agreements and other transfer and assignment documents reasonably requested by Purchasers, assume and sell and assign to the Corresponding Purchaser (the consideration for which is included in the Purchase Price), all Assumed Executory Contracts which may be assigned by such Seller to the Corresponding Purchaser pursuant to Sections 363 and 365 of the Bankruptcy Code and which shall be set forth on the Schedules delivered pursuant to Section 2.1(a) of this Agreement. Purchasers shall have the right in their sole and absolute discretion to notify Sellers in writing of any Assumed Executory Contract that they do not wish to assume or any Scheduled Contract that they wish to add as an Assumed Executory Contract up to three (3) Business Days prior to the Closing. At the sole discretion and instruction of Purchasers, any such previously considered Assumed Executory Contract that Purchasers no longer wish to assume shall be automatically deemed removed from the Schedules related to Assumed Executory Contracts, automatically deemed added to the Schedules related to Excluded Contracts, and shall be rejected by each Seller party to such Contract in accordance with Section 2.6(e). At the sole discretion and instruction of Purchasers, any such previously considered Excluded Contract that Purchasers wish to assume as an Assumed Executory Contract shall be automatically deemed added to the Schedules related to Assumed Executory Contracts, automatically deemed removed from the Schedules related to Excluded Contracts, and shall be assumed by each Seller party to such Contract ~~to sell~~ and ~~assign~~ assigned to the Corresponding Purchaser.

(c) Designated Contracts. At least three (3) Business Days prior to the Closing, Holdings shall deliver to Sellers Schedule 2.6(c), which shall comprise a list of Scheduled Contracts that Purchasers wish to designate as "Designated Contracts" and for each Designated Contract the anticipated Cure Amount therefor. The Designated Contracts shall be automatically deemed removed from all Schedules related to Assumed Executory Contracts and Excluded Contracts, and shall not be Assumed Executory Contracts or Excluded Contracts as of the Closing Date. Except as otherwise set forth in Section 2.6(e), Sellers shall not seek to reject the Designated Contracts for a period of thirty (30) days following the Closing Date (the "Contract Retention Period"). Purchasers may, at their sole discretion and at any time during the Contract Retention Period, deliver to Sellers one (1) or more written notices (each, a "Rejection Notice") notifying Sellers of Purchasers' intent not to assume any Designated Contract(s).

(d) With respect to the Designated Contracts, as soon as reasonably practicable after the date that Purchasers provide a Rejection Notice with respect to any Designated Contract, Sellers shall reject such Excluded Contract, and all Liabilities arising after the effective date of rejection (the "Rejection Effective Date") of such Excluded Contract shall be considered Excluded Liabilities under this Agreement; provided, that Purchasers shall use commercially reasonable best efforts to have the Rejection Effective Date be no later than two (2) Business Days after delivery by Purchasers of such Rejection Notice or, if no such Rejection Notice and no Assumption Notice (as defined below) is delivered with respect to any such Designated Contract, the end of the Contract Retention Period. Notwithstanding anything in this Agreement to the contrary, after the end of the Contract Retention Period, any Designated Contract(s) not previously assumed or not identified in an Assumption Notice shall automatically be deemed an Excluded Contract for all purposes under this Agreement. Purchasers may, at their sole discretion and at any time during the Contract Retention Period, deliver to Sellers one (1) or more written notices (each, an "Assumption Notice") requesting assumption and assignment of any Designated Contract(s). Upon receipt of an Assumption Notice, each Seller party to the Designated Contract(s) set forth in the applicable Assumption Notice shall, subject to the Corresponding Purchaser's demonstrating adequate assurance of future performance thereunder, take all actions reasonably necessary to seek to assume and assign to the Corresponding Purchaser pursuant to Section 365 of the Bankruptcy Code the Designated Contract(s) set forth in the applicable Assumption Notice, and the Corresponding Purchaser shall be responsible for satisfying any Cure Amounts relating to such Designated Contracts. To the extent that any Designated Contract is a Facility Lease, each Seller party to such Facility Lease hereby grants the Corresponding Purchaser a license to use and possess the Facility that is leased pursuant to such Facility Lease. Such license shall commence on the Closing Date and shall terminate on the Rejection Effective Date of such Facility Lease. Notwithstanding anything in this Agreement to the contrary, on the date any Designated Contract is assumed and assigned to a Purchaser pursuant to this Section 2.6(e)2.6(d), such Contract shall be deemed an Assumed Executory Contract for all purposes under this Agreement. With respect to any Designated Contract, each Purchaser shall perform all of the Corresponding Seller's obligations under such Designated Contract and shall compensate the Corresponding Seller for all obligations and liabilities, in each case first arising after the Closing Date and actually incurred by the Corresponding Seller as a result of such performance (or failure to so perform) by Purchaser after the Closing under such Designated Contract until the earliest of the date such Designated Contract is assigned to a Purchaser or the Rejection Effective Date with respect to such Designated Contract (the "Designated Remaining Executory Contract Obligations"). The covenants set forth in this Section 2.6(d) shall survive the Closing.

(e) Rejection of Excluded Contracts. As soon as practicable after the Closing Date, Sellers shall reject all Excluded Contracts. Upon the expiration of the Contract Retention Period, all Designated Contracts that have not been deemed Assumed Executory Contracts pursuant to an Assumption Notice and have not been the subject of a Rejection Notice shall be automatically deemed to be Excluded Contracts, Sellers shall immediately reject such Excluded Contracts if not previously rejected, and all obligations arising after the effective date of the Contract Retention Period in connection with such Excluded Contracts shall be considered Excluded Liabilities under this Agreement. To the extent that any executory Contract or unexpired lease relating to the Business is not identified prior to the Closing Date or is not an Assumed Executory Contract, an Excluded Contract or a Designated Contract on the Closing

Date, such executory Contract or unexpired lease shall be deemed an Excluded Contract and Sellers shall immediately reject any such executory Contract or unexpired lease upon discovery. The covenants set forth in this Section 2.6(e) shall survive the Closing.

(f) Notwithstanding anything in this Agreement to the contrary, Sellers may reject the Contracts set forth on Schedule 2.6(f) at any time from and after the Effective Date.

2.7 ~~Cure Payments.~~ Except as set forth in Section 2.6(d), Sellers will be responsible for paying all Cure Amounts (which Cure Amounts shall be paid out of the Cash Amount received by Sellers) in connection with the assignment and assumption of the Assumed Executory Contracts. In addition, Sellers will be responsible for paying all Cure Amounts with respect to any Designated Contract that becomes an Assumed Executory Contract pursuant to Section 2.6(c).

2.8 Deemed Consents and Cures. For all purposes of this Agreement (including all representations and warranties of Sellers contained herein), Sellers shall be deemed to have obtained all required consents in respect of the assignment of any Assumed Executory Contract if, and to the extent that, pursuant to the Sale Order or other Order of the Bankruptcy Court, Sellers are authorized to assume and assign to Purchasers, and Purchasers are authorized to accept, such Assumed Executory Contracts pursuant to Section 365 of the Bankruptcy Code, and any applicable Cure Amount has been satisfied by Sellers. If the consent required to effectuate the assignment of any Assumed Executory Contracts to Purchasers cannot be obtained pursuant to the Sale Order or other Order of the Bankruptcy Court, then the parties shall endeavor to obtain such consent pursuant to Sections 4.5, 7.1 and 10.5.

### ARTICLE III BASIC TRANSACTION

3.1 ~~First Closing.~~ At the First Closing, (a) Purchasers shall purchase and be assigned the Acquired Assets (with each Purchaser purchasing and being assigned the Acquired Assets of the Corresponding Seller), and (b) in consideration of the Acquired Assets, (i) Purchasers shall pay to Sellers, in the aggregate, 200,000 units of Intermediate Holdings (the "Intermediate Holdings Units"), ~~200,000 units of Broyhill Intermediate Holdings (the "Broyhill Intermediate Holdings Units"), 200,000 units of Lane Intermediate Holdings (the "Lane Intermediate Holdings Units"),~~ and the Cash Amount (with ~~(w) each Purchaser paying, and each Seller receiving, its Allocated Share of the Cash Amount,~~ (x) Lane each Purchaser paying, and each Seller receiving, its Allocated Share of the Cash Amount and (y) Intermediate Holdings and its Subsidiaries paying their Allocated Share of the Lane Intermediate Holdings Units to Sellers that conduct the Lane Business, (y) ~~Broyhill Intermediate Holdings and its Subsidiaries paying their Allocated Share of the Broyhill Intermediate Holdings Units to Sellers that conduct the Broyhill Business and~~ (z) ~~Intermediate Holdings and its Subsidiaries paying their Allocated Share of the Intermediate Holdings Units to Sellers that do not conduct the Broyhill Business or the Lane Business,~~), (ii) Purchasers shall pay to Sellers, in the aggregate, 80% of the Debt Interests (the aggregate face value of the debt obligations plus any and all accrued and unpaid interest, fees and expenses and the Prepayment Premium (as defined in the Prepetition Term Loan Agreement) represented by such Debt Interests, together, the "First Credit Bid Amount") (with each Purchaser paying, and each Seller receiving, its Allocated Share of such Debt



Interests), and (iii) Purchasers shall assume, without duplication, the Assumed Obligations (with each Purchaser assuming the Assumed Obligations of the Corresponding Seller). The closing of the transactions contemplated by this Section 3.1 shall be referred to herein as the “First Closing.” If requested by Purchasers, Sellers shall negotiate and execute at the First Closing a transition services agreement in form and substance reasonable satisfactory to Sellers and Purchasers. Notwithstanding anything in this Agreement to the contrary, the Allocated Shares set forth on the Schedule of Sellers and Purchasers (A) shall not be binding upon the Sellers for purposes of any plan filed in connection with the Chapter 11 Cases, (B) shall not, and shall not be interpreted to, have any effect on the distributions to Sellers’ creditors, (C) shall be prepared, to the extent reasonably possible, in a manner consistent with any distributions to Sellers’ creditors, with any plan filed in connection with the Chapter 11 Cases, and with the characterization of the transactions set forth in Section 3.5, and (D) shall be adjusted to the extent necessary to be consistent with any distributions to Sellers’ creditors, any plan filed in connection with the Chapter 11 Cases, and with the characterization of the transactions set forth in Section 3.5.

3.2 Distributions. ~~Immediately after the First Closing and on the Closing Date, Sellers shall, as applicable, effect certain distributions (the “Distributions”) with respect to the Intermediate Holdings Units, the Broyhill Intermediate Holdings Units and the Lane Intermediate Holdings Units received by Sellers pursuant to Section 3.1, pursuant to which Sellers shall cause to be distributed to FB Parent all of the Intermediate Holdings Units, the Broyhill Intermediate Holdings Units and the Lane Intermediate Holdings Units received by Sellers pursuant to Section 3.1.~~

3.3 Second Closing. ~~Immediately after the Distributions and on the Closing Date, (a) Holdings shall purchase the Intermediate Holdings Units, the Broyhill Intermediate Holdings Units and the Lane Intermediate Holdings Units from FB Parent, and (b) in consideration of the Intermediate Holdings Units, the Broyhill Intermediate Holdings Units and the Lane Intermediate Holdings Units, Holdings shall pay to FB Parent 20% of the Debt Interests (the aggregate face value of the debt obligations represented by such Debt Interests plus any and all accrued and unpaid interest, fees and expenses and the Prepayment Premium (as defined in the Prepetition Term Loan Agreement), the “Second Credit Bid Amount” and, together with the First Credit Bid Amount, the “Credit Bid Amount”). The closing of the transactions contemplated by this Section 3.3 shall be referred to herein as the “Second Closing.”~~

3.4 Purchase Price. ~~The aggregate purchase price for the Acquired Assets (the “Purchase Price”) is equal to the sum of (a) the amounts paid by Purchasers pursuant to Sections 3.1 and 3.3, plus (b) Purchasers’ assumption of the Assumed Obligations. Upon receipt by Sellers of the Credit Bid Amount, all obligations of Sellers under the DIP Credit Facility and the Prepetition Term Loan Facility shall be deemed satisfied in full and cancelled pursuant to the Sale Order. In lieu of the satisfaction and cancellation of the Prepetition Term Loan Facility, to the extent provided for in the Sale Order, Purchasers (or their designee) may take an assignment of the Prepetition Term Loan Facility from the holder thereof, and the amount paid by Purchasers for such assignment (not to exceed the amount owed by the Debtors under the Prepetition Term Loan Facility) shall be deducted from the Purchase Price, all of Debtors’ obligations under the Prepetition Term Loan Facility shall become Assumed Obligations under Section 2.3(a) hereof,~~

and any security interests or liens under the Prepetition Term Loan Facility against Excluded Assets shall be released.

3.5 Reorganization Pursuant to Section 368(a)(1)(G) of the Code. With respect to the transactions contemplated by this Agreement intended to constitute a G Reorganization, (A) this Agreement constitutes a “plan of reorganization” of FB Parent and its Subsidiaries and Holdings and its Subsidiaries solely for purposes of Sections 368 and 354 of the Code and (B) the transactions with respect to FB Parent and its Subsidiaries described herein, in combination with the subsequent liquidation of FB Parent and its Subsidiaries, are intended to constitute a reorganization of FB Parent and its Subsidiaries pursuant to Section 368(a)(1)(G) of the Code.

3.6 Allocation of Purchase Price. Purchasers shall, within ninety (90) days after the Closing Date, prepare and deliver to FB Parent a schedule allocating the ~~purchase price~~ Purchase Price for U.S. federal, and any applicable state, local and other applicable tax purposes among Sellers and then, if applicable, the portion of the Purchase Price allocated to such Seller shall be further allocated among the Acquired Assets of such Seller (such schedule, the “Allocation”), in accordance with Section 1060 of the Code, and, if applicable, Section 338 of the Code, and the Treasury regulations thereunder (and any similar provision of any applicable state, local, or foreign tax Law). ~~The Allocation (If within thirty (30) days after the Sellers’ receipt of the Allocation, Sellers shall not have objected in writing to the Allocation, then the Allocation shall become the Final Allocation, as defined below. If Sellers raise any objection(s) in writing to the Allocation within thirty (30) days of the receipt thereof, Purchasers and Sellers shall negotiate in good faith to resolve such objection(s). If and to the extent the Parties are unable to agree on the contents of the Allocation, the allocation of the Purchase Price shall be determined within a reasonable time by an independent accounting firm of national repute mutually selected by Purchasers and Sellers. The fees and expenses of any such accounting firm shall be shared equally by Sellers and Purchasers. The allocation of the Purchase Price, as agreed upon by Purchasers and Sellers (as a result of either the Sellers’ failure to object to the Allocation or of good faith negotiations between Purchasers and Sellers) or determined by an independent accounting firm under this Section 3.6 (the “Final Allocation”), including the amount of the purchase price for income tax purposes)~~ shall be binding upon Purchasers and Sellers. Purchasers and Sellers shall report and file all Tax Returns (including amended Tax Returns and claims for refund) in a manner that is consistent with the Final Allocation, and shall take no position contrary thereto or inconsistent therewith unless required by applicable Law. Purchasers and FB Parent shall cooperate in the filing of any forms (including U.S. Internal Revenue Service (“IRS”) Form 8023 under Section 338 of the Code and IRS Form 8594 under Section 1060 of the Code) with respect to the Final Allocation. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 3.6 shall survive the Closing without limitation. ~~For purposes of clarification~~ The Final Allocation (A) shall not be binding upon the Sellers for purposes of any plan filed in connection with the Chapter 11 Cases and (B) shall not, the Allocation and shall not be interpreted to, have any effect on the distribution-distributions to Sellers’ creditors.

### 3.7 Closing Adjustment.

~~If a Lane Sale will not be consummated prior to the Closing, then three (3) Business Days prior to the Closing Date, FB Parent shall deliver a written certification to Holdings (which certification shall be acceptable to Holdings, acting reasonably) setting forth the Sellers' best~~

~~estimate of the Accounts Receivable of the Lane Entities and the Inventory of the Lane Entities, in each case as of the close of business on the date immediately prior to the Closing Date, calculated in a manner consistent with the policies, conventions, methodologies and procedures used in preparing the Adjustment Schedule (such estimates, the "Closing Accounts Receivable" and the "Closing Inventory," respectively). If the Closing Accounts Receivable is greater or less than \$29,133,000 (the "Target Accounts Receivable") by more than \$3 million (the excess of (x) the amount by which the Closing Accounts Receivable is greater or less than the Target Accounts Receivable over (y) \$3 million, the "Accounts Receivable Adjustment Excess"), then (i) if the Closing Accounts Receivable is greater than the Target Accounts Receivable, the Cash Amount shall be increased by an amount equal to 85% of the Accounts Receivable Adjustment Excess, and (ii) if the Closing Accounts Receivable is less than the Target Accounts Receivable, the Cash Amount shall be reduced by an amount equal to 85% of the Accounts Receivable Adjustment Excess. If the Closing Inventory is greater or less than \$59,765,000 (the "Target Inventory") by more than \$5 million (the excess of (x) the amount by which the Closing Inventory is greater or less than the Target Inventory over (y) \$5 million, the "Inventory Adjustment Excess"), then (i) if the Closing Inventory is greater than the Target Inventory, the Cash Amount shall be increased by an amount equal to 60% of the Inventory Adjustment Excess, and (ii) if the Closing Inventory is less than the Target Inventory, the Cash Amount shall be reduced by an amount equal to 60% of the Inventory Adjustment Excess.~~

#### ARTICLE IV CLOSING

4.1 Closing. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, the closing of the transaction contemplated by this Agreement (the "Closing," which shall consist of the First Closing, the Distributions and the Second Closing) will take place at the offices of ~~Kirkland & Ellis LLP, 300 N. LaSalle Street, Chicago, IL 60654 at 10:00 A.M. Central Time~~ Proskauer Rose LLP, Eleven Times Square, New York, NY 10036 at 10:00 a.m. prevailing Eastern time as soon as practicable after the date on which the conditions set forth in Article VIII have been satisfied or waived (other than those conditions which by their nature are to be satisfied at the Closing, but subject to satisfaction of such conditions at the Closing) but no later than three (3) days thereafter; or on or at such other date or place as Holdings and FB Parent may determine (the "Closing Date").

#### 4.2 Deliveries by Purchasers.

(a) On the Closing Date, at the First Closing:

(i) Purchasers shall deliver to Sellers the Intermediate Holdings Units, ~~the Broyhill Intermediate Holdings Units and the Lane Intermediate Holdings Units, and Intermediate Holdings, Broyhill Intermediate Holdings and Lane~~ and Intermediate Holdings will record in ~~their~~ its equity records the transfer of the Intermediate Holdings Units, ~~the Broyhill Intermediate Holdings Units and the Lane Intermediate Holdings Units~~ from Purchasers to Sellers;

(ii) Purchasers shall deliver to FB Parent, for the benefit of Sellers, in accordance with their respective Allocated Shares (but subject to the last sentence in Section 3.1), the Cash Amount by wire transfer of immediately available funds;

(iii) Purchasers shall pay to Sellers, in the aggregate, 80% of the Debt Interests;

(iv) Purchasers shall deliver to Sellers one (1) or more assignments and assumptions of the Assumed Obligations, in customary form mutually acceptable to Purchasers and Sellers (collectively, the “Assignment and Assumption Agreements”), duly executed by the applicable Purchaser or Purchasers;

(v) each of Holdings, ~~Intermediate Holdings, Broyhill Intermediate Holdings and Lane~~ and Intermediate Holdings shall deliver an affidavit, sworn under penalty of perjury and dated as of the Closing Date, in form and substance required under the Treasury regulations issued pursuant to Sections 897 and 1445 of the Code, stating that each such Purchaser is not and has not been a United States real property holding corporation as defined in Section 897 of the Code; and

(vi) Purchasers shall deliver to Sellers such other documents or instruments as are required to be delivered by any Purchaser at the Closing pursuant to the terms hereof or that Sellers reasonably request prior to the Closing Date to effect the transactions contemplated hereby.

(b) On the Closing Date, at the Second Closing, Holdings shall pay to FB Parent 20% of the Debt Interests.

#### 4.3 Deliveries by Sellers.

(a) On the Closing Date, at the First Closing, Sellers shall deliver or procure delivery to Purchasers of:

(i) physical possession of all of the Acquired Assets capable of passing by delivery with the intent that title in such Acquired Assets shall pass by and upon delivery;

(ii) the Assignment and Assumption Agreements, each duly executed by the applicable Seller or Sellers;

(iii) one (1) or more bills of sale, in customary form mutually acceptable to Purchasers and Sellers, conveying in the aggregate all of the owned personal property of Sellers included in the Acquired Assets, each duly executed by the applicable Seller or Sellers;

(iv) Intellectual Property assignments in customary form mutually acceptable to Purchasers and Sellers each duly executed by the applicable Seller or Sellers and each in recordable form to the extent necessary to assign such rights;

(v) special warranty or limited warranty deeds (as customary in the applicable jurisdiction) with respect to each Acquired Owned Real Property, subject only to matters disclosed on the Title Commitment that are Permitted Liens;

(vi) an assignment and assumption of lease with respect to each of the Assumed Facility Leases;

(vii) a certified copy of the Sale Order for the Acquired Owned Real Property;

(viii) certificates of title and title transfer documents to all titled motor vehicles;

(ix) assignment and assumption agreements with respect to Sellers' Permits and warranties, whereby each Seller shall assign to the Corresponding Purchaser all of such Seller's rights in and to any Permits and warranties relating (directly or indirectly) to the Acquired Assets or the Business;

(x) such documentation as may be necessary to change the authorized signatories on any bank accounts or powers of attorney relating (directly or indirectly) to the Acquired Assets;

(xi) certified copies of the resolutions of the board of directors of each Seller authorizing the execution, delivery and performance of this Agreement and the other agreements contemplated hereby and the consummation of the transactions contemplated hereby and thereby;

(xii) an affidavit from each Seller, sworn under penalty of perjury and dated as of the Closing Date, in form and substance required under the Treasury regulations issued pursuant to Section 1445 of the Code, stating that such Seller is not a foreign person as defined in Section 1445 of the Code;

(xiii) copies of all Third Party approvals and governmental approvals obtained pursuant to Section 7.1;

(xiv) all of the Books and Records;

(xv) originals (or, to the extent originals are not available, copies) of all Assumed Executory Contracts (together with all amendments, supplements or modifications thereto);

(xvi) such other instruments as are reasonably necessary to vest in Purchasers good and marketable title in and to the Acquired Assets in accordance with the provisions hereof; ~~and~~

(xvii) upon request of Purchasers or Sellers, a transition services agreement, in form and substance reasonably acceptable to Sellers and Purchasers;

(xviii) the Mutual Release; and

~~(xix)~~ ~~(xvii)~~ such other documents or instruments as are required to be delivered by any Seller at the Closing pursuant to the terms hereof or that Purchasers reasonably request prior to the Closing Date to effect the transactions contemplated hereby.

(b) On the Closing Date, at the First Closing (or as promptly as practicable thereafter), Sellers shall pay the Cure Amounts for the Assumed Executory Contracts (which Cure Amounts shall be paid out of the Cash Amount received by Sellers).

(c) On the Closing Date, Sellers shall deliver to Purchasers distribution resolutions and/or agreements evidencing the Distributions, and Intermediate Holdings, ~~Broyhill Intermediate Holdings and Lane Intermediate Holdings~~ will record in ~~their~~ its equity records the transfer of the ~~Intermediate Holdings Units, the Broyhill Intermediate Holdings Units and the Lane~~ Intermediate Holdings Units pursuant to the Distributions.

(d) On the Closing Date, at the Second Closing, FB Parent shall deliver to Holdings the ~~Intermediate Holdings Units, the Broyhill Intermediate Holdings Units and the Lane~~ Intermediate Holdings Units (which have been delivered to Sellers pursuant to the First Closing and distributed to FB Parent pursuant to the Distributions), and Intermediate Holdings, ~~Broyhill~~ will record in its equity records the transfer of the Intermediate Holdings ~~and Lane Intermediate Holdings will record in their equity records the transfer of the Intermediate Holdings Units, the Broyhill Intermediate Holdings Units and the Lane Intermediate Holdings Units from FB Parent to Holdings.~~ Units from FB Parent to Holdings.

(e) On the Closing Date, Sellers shall deliver to Purchasers distribution resolutions and/or agreements evidencing the Distributions and Intermediate Holdings will record in its equity records the transfer of the Intermediate Holdings Units from FB Parent to Holdings.

4.4 Form of Instruments. To the extent that a form of any document to be delivered hereunder is not attached as an Exhibit hereto, such documents shall be in form and substance, and shall be executed and delivered in a manner, reasonably satisfactory to Purchasers and Sellers.

4.5 Further Assurances:

~~(a)~~ From time to time prior to and after the Closing, Sellers and, as applicable, Purchasers, shall execute and deliver such documents and use their reasonable best efforts to take or cause to be taken all actions and do or cause to be done all things necessary, proper or advisable to consummate the transactions contemplated by this Agreement, including making, as reasonably requested by Purchasers or Sellers, all filings, applications, statements and reports to all authorities that are required to be made prior to the Closing Date by or on behalf of Sellers or Purchasers, respectively, or any of their respective Affiliates pursuant to any applicable Law in connection with this Agreement and the transactions contemplated hereby (including to put Purchasers in actual possession and operating control of the Acquired Assets, to effectuate, record or perfect the transfer of the Acquired Assets to Purchasers, to confirm the title of the Acquired Assets in Purchasers, to assist Purchasers in exercising rights relating thereto, to obtain all consents, approvals and authorizations of Third Parties, to make all filings with and give all



notices to Third Parties which may be necessary or required in order to effectuate the transactions contemplated hereby, and to obtain landlords' estoppels and landlords' lenders' waivers (such landlords' estoppels and landlords' lenders' waivers to be at Purchasers' sole cost and expense). Sellers shall use commercially reasonable efforts to fulfill or obtain the fulfillment of the conditions set forth in Sections 8.1 and 8.2 of this Agreement. From and after the Closing, Sellers shall use reasonable best efforts and shall take all actions reasonably requested by Purchasers, at Purchasers' sole cost and expense, to assist Purchasers to fulfill or obtain the fulfillment of the condition set forth on Schedule 8.2(k) and shall use reasonable best efforts to provide to Purchasers, at Purchasers' sole cost and expense, benefits, and enforce on behalf of Purchasers all rights, as reasonably requested by Purchasers with respect to the Contracts set forth on Schedule 8.2(k) ~~8.2(j)~~. Sellers shall provide notice of the transactions contemplated by this Agreement and the Chapter 11 Cases to all parties entitled to such notice, including all environmental authorities in jurisdictions applicable to Sellers and all other Persons with current or potential claims with respect to any Excluded Environmental Liabilities or other Liabilities or obligations arising under Environmental Laws or relating to Hazardous Substances.

~~(b) With respect to any Lane Sale, Holdings agrees to negotiate in good faith the entry by Holdings or one or more Purchasers or their Affiliates, as reasonably requested by the purchaser in the Lane Sale, into a transition services or similar agreement with the purchaser of the Lane Business; provided that neither Holdings, the Purchasers nor their Affiliates shall be required to incur any costs, fees, expenses or liability with respect to providing such services.~~

4.6 Withholding. Notwithstanding anything herein to the contrary, Purchasers shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to each Seller such amounts as they are required to deduct and withhold with respect to the making of such payment under the Code and the rules and regulations promulgated thereunder, or any applicable provision of state, local or foreign Tax Law. To the extent that amounts are so withheld by Purchasers and timely and properly paid over to the proper Governmental Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to each Seller in respect of which such deduction and withholding was made by Purchasers.

## ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the Company Reports filed with or furnished to the Securities and Exchange Commission (the "SEC") starting with the annual report on Form 10-K of FB Parent for the fiscal year ending December 29, 2012 and prior to August 8, 2013 (collectively, the "Filed Company SEC Documents") (excluding (a) any risk factor disclosures set forth under the heading "Risk Factors" and (b) any disclosure of risks including in any "forward looking statements" disclaimer or any other forward looking statements of risk that do not contain a reasonable level of detail about the specific risks of which the statements warn), Sellers jointly and severally represent and warrant to Purchasers on the date of this Agreement that the statements contained in this Article V ~~with respect to Sellers other than the Lane Entities are correct and complete as of the date of the Prior Agreement (except that (i) the representations and warranties contained in Sections 5.1 through 5.4 are true and correct as of the date of this Agreement, and (ii) the representations and warranties contained in this Article V with respect to the Lane Entities are true and correct as of the date of this Agreement).~~ are correct and complete.

5.1 Organization, Standing. Each Seller and each Foreign Subsidiary is a legal entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization and has all requisite corporate or similar power and authority and all Permits necessary to own, lease and operate its respective properties and assets and to carry on its business as presently conducted. Each Seller and each Foreign Subsidiary is qualified to do business and is in good standing or with active status as a foreign corporation in each other jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified or in good standing has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All jurisdictions in which Sellers and the Foreign Subsidiaries are qualified to do business are set forth on Schedule 5.1.

5.2 Subsidiaries. Schedule 5.2 sets forth, for each Subsidiary of FB Parent, (i) its name and jurisdiction of organization, and (ii) the number of authorized, issued and outstanding shares or equivalent thereof for each class of its capital stock or other equity interests and the holders thereof. All of the issued and outstanding shares of capital stock or other equity interests of each Subsidiary of FB Parent have been duly authorized and are validly issued, fully paid, and non-assessable. Except as set forth on Schedule 5.2, FB Parent or one (1) or more of its Subsidiaries hold of record and own beneficially all of the outstanding shares of each Subsidiary of FB Parent, free and clear of any restrictions on transfer, Liens, options, warrants, purchase rights, Contracts, commitments, equities, claims, and demands. There are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require FB Parent or any of its Subsidiaries to sell, transfer, or otherwise dispose of any capital stock or other equity interests of any of its Subsidiaries or that could require any Subsidiary of FB Parent to issue, sell, or otherwise cause to become outstanding any of its own capital stock or other equity interest (other than pursuant to this Agreement). There are no outstanding stock appreciation, phantom stock, profit participation, or similar rights with respect to any Subsidiary of FB Parent. There are no voting trusts, proxies, or other agreements or understandings with respect to the voting of any capital stock of any Subsidiary of FB Parent. No Seller and no Foreign Subsidiary is in default under or in violation of any provision of its charter or bylaws or other similar organizational documents. Neither FB Parent nor any of its Subsidiaries controls directly or indirectly or has any direct or indirect equity participation in any corporation, partnership, trust, or other business association that is not a Subsidiary of FB Parent. Except as set forth on Schedule 5.2, no Seller and no Foreign Subsidiary is a member of (nor is any portion of the Business conducted through) any partnership or a participation in any joint venture or similar arrangement. Except as set forth on Schedule 5.2, neither FB Parent nor any of its Subsidiaries owns or has any right to acquire, directly or indirectly, any outstanding capital stock of, or other equity interests in, any Person.

5.3 Validity of Agreement; Power. Subject to any necessary authorization from the Bankruptcy Court, each Seller has full power and authority to execute and deliver the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The board of directors (or similar governing body) of each Seller has duly approved the Transaction Documents to which such Person is a party and has duly authorized the execution and delivery of such Transaction Documents and the consummation of the transactions contemplated thereby. No other corporate or organizational proceedings on the part of any Seller are necessary to approve and authorize the execution and delivery of the Transaction Documents



to which such Person is a party and the consummation of the transactions contemplated thereby. All Transaction Documents to which any Seller is a party have been duly executed and delivered by such Person, except such Transaction Documents that are required by the terms hereof to be executed and delivered by such Person after the date hereof, in which case such Transaction Documents will be duly executed and delivered by such Person at or prior to the Closing, and, subject to any necessary authorization from the Bankruptcy Court, all Transaction Documents constitute, or will constitute, as the case may be, the valid and binding agreements of Sellers, enforceable against Sellers in accordance with their terms.

5.4 No Conflicts or Violations. Except as set forth on Schedule 5.4 or any approvals required by the Bankruptcy Court or pursuant to the HSR Act, and except to the extent any of the following is not enforceable due to operation of the Sale Order, the execution, delivery and performance of the Transaction Documents and the consummation of the transactions contemplated thereby by Sellers do not and will not conflict with, result in any breach, default or violation of, give rise to a right of modification, termination or acceleration or loss of a material benefit under, result in the creation of any Lien or Liability under, require any authorization, consent, approval, exemption or other action by or notice or declaration to, or filing with, any Governmental Authority or other Person under, (i) any provision of the articles of incorporation or bylaws or other equivalent organizational document of any Seller or Foreign Subsidiary, (ii) any Material Contract to which any Seller or Foreign Subsidiary is a party to or by which it is bound or (iii) any determination or Order of any Governmental Authority or Law applicable to any Seller or Foreign Subsidiary or its property or assets.

5.5 Financial Statements and Related Matters.

(a) Set forth on Schedule 5.5(a) are copies of the following financial statements for FB Parent and its Subsidiaries: (i) unaudited consolidated and consolidating balance sheets as of June 29, 2013 (collectively, the "Latest Balance Sheet") and the related statements of income and cash flows for the six (6)-month period then ended, (ii) audited consolidated and consolidating balance sheets and statements of income and cash flows as of and for the fiscal year ended December 29, 2012, and (iii) audited consolidated and consolidating balance sheets and statements of income and cash flows as of and for the fiscal year ended December 31, 2011. Each of the foregoing financial statements (including in all cases the notes thereto, if any) is accurate and complete in all material respects, is consistent with the Books and Records (which, in turn, are accurate and complete in all material respects), presents fairly, in all material respects, Sellers' financial condition and results of operations as of the times and for the periods referred to therein, and has been prepared in accordance with GAAP, subject in the case of unaudited financial statements to changes resulting from normal year-end adjustments for recurring accruals (which shall not be material individually or in the aggregate) and to the absence of footnote disclosure.

(b) Schedule 5.5(b) sets forth, as of the date of ~~the Prior~~ this Agreement, all of the outstanding Indebtedness of the Foreign Subsidiaries. As of the Closing Date, there will not be any Indebtedness of the Foreign Subsidiaries except as set forth on Schedule 5.5(b) and except as may be incurred in compliance with Section 7.3.

(c) FB Parent has filed or furnished, as applicable, on a timely basis all registration statements, forms, reports and other documents required to be filed or furnished by it with the SEC pursuant to the Securities Act or the Exchange Act on or after January 1, 2012 and prior to August 8, 2013 (the “Company Reports”). Each of the Company Reports, at the time of its filing or being furnished, complied when filed or furnished as to form in all material respects with the applicable requirements of the Securities Act and the Exchange Act, as the case may be. As of their respective dates (or, if amended prior to the date hereof, as of the date of such amendment), the Company Reports did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances in which they were made, not misleading. As of the date of ~~the Prior~~ this Agreement, there are no outstanding and unresolved comments received from the SEC or its staff with respect to any of the Company Reports.

5.6 Absence of Undisclosed Liabilities. To the Knowledge of Sellers, except as set forth on Schedule 5.6, no Foreign Subsidiary has any material Liabilities, except (i) executor obligations under Contracts described on Schedule 5.13(a) or under Contracts which are not required to be disclosed thereon (but not Liabilities for breaches thereof), (ii) Liabilities stated or adequately reserved against in the Liabilities side of the Latest Balance Sheet, (iii) Liabilities which have arisen after the date of the Latest Balance Sheet in the Ordinary Course of Business or otherwise in accordance with the terms and conditions of this Agreement (none of which is a material Liability for breach of contract, breach of warranty, tort or infringement or a claim or lawsuit or Liability under Environmental Laws) and (iv) Excluded Liabilities.

5.7 Accounts Receivable. Except as set forth on Schedule 5.7, each of the Accounts Receivable arising from services or sales by any Seller or Foreign Subsidiary, whether or not earned thereby on the date hereof or on the Closing Date, constitutes a bona fide receivable resulting from a bona fide sale to a customer in the Ordinary Course of Business, the amount of which was actually due on the date thereof, is not subject to any valid counterclaim or setoff other than normal cash discounts accrued in the Ordinary Course of Business, and is collectible net of any reserves for doubtful accounts on any applicable Books and Records computed in accordance with GAAP.

5.8 Accounts Payable and Other Accrued Expenses. Set forth on Schedule 5.8 is a list of all accounts payable and other accrued expenses of Sellers and the Foreign Subsidiaries as of September 7, 2013, together with the name of each payee, the relationship (if any) to Sellers, the date each such payment is due and the nature of the transaction in which it was incurred if other than a trade payable incurred in the Ordinary Course of Business.

5.9 Inventory. Except as set forth on Schedule 5.9, the Inventory of Sellers and the Foreign Subsidiaries (i) consists solely of materials and goods useable or saleable in the Ordinary Course of Business (taking into account the quantity and quality of the Inventory), (ii) is not materially defective, slow moving, obsolete or damaged, and (iii) is fit and merchantable for their particular use in all material respects. Except as set forth on Schedule 5.9, none of the Inventory is subject to any consignment, bailment, warehousing or similar agreement.

5.10 Title to Assets; Assets Necessary to Business.

(a) Sellers and the Foreign Subsidiaries have good and marketable title to, or a valid leasehold interest in or all rights to use, all assets reflected under the heading “assets” on the face of the Latest Balance Sheet, and on such balance sheet as it will be adjusted through the Closing Date to reflect transactions occurring in the Ordinary Course of Business since the date of the Latest Balance Sheet as may be effected in accordance with Section 7.3.

(b) To the Knowledge of Sellers, the assets of Sellers and the Foreign Subsidiaries are, in all material respects, in good operating condition and repair (ordinary wear and tear excepted) and are fit for use in the Ordinary Course of Business.

(c) Each asset that is material to the operation of the Business as presently conducted is an Acquired Asset.

(d) Subject to Bankruptcy Court approval, Sellers have the power and the right to sell, assign and transfer and Sellers will sell and deliver to Purchasers, and upon consummation of the transactions contemplated by this Agreement, Purchasers will acquire good and marketable title to the Acquired Assets, free and clear of all Liens other than Permitted Liens.

(e) The Transaction Documents, when duly executed and delivered by Sellers to Purchasers at the Closing, will effectively vest in Purchasers good and marketable title to the Acquired Assets, subject only to the Assumed Obligations and Permitted Liens.

#### 5.11 Real Property.

(a) Schedule 5.11(a) sets forth the address and description of all Owned Real Property. With respect to each Owned Real Property and except as set forth on Schedule 5.11(a): (i) the applicable Seller or Foreign Subsidiary has (A) good and marketable indefeasible fee simple title with respect to Owned Real Property located in the United States and (B) customary title with respect to Owned Real Property located in a jurisdiction outside of the United States, free and clear of all Liens, except Permitted Liens; (ii) there are no leases, subleases, licenses, concessions, or other agreements, written or oral, granting to any Person the right of use or occupancy of any portion of such Owned Real Property; (iii) there are no outstanding options, rights of first offer, or rights of first refusal to purchase such Owned Real Property (other than the rights of Purchasers pursuant to this Agreement), or any portion thereof or interest therein; and (iv) Sellers and the Foreign Subsidiaries are not a party to any agreement or option to purchase any real property or interest therein.

(b) Except as set forth on Schedule 5.11(b), no Seller or Foreign Subsidiary has received any written notice of any pending or threatened expropriation, condemnation or other proceedings in the nature of eminent domain in connection with any parcel of the Owned Real Property or the Leased Facilities.

(c) Schedule 5.11(c) sets forth the address of each Leased Facility and a true and complete list of all Facility Leases (including the title and date thereof and the parties thereto), including all amendments, modifications, extensions, renewals, guaranties, and other agreements with respect thereto. In addition, except as set forth on Schedule 5.11(c), (i) there are no occupancy rights, subleases or licenses presently affecting the Leased Facilities; (ii) Sellers

have delivered to Purchasers true and complete copies of each of the Facility Leases, including all amendments, modifications, extensions, renewals, guaranties, and other agreements with respect thereto (or in the case of an oral lease, a written summary of the material terms of such lease), and none of such leases has been otherwise amended, modified or terminated; (iii) the Facility Leases are at present and on the date of the Closing shall be legal, valid, binding, enforceable and in full force and effect, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other Laws affecting creditors' rights generally from time to time in effect, and to general equitable principles, unless any such Facility Lease shall have expired in accordance with its terms (and not because of any termination or other acceleration of the stated expiration date thereof); (iv) there is no option to purchase, right of first offer, right of first refusal or other provision granting any Seller or any other Person any right to acquire Sellers' interest in the Leased Facilities; (v) neither Sellers nor any other party to the Facility Lease is in material breach or default under such Facility Lease, and no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a material breach or default, or permit the termination, modification or acceleration of rent under such Facility Lease; and (vi) Sellers and the Foreign Subsidiaries have not subleased, licensed or otherwise granted any Person the right to use or occupy such Facility Lease or any portion thereof.

(d) To the Knowledge of Sellers, there are no material defects in the buildings, improvements and structures and fixtures located on or at the Acquired Owned Real Property or at the Assumed Leased Facilities which would materially impair the conduct of the Business by Purchasers immediately following the Closing. To the Knowledge of Sellers, the mechanical, electrical, plumbing, HVAC and other systems servicing the Acquired Owned Real Property and the Assumed Leased Facilities are in good working order and repair, ordinary wear and tear excepted, and there are no defects (latent, patent, or otherwise) in such systems which could reasonably be expected to materially impair the conduct of the Business by Purchasers immediately following the Closing.

(e) The Owned Real Property and the Leased Facilities comprise all of the real property used in, or otherwise related to, the Business.

#### 5.12 Intellectual Property.

(a) Schedule 5.12(a) sets forth a complete and correct list of all of the following Intellectual Property that is owned by any Seller or Foreign Subsidiary: (i) patents and patent applications, trademark and service mark registrations and applications, copyright registrations and applications, and internet domain names; (ii) material unregistered trademarks, service marks, copyrights and any other material unregistered Intellectual Property; and (iii) material computer software.

(b) Sellers and the Foreign Subsidiaries (i) own and possess, free and clear of all Liens (other than Liens set forth on Schedule 5.12(b) or Liens that will be discharged pursuant to the Sale Order), all right, title and interest in and to the Intellectual Property set forth on Schedule 5.12(a), and (ii) to the Knowledge of Sellers, own and possess all right, title and interest in and to, or have a valid and enforceable right to use (pursuant to a written license agreement set forth on Schedule 5.13(a), a Contract entered into in the Ordinary Course of

Business or a license for commercially available, standard, off-the-shelf, unmodified software that is provided in executable form only and provided for Sellers' internal use only), in each case free and clear of all Liens (other than Liens set forth on Schedule 5.12(b) or Liens that will be discharged pursuant to the Sale Order), all of the other Intellectual Property necessary for or used in the conduct of the Business as presently conducted by Sellers and the Foreign Subsidiaries (together with all of Intellectual Property set forth on Schedule 5.12(a), collectively, the "Company Intellectual Property"). To the Knowledge of Sellers, all of the Company Intellectual Property is valid, subsisting and enforceable. Sellers have taken all actions necessary or commercially reasonable to maintain, protect, and enforce the Company Intellectual Property.

(c) Except as set forth on Schedule 5.12(c), to the Knowledge of Sellers, no claims have been made or threatened against any Seller or any Foreign Subsidiary contesting the validity, use, ownership or enforceability of any of the Company Intellectual Property. To the Knowledge of Sellers, no Seller or Foreign Subsidiary has infringed, misappropriated or otherwise conflicted with, the operation of the Business as presently conducted does not infringe, misappropriate or otherwise conflict with, and the operation of the Business as conducted prior to the Closing has not infringed, misappropriated, or otherwise conflicted with, any Intellectual Property of any Third Party. To the Knowledge of Sellers, there are no facts which indicate a likelihood of any of the foregoing and no Seller or Foreign Subsidiary has received during the past three (3) years any Notices regarding any of the foregoing (including any demands or offers to license any Intellectual Property from any Third Party).

(d) To the Knowledge of Sellers, no Third Party has infringed, misappropriated or otherwise conflicted with any of the Company Intellectual Property.

(e) Sellers and the Foreign Subsidiaries have taken commercially reasonable measures to implement policies and procedures consistent with industry-standard practices with respect to their current and former consultants, contractors and employees, to the extent that any of the foregoing have developed, created or modified any material Company Intellectual Property or have had access to any material confidential Company Intellectual Property, (i) assigning ownership to Sellers of Intellectual Property created, developed or modified by (A) such employees arising out of their employment or (B) such contractors or consultants engaged by Sellers arising out of their engagement; and (ii) requiring such employees, contractors and consultants to maintain the confidentiality of all Company Intellectual Property.

(f) Immediately subsequent to the Closing, the Company Intellectual Property and computer systems, including software, hardware, networks, interfaces, platforms and related systems owned or used by Sellers or the Foreign Subsidiaries (collectively, the "Company Systems") will be owned by or available for use by Purchasers on terms and conditions substantially similar to those under which Sellers and the Foreign Subsidiaries owned or used the Company Intellectual Property and Company Systems immediately prior to the Closing. Sellers and the Foreign Subsidiaries own or have a valid and enforceable right to use all Company Systems, free and clear of all Liens (other than Liens set forth on Schedule 5.12(b) or that will be discharged pursuant to the Sale Order). Each Company System is adequate for its intended functions, operations, purposes and capabilities and is sufficient for the immediate and future needs of the Business as currently contemplated by Sellers.



(g) Except as set forth on Schedule 5.12(g), no other party to any Assumed Contract that provides a license to any Intellectual Property has requested or initiated an audit or other review or inspection of any Facilities or any Books and Records. Sellers have provided Purchasers with true and correct copies of all material licenses to Intellectual Property, in each case together with all amendments, waivers or other changes thereto.

5.13 Contracts.

(a) Except (i) as set forth on Schedule 5.13(a), (ii) as filed as an exhibit to a Filed Company SEC Document, or (iii) as contemplated by this Agreement, no Seller or Foreign Subsidiary is a party to or bound by, whether written or oral, any:

(i) Collective Bargaining Agreement;

(ii) settlement, conciliation or similar agreement which imposes any payment or other material obligations on any Seller or Foreign Subsidiary after the execution date of ~~the Prior~~ this Agreement;

(iii) management agreement or Contract for the employment of any officer, individual employee or other Person on a full-time, part-time, consulting or other basis (A) providing for annual cash or other compensation in excess of Seventy-Five Thousand Dollars (\$75,000), (B) providing for the payment of any cash or other compensation or benefits as a result of the execution of this Agreement or the consummation of the transactions contemplated hereby, or (C) otherwise restricting the ability to terminate the employment of any employee at any time for any lawful reason or for no reason without Liability;

(iv) Contract with any Government Authority;

(v) Contract relating to borrowed money or other Indebtedness or the mortgaging, pledging or otherwise placing a Lien on any material asset or group of material assets of Sellers or the Foreign Subsidiaries or any letter of credit arrangements, or any Guaranty therefor;

(vi) Contract under which any Seller or Foreign Subsidiary is a (A) lessee of or holds or operates any personal property owned by any other Person, except for any lease of personal property under which the aggregate annual rental payments do not exceed One Hundred Thousand Dollars (\$100,000) in any twelve-month period or (B) lessor of or permits any Person to hold, operate or occupy any property, real or personal, owned or controlled by such Seller or Foreign Subsidiary;

(vii) Contract or group of related Contracts (other than purchase and sale orders entered into in the Ordinary Course of Business) with the same party or group of Affiliated parties continuing over a period of more than six (6) months from the date or dates thereof, not terminable by any Seller or Foreign Subsidiary upon thirty (30) days or less notice without penalty or involving more than One Hundred Thousand Dollars (\$100,000);

(viii) Contract relating to the ownership of, investments in or loans and advances to any Person, including investments in joint ventures and minority equity investments;

(ix) assignment, license, royalty or other Contract with respect to any Intellectual Property, including any Contract under which any Seller or Foreign Subsidiary is a licensor or licensee (excluding immaterial royalty agreements and licenses for commercially available, standard, off-the-shelf, unmodified software that is provided in executable form only and provided for Sellers' internal use only), and Contract affecting any Seller's or Foreign Subsidiary's ability to use any Intellectual Property;

(x) Contract that contains any provision pursuant to which any Seller or Foreign Subsidiary is obligated to indemnify or make any indemnification payments to any Person (other than Contracts entered into in the Ordinary Course of Business where such obligation would not reasonably be expected to result in Liabilities in excess of One Hundred Thousand Dollars (\$100,000) per year);

(xi) material agent, sales representative, sales or distribution Contracts (other than purchase and sale orders entered into in the Ordinary Course of Business);

(xii) material Contract relating to the marketing or advertising of any Seller's or Foreign Subsidiary's products or services;

(xiii) power of attorney or other similar Contracts or grant of agency;

(xiv) Contract prohibiting any Seller or Foreign Subsidiary, now or in the future, from freely engaging in any business or competing anywhere in the world or restricting its use or disposition of any Intellectual Property, including any nondisclosure, non-competition, settlement, coexistence, standstill or confidentiality agreements;

(xv) Contract (A) providing for any Seller or Foreign Subsidiary to be the exclusive provider of any product or service to any Person or the exclusive recipient of any product or service of any Person or that otherwise involves the granting by any Person to the any Seller or Foreign Subsidiary of exclusive rights of any kind, (B) providing for any Person to be the exclusive provider of any product or service to any Seller or Foreign Subsidiary or (C) granting to any Person a right of first refusal or right of first offer on the sale of any part of the business of any Seller or Foreign Subsidiary;

(xvi) Contract providing for any Seller or Foreign Subsidiary to guarantee, grant or otherwise promise to any Person the sale or provision of any product or service at the best, lowest or otherwise most favored price or terms; and

(xvii) any other individual Contract that is otherwise material to the assets, operations or financial condition of Sellers or the Business, taken as a whole.

(b) All of the Contracts of the type described in Section 5.13(a) (including those not required to be disclosed because they are filed as an exhibit to a Filed Company SEC Document) are referred to herein as the "Material Contracts" and each, individually, a "Material Contract." Except as disclosed on Schedule 5.13(b), (i) to the Knowledge of Sellers, no Material Contract has been materially breached or canceled by the other party, and there is no anticipated material breach by any other party to any Material Contract, (ii) except for defaults that will be cured through payment of the Cure Amounts or arising solely as a consequence of the

commencement of the Chapter 11 Cases, no Seller nor, to the Knowledge of Sellers, any other party thereto is in default or breach in any material respect under the terms of any Material Contract and, to the Knowledge of Sellers, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute a material default or breach thereunder, (iii) no Seller or Foreign Subsidiary has assigned, delegated or otherwise transferred to any Person any of its rights, title or interest under any Material Contract, and (iv) each Material Contract is legal, valid, binding, enforceable and in full force and effect and, subject to the terms of this Agreement, will continue as such following the consummation of the transactions contemplated hereby.

(c) Sellers have provided or made available (in the Data Room or as an exhibit to a Filed Company SEC Document) to Purchasers true and correct copies of all Material Contracts, in each case together with all amendments, waivers or other changes thereto and Schedule 5.13(a) contains an accurate and complete description of all material terms of all oral Contracts referred to therein.

5.14 Insurance. Schedule 5.14 lists and describes all policies of insurance owned, held, or maintained by or for the benefit of any Seller or Foreign Subsidiary or insuring the property or assets of any Seller or Foreign Subsidiary, including the type and amount of coverage and the expiration dates of the policies and, with respect to claims in excess of \$50,000, the claims history for the past two years. Sellers have made available to Purchasers all policies of insurance owned, held, or maintained by or for the benefit of any Seller or Foreign Subsidiary or insuring the property or assets of any Seller or Foreign Subsidiary. Except as set forth on Schedule 5.14, (a) current premiums and any other obligations under such insurance have been paid and all such policies are valid and enforceable and in full force and effect on the date hereof and no Seller or Foreign Subsidiary is in default with respect to its obligations under any such insurance policies, and (b) no Seller or Foreign Subsidiary has received any Notice within the last ninety (90) days threatening suspension, revocation, modification or cancellation of any insurance policy or a material increase in any premium in connection therewith or informing any Seller or Foreign Subsidiary that any coverage listed on Schedule 5.14 will or may not be available in the future on substantially the same terms as now in effect. Except as set forth on Schedule 5.14, no Seller has been denied insurance coverage within the past three (3) years. Except as set forth on Schedule 5.14, no Seller or Foreign Subsidiary has any self-insurance or co-insurance programs. The reserves set forth on the Latest Balance Sheet are adequate to cover all anticipated Liabilities with respect to self-insurance or co-insurance programs listed on Schedule 5.14.

5.15 Taxes. Except as set forth on Schedule 5.15.

(a) Each Seller and each Foreign Subsidiary has filed all material Tax Returns that it was required to file. All such filed Tax Returns were correct and complete in all material respects. All material Taxes owed by any Seller and any Foreign Subsidiary and all material Taxes with respect to the Acquired Assets (in each case, whether or not shown on any Tax Return) have been paid. No Seller and no Foreign Subsidiary is the beneficiary of any extension of time within which to file any Tax Return. With respect to each Seller and each Foreign Subsidiary, no unresolved claim has been made within the past three (3) years by a Governmental Authority in a jurisdiction where such party does not file Tax Returns that such Seller or Foreign Subsidiary or the Business is or may be subject to taxation by that jurisdiction.



(b) Each Seller and each Foreign Subsidiary has withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other Third Party, and all IRS Forms W-2 and 1099 (or any other applicable form) required with respect thereto have been properly completed and timely filed.

(c) No Seller and no Foreign Subsidiary has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency other than as the result of extending the due date of a Tax Return which waiver or extension is still in effect.

(d) No Seller and no Foreign Subsidiary is a party to any Tax allocation or sharing agreement other than any agreement the principal subject matter of which is not Taxes. No Seller and no Foreign Subsidiary (i) has been a member of an Affiliated Group filing a consolidated federal income Tax Return or any state, local or non-U.S. equivalent thereof (other than an Affiliated Group the common parent of which was FB Parent) or (ii) has any Liability for the Taxes of any Person (other than any Seller) under Section 1.1502-6 of the Treasury Regulations (or any similar provision of state, local, or foreign Law), as a transferee or successor or, except, by Contract the principal subject matter of which is not Taxes, or otherwise.

(e) There are no Liens for Taxes other than Permitted Liens upon any of the Acquired Assets.

(f) Schedule 5.15(f) sets forth each non-U.S. Subsidiary of FB Parent and its entity classification for U.S. federal income tax purposes.

#### 5.16 Employee Benefit Plans.

(a) Schedule 5.16(a) sets forth a complete and accurate list of each Employee Benefit Plan. Sellers have provided or made available (in the Data Room or as an exhibit to a Filed Company SEC Document) to Purchasers true and complete copies of each Employee Benefit Plan and all material documents pursuant to which such Employee Benefit Plans are maintained, funded and administered (including all plan documents, amendments thereto, summary plan documents, trust documents, annual reports, actuarial reports, service agreements and group insurance Contracts). Except as set forth on Schedule 5.16(a), to the Knowledge of Sellers, each Employee Benefit Plan has been established, maintained, funded and administered in material compliance with its terms, all applicable requirements of ERISA, the Code, and other applicable Laws. Except as set forth on Schedule 5.16(a), to the Knowledge of Sellers, each Employee Benefit Plan that is intended to be qualified under Code § 401(a) is so qualified and has received a favorable determination letter from the IRS upon which it may rely, and no fact or event has occurred that could adversely affect the qualified status of such Employee Benefit Plan.

(b) Except as set forth on Schedule 5.16(b), none of Sellers, any of their Affiliates or any ERISA Affiliates maintains, contributes to or has any Liability or could have any potential Liability (including liability with respect to any partial “withdrawal” or a “complete withdrawal” within the meaning of Sections 4205 and 4203 of ERISA, respectively)

under or with respect to (i) any “employee pension benefit plan” (as defined in Section 3(2) of ERISA) that is subject to Title IV or Section 302 of ERISA or Section 412 of the Code, or any “multiemployer plan” (as defined in Section 3(37) of ERISA), “multiple employer plan” (within the meaning of Section 210 of ERISA or Section 413(c) of the Code), or (iv) “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA). Except as set forth on Schedule 5.16(b), Sellers and the Foreign Subsidiaries do not have and have not had any Liability as a consequence of at any time being treated as a single employer under Section 414 of the Code with any Person other than Sellers and the Foreign Subsidiaries.

(c) No event or condition has occurred in connection with which any Seller or any ERISA Affiliate could be reasonably likely to be subject to any material Liability, fine, excise tax, or Lien with respect to (i) any Employee Benefit Plan or any benefit or compensation plan, program, arrangement or agreement under ERISA, the Code or any other applicable Law or (ii) under any agreement or arrangement pursuant to or under which any Seller or any ERISA Affiliate is required to indemnify any Person against such Liability or have any joint and several Liability. There are no pending or, to the Knowledge of Sellers, threatened claims, suits, audits or investigations related to any Employee Benefit Plan (other than non-material, routine claims for benefits) that could become a Liability of Purchasers. No Seller or Foreign Subsidiary has incurred any material Liability to the Pension Benefit Guaranty Corporation, the IRS, or the Department of Labor with respect to any Employee Benefit Plan that has not been satisfied in full, nor, to the Knowledge of Sellers, does any condition exist that presents a material risk to any Seller or Foreign Subsidiary of incurring such a Liability. To the Knowledge of Sellers, with respect to each Employee Benefit Plan, there have been no material prohibited transactions as defined in Section 406 of ERISA or Section 4975 of the Code or any material breach of fiduciary duty (as determined under ERISA).

(d) Except as set forth on Schedule 5.16(d), the consummation of the transactions contemplated by this Agreement (alone or in connection with any subsequent event, including a termination of employment) will not (i) accelerate the vesting or payment of any benefit provided or made available under any Employee Benefit Plan, (ii) increase the amount of or forfeit any benefit provided or made available under any Employee Benefit Plan, or (iii) accelerate or increase the funding obligation under any Employee Benefit Plan.

(e) To the Knowledge of Sellers, Sellers and any ERISA Affiliates have complied with the health care continuation requirements of Part 6 of Subtitle B of Title I, Section 4980B of the Code and any similar state Law of ERISA (“COBRA”); and, except as set forth on Schedule 5.16(e), no Seller or ERISA Affiliate has any obligations under any Employee Benefit Plan, or otherwise, to provide post-employment or post-termination health, life insurance or other welfare benefits to any Person, except as specifically required under COBRA.

(f) To the Knowledge of Sellers, with respect to each Employee Benefit Plan, all payments, premiums, contributions, distributions, reimbursements or accruals for all periods (or partial periods) ending prior to or as of the Closing Date shall have been timely made or properly accrued in accordance with the terms of the applicable Employee Benefit Plan, applicable Law and GAAP. None of the Assumed Employee Benefit Plans has any material unfunded Liabilities.

(g) Each “nonqualified deferred compensation plan” (as defined under Section 409A(d)(1) of the Code) maintained by any Seller or any Foreign Subsidiary has been maintained and operated in good faith compliance with Section 409A of the Code and applicable guidance thereunder.

5.17 Labor and Employment Matters. Except as set forth on Schedule 5.17:

(a) No Seller and no Foreign Subsidiary is a party to any Collective Bargaining Agreement or has any relationship with any union, labor organization, works council, trade union, or other employee representative;

(b) No union organizing or decertification activities are underway or, to the Knowledge of Sellers, threatened, no other question concerning representation exists, and no such matters have occurred within the last three (3) years;

(c) There is no labor strike, slowdown, work stoppage, walkout or other material labor dispute pending or, to the Knowledge of Sellers, threatened against any Seller or Foreign Subsidiary, and no such dispute has occurred within the last three (3) years. With respect to the transaction contemplated by this Agreement, any notice required under any Law or Collective Bargaining Agreement has been or prior to Closing will be given and all bargaining, notification, and consent obligations have been or prior to Closing will be satisfied. No Seller has implemented any plant closing or layoff of employees that could reasonably be expected to implicate the Worker Adjustment and Refraining Notification Act of 1988, as amended or any similar Laws (collectively, the “WARN Act”) without having complied with the WARN Act, and no such layoffs will be implemented without advance notice to Purchasers.

5.18 Personnel Matters. Schedule 5.18 contains an accurate and complete list of the names, job classifications, dates of hire, wage rates, base compensation, and any supplemental or bonus compensation (including any retention or stay bonus arrangements) for all Persons employed by or providing independent contract services to Sellers and the Foreign Subsidiaries as of September 6, 2013. To the Knowledge of Sellers, no key executive employee and no group of employees or independent contractors of any Seller or Foreign Subsidiary has any plans to terminate his, her or its employment or relationship with any Seller or Foreign Subsidiary.

5.19 Litigation; Orders. Except as set forth on Schedule 5.19, (a) there are no material Proceedings or Orders pending or, to the Knowledge of Sellers, threatened against or affecting any Seller or Foreign Subsidiary at law or in equity, in the United States or elsewhere, or before or by (or that could come before) any arbitrator or Governmental Authority (including any Proceedings with respect to the transactions contemplated by this Agreement), (b) no Seller or Foreign Subsidiary is subject to any material grievance or arbitration Proceedings under any Collective Bargaining Agreement or otherwise, and (c) no Seller or Foreign Subsidiary is subject to any Order of any Governmental Authority (or settlement enforceable therein), and no Seller or Foreign Subsidiary has received any opinion or memorandum or legal advice from legal counsel to the effect that it is exposed, from a legal standpoint, to any Liability or disadvantage which may be material to the Business.

5.20 Compliance with Law; Permits. Except as set forth on Schedule 5.20, each Seller and each Foreign Subsidiary, and each of its current and former officers, directors, partners, agents and employees, has, in all material respects, complied with and are in material compliance with, and are not in default in any respect with, all applicable Laws and Orders of any Governmental Authority relating to the operation of the Business, and no written notices have been received by, and no claims filed against, any Seller or Foreign Subsidiary alleging a material violation of any such Laws or Orders. Sellers and the Foreign Subsidiaries hold and are, in all material respects, in compliance with all Permits of all Governmental Authorities required for the conduct of the Business and the ownership of their properties, and Schedule 5.20 sets forth a list of all such material Permits. No notices have been received by any Seller or Foreign Subsidiary alleging the failure to hold any material Permit.

5.21 Environmental Matters.

(a) Except as set forth on Schedule 5.21(a), to the Knowledge of Sellers, each Seller and each Foreign Subsidiary is and has for the three-year period prior to the Closing Date been in compliance with all Environmental Laws, which compliance has included obtaining and complying with all Permits required pursuant to Environmental Laws.

(b) Except as set forth on Schedule 5.21(b), no Seller or Foreign Subsidiary nor any predecessor or Affiliate thereof has received any Notice, report or other information regarding any actual or alleged violation of, or any Liabilities (including any investigatory, remedial or corrective obligation) under, Environmental Laws for the three-year period prior to the Closing Date, or that remain outstanding, unresolved or unsatisfied.

(c) Except as set forth on Schedule 5.21(c), there is no pending Claim asserting Liability against any Seller or Foreign Subsidiary or any predecessor or Affiliate thereof alleging that the foregoing Persons have, and, to the Knowledge of Sellers, no Seller or Foreign Subsidiary nor any predecessor or Affiliate thereof has, (i) treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, Released, or exposed any Person to, any substance, including any Hazardous Substances, or (ii) owned or operated any property or Facility contaminated by any substance, in either case so as to give rise to any current or future Liabilities, including any Liability for response costs, corrective action costs, personal injury, property damage, natural resources damages or attorney fees, or any material investigatory, corrective or remedial obligations, pursuant to CERCLA or any other Environmental Laws.

(d) Except as set forth on Schedule 5.21(d), to the Knowledge of Sellers, no Seller or Foreign Subsidiary nor any predecessor or Affiliate thereof has manufactured, produced, sold, marketed, installed or distributed products or items containing asbestos or other Hazardous Substances such as would give rise to Liability under Environmental Laws, and none of the foregoing Persons have any Liability with respect to the presence or alleged presence of asbestos or other Hazardous Substances in any product or item or at or upon any property or Facility.

(e) Sellers have provided or made available (in the Data Room or as an exhibit to a Filed Company SEC Document) to Purchasers true and correct copies of all

environmental audits, reports and other documents materially bearing on environmental, health and safety matters relating to the current operations, properties or Facilities of the Business.

5.22 Affiliate Transactions(a). Except as disclosed on Schedule 5.22 (a), no Insider is a party to any agreement, Contract, commitment or transaction with any Seller or Foreign Subsidiary or has any interest in the Acquired Assets or any property, real or personal or mixed, tangible or intangible, of any Seller or Foreign Subsidiary.

~~(b) Except as disclosed on Schedule 5.22(b), (i) no Lane Entity is a party to any agreement, Contract, commitment or transaction with, or the rights or obligations under which is shared with, any other Seller or Foreign Subsidiary, (ii) no Lane Entity has any interest in the Acquired Assets or any property, real or personal or mixed, tangible or intangible, of any other Seller or Foreign Subsidiary or used in or otherwise related to the Business (other than the Lane Business), and (iii) no other Seller or Foreign Subsidiary has any interest in the property, real or personal or mixed, tangible or intangible, of any Lane Entity or of the Lane Business.~~

5.23 Relationships with Customers and Suppliers. Schedule 5.23 sets forth a true and accurate list of (a) the names and addresses of the top twenty (20) customers of Sellers (on a consolidated basis) (by dollar volume of sales to such customers) (such customers, the “Material Customers”) and (b) the names of the top ten (10) suppliers of Sellers (on a consolidated basis) (by dollar volume of purchases from such suppliers) (such suppliers, the “Material Suppliers”), in each case for the fiscal year ended December 29, 2012 and for the six (6)-month period ended June 29, 2013. Except as set forth on Schedule 5.23, to the Knowledge of Sellers, no Seller or Foreign Subsidiary has received any indication from any Material Customer or Material Supplier to the effect that such Material Customer or Material Supplier will stop, materially decrease the rate of, or materially change the terms (whether related to payment, price or otherwise) with respect to, buying or supplying as the case may be, materials, products or services from or to any such Seller or Foreign Subsidiary (whether as a result of the consummation of the transactions contemplated hereby or otherwise).

5.24 Product Warranty. All products manufactured, sold, leased, or delivered by any Seller or Foreign Subsidiary have been in material conformity with all applicable contractual commitments and all express warranties, and no Seller or Foreign Subsidiary has any material Liability for replacement or repair thereof or other damages in connection therewith.

5.25 Product Liability. No Seller or Foreign Subsidiary has any material Liability arising out of any injury to individuals or property as a result of the ownership, possession, or use of any product manufactured, sold, leased, or delivered by any Seller or Foreign Subsidiary.

5.26 Brokers. Except as set forth on Schedule 5.26, no Seller has incurred any Liability to any broker, finder or agent with respect to the payment of any commission regarding the consummation of the transactions contemplated hereby.

5.27 Absence of Certain Developments. Except as set forth on Schedule 5.27 and except as expressly contemplated by this Agreement, since the date of the Latest Balance Sheet, no Seller or Foreign Subsidiary has taken or omitted to take any action or suffered any condition or circumstance that would require the consent of Holdings pursuant to Section 7.3.



5.28 Bank Accounts Schedule. Schedule 5.28 lists all bank accounts, safety deposit boxes and lock boxes (designating each authorized signatory with respect thereto) for each Seller and Foreign Subsidiary.

5.29 Officers and Directors. Schedule 5.29 lists all officers, directors and equivalent senior executives and members of governing bodies of each Seller and Foreign Subsidiary.

5.30 Compliance with Customs and International Trade Laws. Except as set forth on Schedule 5.30, and without in any way limiting the representations and warranties otherwise provided in Article V of this Agreement:

(a) Sellers and their respective Affiliates are in material compliance with all applicable Customs and International Trade Laws, and to the Knowledge of Sellers, at no time during the past five (5) years have Sellers or any of their respective Affiliates committed any violation of the Customs and International Trade Laws, and to the Knowledge of Sellers, there are no unresolved questions or claims concerning any liability of Sellers or any of their respective Affiliates with respect to any such Laws.

(b) Neither Sellers nor, to the Knowledge of Sellers, any of their respective Affiliates is subject to any pending material civil or criminal investigation, litigation, audit, compliance assessment, focused assessment, penalty Proceeding or assessment, liquidated damages Proceeding or claim, forfeiture or forfeiture action, record-keeping inquiry, assessment of additional duty for failure to properly mark imported merchandise, notice to properly mark merchandise or return merchandise to Customs custody, claim for additional Customs duties or fees, denial Order, suspension of export privileges, government sanction, or any other action, Proceeding or claim by a Governmental Authority involving or otherwise relating to any alleged or actual violation of the Customs and International Trade Laws or relating to any alleged or actual underpayment of Customs duties, fees, Taxes or other amounts owed pursuant to the Customs and International Trade Laws, and to the Knowledge of Sellers, each Seller and their respective Affiliates has paid all Customs duties and fees, all other import duties and fees, and brokerage fees owed for merchandise imported by them or imported on their behalf into the United States.

(c) To the Knowledge of Sellers, neither Sellers nor any of their respective Affiliates has made or provided any false statement or omission to any Governmental Authority or to any purchaser of products, in connection with the importation of merchandise, the valuation or classification of imported merchandise, the duty treatment of imported merchandise, the eligibility of imported merchandise for favorable duty rates or other special treatment, country-of-origin marking, North American Free Trade Act (NAFTA) Certificates, marking and labeling requirements for textiles and apparel, other statements or certificates concerning origin, quota or visa rights, export licenses or other export authorizations, U.S.-content requirements, licenses or other approvals required by a foreign Governmental Authority, or any other requirement relating to the Customs and International Trade Laws.

(d) Neither Sellers nor, to the Knowledge of Sellers, any of their respective Affiliates nor any agent acting on behalf of Sellers or any of their respective Affiliates has made, either directly or indirectly, any payment, offer, gift, promise to give, or authorized or otherwise

participated in, assisted in or facilitated any payment or gift that is prohibited by the United States Foreign Corrupt Practices Act.

(e) None of the products or materials imported by, for or on behalf of Sellers or any of their respective Affiliates for which final liquidation has not yet occurred is subject to or otherwise covered by an antidumping duty Order or countervailing duty Order that remains in effect or is subject to or otherwise covered by any pending antidumping or countervailing duty investigation by agencies of any Governmental Authority.

(f) No Seller or Foreign Subsidiary, nor any officer or director thereof, nor, to the Knowledge of Sellers, any agent acting on behalf of any Seller or Foreign Subsidiary has (i) been or is designated on any list of any U.S. Governmental Authority, including OFAC's Specially Designated Nationals and Blocked Persons List, the U.S. Department of Commerce's Denied Persons List, the Commerce Entity List, and the U.S. Department of State's Debarred List, (ii) participated in any transaction involving such designated Person or any country that is subject to U.S. sanctions administered by OFAC, (iii) exported (including deemed exportation) or re-exported, directly or indirectly, any good, technology or services in violation of any applicable U.S. export control or economic sanctions Laws administered by OFAC, the U.S. Department of Commerce or the U.S. Department of State, or (iv) participated in any export, re-export or transaction connected with any purpose prohibited by U.S. export control and economic sanctions Laws, including, without limitation, support for international terrorism and nuclear, chemical or biological weapons proliferation.

5.31 Government Contracts. Sellers have complied with all material terms and conditions of, and all Laws relating to, each Government Contract, and Sellers have not received any notice from the U.S. Government or any prime contractor or subcontractor asserting that any Seller has materially breached or violated any Law, certification, representation, clause, provision or requirement relating to any Government Contract. Sellers have established and maintain adequate internal controls for compliance with all Government Contracts and all invoices or other demands for payment submitted by or on behalf of Sellers pursuant to any Government Contract were current, accurate and complete in all material respects as of their respective submission dates. Sellers have not (i) been suspended or debarred from bidding on government contracts by a Governmental Authority; (ii) been audited or investigated by any Governmental Authority with respect to any Government Contract; (iii) conducted or initiated any internal investigation or made a voluntary or mandatory disclosure to any Governmental Authority or other customer or prime contractor or higher-tier subcontractor with respect to any alleged or potential irregularity, misstatement or omission arising under or relating to a Government Contract; (iv) received from any Governmental Authority or other customer or prime contractor or higher-tier subcontractor any notice of breach, cure, show cause or default with respect to any Government Contract; or (v) had any Government Contract terminated by any Governmental Authority or other customer or prime contractor or higher-tier subcontractor for default or failure to perform in accordance with applicable standards.

5.32 Warranties are Exclusive. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR EQUITY, IN RESPECT OF ANY OF THEIR ASSETS (INCLUDING THE ACQUIRED ASSETS), LIABILITIES (INCLUDING THE ASSUMED OBLIGATIONS)

OR OPERATIONS, INCLUDING WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR NON-INFRINGEMENT. ANY OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED AND NONE SHALL BE IMPLIED AT LAW OR EQUITY. PURCHASERS HEREBY ACKNOWLEDGE AND AGREE THAT PURCHASERS ARE PURCHASING THE ACQUIRED ASSETS ON AN "AS IS, WHERE IS" BASIS AFTER GIVING EFFECT TO THE TERMS CONTAINED HEREIN.

## ARTICLE VI REPRESENTATIONS AND WARRANTIES OF PURCHASERS

Purchasers represent and warrant to Sellers on the date of this Agreement that the statements contained in this Article VI are correct and complete.

6.1 Organization. Each Purchaser and each Guarantor is a legal entity validly existing and in good standing under the Laws of the jurisdiction of its organization and has the full power and authority to execute, deliver and perform this Agreement and to consummate all transactions contemplated hereby.

6.2 Authority. The execution, delivery and performance by each Purchaser and each Guarantor of the Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of such Purchaser or such Guarantor and do not and will not violate any provisions of such Person's organizational documents, any applicable Law or any Contract or Order binding upon such Person. All Transaction Documents to which any Purchaser is a party, and in the case of Guarantors, this Agreement, constitute a valid and binding agreement of each Purchaser and each Guarantor, enforceable against such Person in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other Laws affecting creditors' rights generally from time to time in effect, and to general equitable principles.

6.3 Consents. No notice to, filing with, authorization of, exemption by, or consent (other than the approval of the Bankruptcy Court) of any Person is required in order for Purchasers and Guarantors to consummate the transactions contemplated hereby, other than pursuant to the HSR Act.

6.4 Ownership and Transfer of Intermediate Holdings Units, ~~Broyhill Intermediate Holdings Units and Lane Intermediate Holdings Units~~. Purchasers are, or at the Closing will be, the record and beneficial owners of the ~~Intermediate Holdings Units, the Broyhill Intermediate Holdings Units and the Lane~~ Intermediate Holdings Units, free and clear of any and all Liens. Purchasers have, or at the Closing will have, the requisite corporate power and authority to sell, transfer, assign and deliver the Intermediate Holdings Units, ~~the Broyhill Intermediate Holdings Units and the Lane Intermediate Holdings Units~~ as provided in this Agreement, and such deliver will convey to Sellers good and marketable title to the Intermediate Holdings Units, ~~the Broyhill Intermediate Holdings Units and the Lane Intermediate Holdings Units~~, free and clear of any and all Liens.



6.5 Availability of Funds. As of the Closing, Purchasers will have sufficient funds available to consummate the transactions contemplated by this Agreement and to provide adequate assurance of future performance by Purchasers under this Agreement and the Assumed Contracts.

6.6 Solvency. Assuming the Acquired Assets and the Assumed Obligations, taken together, do not, in and of themselves, render Purchasers Insolvent, and assuming the accuracy of the representations and warranties of Sellers set forth in Article V (without giving effect to any “materiality,” “Material Adverse Effect” or “Knowledge” qualifiers included therein), as of the Closing and immediately after consummating the transactions contemplated by this Agreement and the other Transaction Documents, Purchasers will not (a) be insolvent (either because their financial condition is such that the sum of their debts is greater than the fair value of their assets or because the present fair value of their assets will be less than the amount required to pay their probable Liability on their debts as they become absolute and matured), (b) have unreasonably small capital with which to engage in their business, or (c) have incurred or plan to incur debts beyond their ability to repay such debts as they become absolute and matured (“Insolvent”).

6.7 Investigation by Purchasers. Purchasers have conducted their own independent review and analysis of the Acquired Assets, the Assumed Obligations, and the Business. Purchasers have conducted their own independent review of all orders of, and all motions, pleadings, and other submissions to, the Bankruptcy Court in connection with the Chapter 11 Cases. In entering into this Agreement, Purchasers have relied solely upon their own investigation and analysis, and Purchasers acknowledge that none of Sellers, their Affiliates, or their respective representatives makes or has made any representation or warranty, either express or implied, as to the accuracy or completeness of any of the information provided or made available to Purchasers, their Affiliates or their respective representatives, except for the representations and warranties contained in this Agreement (which are subject to the limitations and restrictions contained in this Agreement).

## ARTICLE VII PRE-CLOSING COVENANTS

7.1 Consents and Approvals. In furtherance of Section 4.5, except with respect to the Government Contracts, Sellers and, as applicable, Purchasers, shall, at their sole cost and expense, use reasonable best efforts (i) solely in the case of Sellers, to obtain all necessary consents and approvals, as reasonably requested by Purchasers, to consummate the purchase and sale of the Acquired Assets and the assignment of the Assumed Obligations, together with any other necessary consents and approvals to consummate the transactions contemplated hereby, including obtaining entry of the Bidding Procedures Order and Sale Order without modification except as Purchasers may consent, (ii) solely in the case of Sellers, to obtain, as requested by Purchasers, all required consents and approvals (if any) necessary to assign and transfer the Assumed Executory Contracts and Sellers’ Permits to Purchasers at Closing and, to the extent that one (1) or more of Sellers’ Permits or any Assumed Executory Contracts are not transferable, to assist Purchasers, at Purchasers’ sole cost, in obtaining replacements therefor. In the event that any of Sellers’ Permits or any Assumed Executory Contracts are not transferable or replacements therefor are not obtainable on or before the Closing, but such Permits, Assumed Executory Contracts, consents and approvals to transfer, or replacements therefor, are obtainable

after the Closing, Sellers shall continue to use reasonable best efforts in cooperation with Purchasers after the Closing as may be required to obtain all required consents and approvals to transfer, or obtain replacements for, such Permits or Assumed Executory Contracts after Closing and shall do all things necessary to give Purchasers the benefits that would be obtained under such Permits and Assumed Executory Contracts, in each case at Purchasers' sole cost and expense. Purchasers shall give any other notices to, make any other filings with, and use reasonable best efforts to cooperate with Sellers to obtain, any other authorizations, consents and approvals in connection with the matters contemplated by this Section 7.1. Each of the parties shall give any other notices to, make any other required filings with, and use commercially reasonable best efforts to obtain, any other required authorizations, consents and approvals of any Governmental Authority in connection with the matters contemplated by this Agreement.

As soon as practicable, but in no event later than five (5) Business Days after the Effective Date, Holdings and FB Parent shall make the filings required to be made under the HSR Act in connection with the transactions contemplated by this Agreement. Holdings and FB Parent shall use their reasonable best efforts to supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act and to take all other reasonable actions necessary to cause the expiration or early termination of the applicable waiting periods under the HSR Act as soon as practicable and to avoid or eliminate each and every impediment under the HSR Act or any other antitrust competition or trade regulation Law by any United States or non-United States Government antitrust authority or any other party so as to enable the Parties to expeditiously close the transactions contemplated hereby no later than the Closing Date Deadline (the "HSR Approval"). In connection with the efforts referenced in this Section 7.1 to obtain all requisite approvals and authorizations for the transactions contemplated by this Agreement under the HSR Act, each of Holdings and FB Parent shall use all reasonable best efforts to: (a) cooperate in all respects with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any legal proceeding initiated by a private party; (b) keep the other party informed in all material respects of any material communication received by such party from, or given by such party to, any Governmental Authority and of any material communication received or given in connection with any proceeding by a private party; and (c) except as otherwise prohibited by Law, permit the other party to review any material communication given by it to, and consult with each other in advance of and be permitted to attend any meeting or conference with, any Governmental Authority or, in connection with any proceeding by a private party, with any other Person, in each case regarding any of the transactions contemplated by this Agreement. The filing fees associated with the filing under the HSR Act described in this Section 7.1 shall be paid by the Purchasers.

7.2 Access to Information and Facilities.— Sellers agree that, prior to the Closing Date, Purchasers, each lender to Purchasers, if any, and their respective representatives shall, upon reasonable notice and so long as such access does not unreasonably interfere with the business operations of any Seller, have reasonable access during normal business hours to all Facilities and shall be entitled to make such reasonable investigation of the properties, businesses and operations of Sellers (including conducting a physical inventory of the Inventory) and such examination of the Books and Records and financial condition of Sellers as they reasonably request and to make extracts and copies to the extent necessary of the Books and Records; provided that no investigation pursuant to this Section 7.2 shall affect any representations or

warranties made herein or the conditions to the obligations of the respective parties to consummate the transactions contemplated by this Agreement.

7.3 Conduct of the Business Pending the Closing— Except as otherwise expressly contemplated by this Agreement ~~(including Section 7.10)~~ or with the prior written consent of Holdings or except as described on Schedule 7.3, from the date hereof until the Closing Date, Sellers:

(a) shall not sell, lease, license, transfer, encumber, abandon, permit to lapse or otherwise dispose of any of their assets (including the capital stock of Affiliates), except for (A) the sale of Inventory in the Ordinary Course of Business, (B) dispositions of obsolete equipment in the Ordinary Course of Business, or (C) as may be required by applicable Law or any Governmental Authority in order to permit or facilitate the consummation of the transactions contemplated by this Agreement;

(b) shall conduct the Business in the Ordinary Course of Business (including timely payment of accounts payable, purchasing and maintaining appropriate levels of Inventory, maintenance of the Books and Records, performing all maintenance and repairs, making capital expenditures and collecting Accounts Receivable), in each case in a manner not materially inconsistent with the DIP Budget;

(c) shall not authorize, declare or pay any dividends on or make any distribution with respect to their outstanding shares of capital stock (whether in cash, assets, stock or other securities) other than to another Seller;

(d) shall not reclassify, redeem, or purchase or otherwise acquire, directly or indirectly, any of their capital stock or membership interests, or make any other change with respect to their capital structure;

(e) shall not issue, sell, pledge, dispose of or encumber, or authorize the issuance, sale, pledge, disposition or encumbrance of, any shares of their capital stock or other ownership interest or any securities convertible into or exchangeable for any such shares or ownership interest, or any rights, warrants or options to acquire or with respect to any such shares of capital stock, ownership interest or convertible or exchangeable securities or take any action to cause to be exercisable any otherwise unexercisable option under any existing stock option plan;

(f) shall use commercially reasonable efforts to preserve intact the Business;

(g) shall not (A) grant or announce any stock option, equity or incentive awards or the increase in the salaries, bonuses or other compensation and benefits payable to any of the employees, directors or other service providers of the Business; (B) hire any new employees to the Business, except in the Ordinary Course of Business consistent with past practice with respect to non-officer employees with an annual base and incentive compensation opportunity not to exceed Seventy-Five Thousand Dollars (\$75,000), (C) pay or agree to pay any pension, retirement allowance, termination or severance pay, bonus, stay bonus or other employee benefit not required by any existing Employee Benefit Plan to any employee, director or other service provider of the Business, whether past or present, (D) enter into or amend any

Contracts of employment or any consulting, bonus, severance, retention, retirement or similar agreement except for agreements for newly hired non-officer employees in the Ordinary Course of Business consistent with past practice with an annual base and incentive compensation opportunity not to exceed Seventy-Five Thousand Dollars (\$75,000), (E) except as required to ensure that any Employee Benefit Plan is not then out of compliance with applicable Law, enter into or adopt any new, or materially increase benefits under or renew, amend or terminate any existing, Employee Benefit Plan or any Collective Bargaining Agreement, or (F) grant any increase in the compensation payable or to become payable to any employee, except such increases as are required by contract in effect as of the date hereof and disclosed on Schedule 5.13(a) or filed as an exhibit to a Filed Company SEC Document; ~~provided, that notwithstanding anything in this clause (g) to the contrary, the Sellers may pay retention bonuses in connection with the Closing and/or~~ increase the salaries, in each case with respect to of employees who currently make less than \$150,000 ~~per year,~~ subject to (i) all such ~~retention bonuses and~~ raises not to exceed \$250,000 in the aggregate and (ii) no such individual's ~~raise and/or bonus~~ being more than the higher of \$10,000 and ~~ten percent (10%)~~ of such employee's then current salary;

(h) shall not change in any material respects any financial accounting or cash management practices, policies or procedures (including accelerating any Accounts Receivable) or any of their methods of reporting income, deductions or other material items for financial accounting purposes, except as required by GAAP or applicable Law;

(i) shall not adopt any amendments to their articles of incorporation or bylaws or other applicable organizational documents;

(j) shall not create any new Subsidiary;

(k) shall not incur, assume, guarantee, prepay or otherwise become liable for, or modify in any material respect the terms of, any Indebtedness;

(l) shall not fail to pay any Tax when it becomes due and payable;

(m) shall not make or change any material election for Tax purposes, change an annual accounting period for Tax purposes, adopt or change any accounting method for Tax purposes, file any amended Tax Return, enter into any closing agreement, settle any Tax claim or assessment, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment, or take any other similar action relating to the filing of any Tax Return or the payment of any Tax, if the taking of any such action could reasonably be expected to increase the Tax liability of Purchasers for any taxable period (or portion thereof) beginning after the Closing Date (other than as the result of the reduction in any Tax attribute of any Seller);

(n) shall not modify, amend, terminate or waive any rights under any Material Contract, or any Contract that would be a Material Contract if in effect on the date of ~~the Prior Agreement (or, in the case of any Contract of any Lane Entity, on the date of~~ this Agreement), except in the Ordinary Course of Business;

(o) shall not enter into any Material Contracts, or terminate or reject (whether pursuant to Section 365 of the Bankruptcy Code or otherwise) any Contract;

(p) shall not enter into, amend, waive or terminate (other than terminations in accordance with their terms) any transaction with any Insider;

(q) shall not enter into any new line of business or discontinue any line of business;

(r) except as permitted or required pursuant to the DIP Facility, shall not settle, pay, discharge, waive or satisfy any litigation, investigation, arbitration, Proceeding or other claim, Liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), except for any such Proceedings, claims, Liabilities or obligations seeking monetary payments only that are not in excess of Fifty Thousand Dollars (\$50,000) individually or One Hundred Thousand Dollars (\$100,000) in the aggregate, excluding any amounts which may be paid under existing insurance policies (such Proceedings, claims, Liabilities or obligations, the “Permitted Settlements”); provided that the terms of any such Permitted Settlements shall require that such monetary payments be paid in cash in full prior to the Closing or solely by Sellers following the Closing;

(s) shall not (A) sell, transfer or otherwise dispose of, encumber, or take or fail to take any action that could reasonably be expected to result in any loss, lapse, abandonment, expiration, invalidity or unenforceability of, any material Intellectual Property; (B) disclose any material confidential information to any Person (except pursuant to an appropriate confidentiality agreement in the Ordinary Course of Business or with a prospective bidder in connection with the Auction which has executed an appropriate confidentiality agreement), or (C) enter into any agreement with any other Person that limits or restricts the ability of any Seller or Foreign Subsidiary to conduct certain activities or use or dispose of certain assets (including any Company Intellectual Property);

(t) shall not authorize, or make any commitment with respect thereto, any capital expenditure in excess of the amounts permitted pursuant to the DIP Facility; provided that such capital expenditures with respect to the Foreign Subsidiaries shall be paid in cash in full prior to the Closing and shall not provide for any payment Liability to be satisfied following the Closing;

(u) shall not fail to maintain in full force and effect material insurance policies covering any Seller or Foreign Subsidiary and its respective properties, assets and businesses, or the Business, in a form and amount consistent with past practice;

(v) shall not acquire (including by merger, consolidation, or acquisition of stock or assets) or make any investment in any interest in any corporation, partnership, limited liability company, association, trust or any other entity, group (as such term is used in Section 13 of the Exchange Act) or organization (including a Governmental Authority), or any division thereof or any assets thereof;

(w) shall maintain compliance in all material respects with all Laws of all Governmental Authorities that relate to Sellers, the Business or the Acquired Assets;

(x) except ~~in connection with a Lane Sale and~~ as provided in Section 10.1, shall not implement any plant closings or employee layoffs that could implicate the WARN Act;



(y) shall not terminate, discontinue, close or dispose of any Owned Real Property or Leased Facility or business operation of the Business;

(z) shall not agree, in writing or otherwise, or announce an intention, to take any of the foregoing actions; and

(aa) shall cause each Foreign Subsidiary to comply with this Section 7.3 as if such Foreign Subsidiary were a Seller; and.

~~Sellers (other than the Lane Entities) have not, from the date of the Prior Agreement until the date hereof, taken or omitted to take any action or suffered to exist any circumstance, in each case as would be restricted by this Section 7.3 if taken, omitted or suffered following the date hereof and prior to the Closing Date.~~

#### 7.4 Notification of Certain Matters.

(a) Sellers shall give notice to Purchasers of (i) the occurrence or nonoccurrence of any event that would be likely to cause either (A) any representation or warranty of Sellers contained in this Agreement, or in connection with the transactions contemplated hereunder, to be untrue or inaccurate in any material respect at any time from the date ~~of the Prior Agreement (or, in the case of any representation or warranty with respect to the Lane Entities, the date hereof)~~ hereof to the Closing or (B) directly or indirectly, any Material Adverse Effect, or (ii) any material failure of any Seller to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder. Notwithstanding the foregoing, the delivery of any notice pursuant to this Section 7.4(a) shall not (x) be deemed to amend or supplement any of the Disclosure Schedules contemplated hereby, (y) be deemed to cure any breach of any representation, warranty, covenant or agreement or to satisfy any condition, or (z) limit or otherwise affect the remedies available hereunder to the party receiving such notice.

(b) To the extent not already included, Sellers shall add Purchasers, and Purchasers' counsel, to Sellers' so-called "Rule 2002 notice list" and otherwise provide notice to Purchasers of all matters that are required to be served on Sellers' creditors pursuant to the Bankruptcy Code and Rules.

#### 7.5 Bankruptcy Actions.

(a) On the Petition Date, Sellers filed with the Bankruptcy Court a motion, ~~in form and substance approved by Purchasers,~~ for entry of the Bidding Procedures Order and approval of the transaction contemplated hereby (the "Sale Motion"). The Sale Motion shall be amended to seek, among other things, the Bankruptcy Court's approval of this Agreement, Sellers' performance under this Agreement and the assumption and the assignment of the Assumed Executory Contracts, and shall provide that Purchasers' promise to perform following the Closing all obligations under the Assumed Executory Contracts shall constitute the only required adequate assurance of future performance required pursuant to Section 365(f)(2) of the Bankruptcy Code.

(b) Sellers shall: (i) obtain entry of the Bidding Procedures Order by the Bidding Procedures Order Deadline Date, (ii) ensure that the Auction (to the extent required by

the Bankruptcy Court), during which Sellers will solicit Qualified Bids from other prospective purchasers for the sale of the Acquired Assets, is held in accordance with the procedures set forth in the Bidding Procedures Order, (iii) obtain entry of the Sale Order by no later than the Sale Order Deadline, and (iv) consummate the Closing on or before the Closing Date Deadline.

(c) Sellers shall deliver or cause to be delivered to Purchasers for review and comment, as soon as commercially reasonable and in any event not less than two (2) Business Days prior to filing, all documents to be filed on behalf of Sellers with the Bankruptcy Court, including all motions, applications, petitions, schedules and supporting papers prepared by Sellers (including forms of Orders and Notices to interested parties) that relate to the transactions contemplated in this Agreement prior to the filing thereof in the Chapter 11 Cases. All motions, applications, petitions, schedules and supporting papers prepared by Sellers and relating (directly or indirectly) to the transactions contemplated by this Agreement to be filed on behalf of Sellers after the date hereof must be reasonably satisfactory in form and substance to Purchasers in their own discretion.

(d) Purchasers and Sellers each agree that they will promptly take such actions as are reasonably requested by ~~Purchasers~~ the other to assist in obtaining entry of the Sale Order and the Bidding Procedures Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of providing necessary assurances of performance ~~by Sellers~~ of their respective obligations under this Agreement and the Transaction Documents and demonstrating that Purchasers are a good faith buyer under Section 363(m) of the Bankruptcy Code.

7.6 Other Bids. Purchasers acknowledge that, pursuant to the Bidding Procedures Order, and after entry of the Bidding Procedures Order on the Bankruptcy Court's docket, Sellers will solicit bids from other prospective purchasers for the sale of all of the Acquired Assets in accordance with the procedures set forth in the Bidding Procedures Order; provided, however, that, following completion of the Auction until the Closing (in the event that Purchasers are selected as the winning bidder), no Seller shall, directly or indirectly, through any officer, director, employee, agent, professional or advisor, solicit any Alternative Transaction or participate in any negotiations or discussions with respect to any Alternative Transaction, and no Seller shall, and Sellers shall cause their Affiliates not to, (i) execute an agreement with respect to an Alternative Transaction or (ii) seek or support Bankruptcy Court approval of a motion or Order inconsistent in any material respect with the transactions contemplated by this Agreement.

#### 7.7 Lane Entities

~~With respect to the Acquired Lane Assets, each Seller hereby covenants that it will (and it will cause its Affiliates to), from time to time, prior to or subsequent to the Closing, without further consideration, do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all further acts, conveyances, transfers, assignments and assurances as reasonably may be required to convey or transfer to Sellers (prior to the Closing) or to Purchasers or, at their option, their Affiliates, any such Acquired Lane Assets free and clear of all Liens (other than Permitted Liens) and Liabilities.~~

#### 7.7 ~~7.8~~ Bankruptcy Matters.

(a) Sellers and Purchaser acknowledge that this Agreement and the sale of the Acquired Assets and the assumption and assignment of the Assumed Executory Contracts are subject to Bankruptcy Court approval. Sellers and Purchasers acknowledge that (i) to obtain such approval, Sellers must demonstrate that they have taken reasonable steps to obtain the highest and otherwise best offer possible for the Acquired Assets, and that such demonstration shall include giving notice of the transactions contemplated by this Agreement to creditors and interested parties as ordered by the Bankruptcy Court, and (ii) Purchasers must provide adequate assurance of future performance under the to-be-assigned Assumed Executory Contracts.

(b) In the event an appeal is taken or a stay pending appeal is requested, from either the Bidding Procedures Order or the Sale Order, Sellers shall immediately notify Purchasers of such appeal or stay request and shall promptly provide to Purchasers a copy of the related Notice of appeal or Order of stay. Sellers shall also provide Purchasers with written notice of any motion or application filed in connection with any appeal from either of such Orders.

(c) From and after the Effective Date, Sellers shall not take any action which is intended to (or is reasonably likely to), or fail to take any action the intent (or the reasonably likely result) of which failure to act is to, result in the reversal, voiding, modification or staying of the Bidding Procedures Order or this Agreement. If Purchasers are the Successful Bidder at the Auction, Sellers shall not take any action which is intended to (or is reasonably likely to), or fail to take any action the intent (or the reasonably likely result) of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order or this Agreement.

7.8 ~~7.9~~ Real Property— From and after the date of ~~the Prior~~ this Agreement through (i) the effective date of assignment for the leases that are Designated Contracts assumed by Purchasers after the Closing, and (ii) the Closing for the Owned Real Property and all Facility Leases that are not Designated Contracts, except with respect to the Excluded Assets:

(a) Maintenance of Real Property. Sellers ~~have maintained and~~ shall maintain the Owned Real Property and the Leased Facilities, including all of the improvements thereon, in substantially the same condition as of the date of this Agreement, ordinary wear and tear excepted, and ~~have not demolished or removed and~~ shall not demolish or remove any of the existing improvements, ~~or erected~~ or erect new improvements on the real property or any portion thereof, without the prior written consent of Holdings.

(b) Leases. Sellers ~~have not amended, modified, extended, renewed or terminated, and~~ shall not amend, modify, extend, renew or terminate any Facility Lease, ~~and have not entered~~ and shall not enter into any new lease, sublease, license or other agreement for the use or occupancy of any real property, without the prior written consent of Holdings.

(c) Title Insurance and Surveys. Sellers shall use their commercially reasonable best efforts to assist Purchasers in obtaining, at Purchasers' sole cost and expense, the Title Commitments, Title Policies and Surveys in form and substance reasonably satisfactory to Purchasers, including removing from title any Liens which are not Permitted Liens. Sellers shall provide the title insurance company selected by Purchasers with reasonable affidavit, escrow or other assurances requested by such title insurance company to issue the Title Policies.



7.10 Lane Sale

~~On or prior to November 29, 2013, FB Parent may consummate a Lane Sale; provided that (a) Purchaser and its Affiliates shall have been considered qualified bidders for the Lane Business under the bidding procedures order for such Lane Sale, and (b) each Seller shall cause an amount equal to the Lane Net Proceeds to be applied in accordance with the DIP Facility. Upon consummation of a Lane Sale, each Lane Entity shall cease to constitute a "Seller" hereunder, and (x) Holdings shall have the right to amend the Schedule of Sellers and Purchasers to remove such Seller and the Corresponding Purchaser, and (y) any provisions set forth in this Agreement relating to actions at the Closing by any Lane Entity and its Corresponding Purchaser shall be deemed no longer applicable.~~

7.9 ~~7.11~~ 503 Liabilities. ~~Since the date of the Prior Agreement, Sellers have paid, and from~~ From and after the date of this Agreement and through the Closing, Sellers shall pay the 503 Liabilities in the Ordinary Course of Business and in any event in accordance with their applicable terms.

7.10 ~~7.12~~ Personnel Matters. On the Business Day prior to the Closing Date, Sellers shall deliver to Purchasers an updated Schedule 5.18 containing an accurate and complete list of the names, job classifications, dates of hire, wage rates, base compensation, and any supplemental or bonus compensation (including any retention or stay bonus arrangements) for all Persons employed by or providing independent contract services to Sellers and the Foreign Subsidiaries as of the Business Day prior to the Closing Date.

7.11 ~~7.13~~ Chapter 11 Filings by Foreign Subsidiaries. Following ~~the execution and delivery of this Agreement and~~ a written request by Holdings no later than five (5) days prior to the Bid Deadline, ~~promptly and in any event no later than ten (10) days following request by Holdings~~ with respect to any Foreign Subsidiaries, Sellers shall cause such Foreign Subsidiary(ies) to file petitions for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court and as party(ies) to the Chapter 11 Cases and to execute and deliver to Purchasers a joinder to this Agreement in form and substance acceptable Holdings, promptly, and in any event no later than ten (10) days following receipt of such written request. From and after such filing and the delivery of such joinder, any such Foreign Subsidiary shall constitute a "Seller" and shall cease to constitute a "Foreign Subsidiary" or an "Acquired Subsidiary" hereunder, Section 2.1(a)(xviii) shall be deemed amended accordingly, and Holdings shall have the right to amend the Schedule of Sellers and Purchasers to reflect such additional Seller and to designate a Corresponding Purchaser.

7.12 ~~7.14~~ Restricted Cash. Following receipt by Sellers of any amounts constituting Restricted Cash, such amounts shall be set aside and held in trust by Sellers for delivery to Purchasers at the Closing.

## ARTICLE VIII CONDITIONS TO CLOSING

8.1 Conditions to Parties' Obligations. The obligations of Purchasers and Sellers under this Agreement are subject to satisfaction of the following conditions precedent on or before the Closing Date, any one or more of which may be waived (but only in writing) by Holdings (on behalf of Purchasers) or FB Parent (on behalf of Sellers) (provided that no such

waiver shall be deemed to have cured any breach of any representation, warranty or covenant made in this Agreement):

(a) Governmental Approvals. All authorizations, consents, filings and approvals, in each case from any Governmental Authority, necessary to permit the parties to perform the transactions contemplated hereby shall have been duly obtained, made or given, shall be in form and substance reasonably satisfactory to the parties, shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and effect. All terminations or expirations of waiting periods imposed (and any extension thereof) by any Governmental Authority necessary for the transactions contemplated under this Agreement, if any, shall have occurred.

(b) No Order. No Order shall be issued by any Governmental Authority restraining or prohibiting the consummation of the transactions contemplated by this Agreement.

8.2 Conditions to Purchasers' Obligations. The obligations of Purchasers under this Agreement are subject to satisfaction of the following conditions precedent on or before the Closing Date, any one or more of which may be waived (but only in writing) by Holdings (provided that no such waiver shall be deemed to have cured any breach of any representation, warranty or covenant made in this Agreement):

(a) Accuracy of Representations and Warranties. Sellers shall make all of the representations and warranties set forth in Article V on and as of the Closing Date, and each such representation and warranty that is qualified by "material," ~~"materiality,"~~ "materiality," "Material Adverse Effect" or other terms of similar import ("Materiality Qualifiers") shall be true and correct as of the Closing Date in all respects, and each such representation and warranty that is not qualified by Materiality Qualifiers shall be true and correct as of the Closing Date in all material respects (in each case except for those representations and warranties made as of a specified date ~~other than the date of the Prior Agreement or the date of this Agreement,~~ which shall be true and correct in all respects as of that date if qualified by Materiality Qualifiers or shall be true and correct in all material respects as of that date if not qualified by Materiality Qualifiers); provided that failure to satisfy the condition set forth in this Section 8.2(a) cannot be caused by any changes, including deterioration, to the Lane Business, so long as (i) the Lane Business has, in the aggregate, been operated substantially in accordance with the DIP Budget, (ii) the Lane Business has, in the aggregate, been operated substantially in accordance with Section 7.3(b) and (iii) except for resignations, terminations for cause in the Ordinary Course of Business, as set forth on Schedule 5.17, or as provided in Section 10.1, employees of the Lane Business have not been terminated by Seller without Purchaser's consent.

(b) Performance of Covenants. Sellers shall have performed and complied in all material respects with the obligations and covenants required by this Agreement to be performed or complied with by Sellers on or prior to the Closing Date; provided that failure to satisfy the condition set forth in this Section 8.2(b) cannot be caused by any changes, including deterioration, to the Lane Business, so long as (i) the Lane Business has, in the aggregate, been operated substantially in accordance with the DIP Budget, (ii) the Lane Business has, in the aggregate, been operated substantially in accordance with Section 7.3(b) and (iii) except for resignations, terminations for cause in the Ordinary Course of Business, as set forth on Schedule

5.17, or as provided in Section 10.1, employees of the Lane Business have not been terminated by Seller without Purchaser's consent.

(c) No Proceeding. No Proceeding shall be pending before any Governmental Authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or involving a claim that consummation thereof would result in the violation of any Law of any Governmental Authority having appropriate jurisdiction.

(d) Officer's Certificate. Sellers shall deliver to Purchasers a certificate signed by each Seller, dated the date of the Closing Date, (in form and substance reasonably satisfactory to Purchasers), certifying that the conditions specified in Sections 8.1 and 8.2 have been satisfied as of the Closing;

(e) Bankruptcy Condition.

(i) The Bidding Procedures Order shall have been entered on the docket of the Bankruptcy Court no later than the Bidding Procedures Order Deadline Date. The Sale Order shall have been entered on the docket of the Bankruptcy Court no later than the Sale Order Deadline and shall have become a Final Order.

(ii) The Sale Order shall approve and authorize the assumption and assignment of the Assumed Executory Contracts, and the Assumed Executory Contracts that are not Designated Contracts shall have been actually assumed and assigned to Purchasers such that the Assumed Executory Contracts that are not Designated Contracts will be in full force and effect from and after the Closing with non-debtor parties being barred and enjoined from asserting against Purchasers, among other things, defaults, breaches or claims of pecuniary losses existing as of the Closing or by reason of the Closing.

(iii) The Bidding Procedures Order shall be in form and substance acceptable to Purchasers in their sole discretion.

(iv) Nothing in this Agreement shall preclude Purchasers or Sellers from consummating the transactions contemplated herein if Holdings, in its sole discretion, waives the requirement that the Sale Order or any other Order shall have become Final Orders. No notice of such waiver of this or any other condition to Closing need be given except to FB Parent, any official committee appointed in the Chapter 11 Cases and the United States Trustee, it being the intention of the parties hereto that Purchasers shall be entitled to, and is not waiving, the protection of Section 363(m) of the Bankruptcy Code, the mootness doctrine and any similar statute or body of law if the Closing occurs in the absence of Final Orders.

(f) Material Adverse Effect. Since the Petition Date, there shall not have occurred a Material Adverse Effect.

(g) Receipt of Required Consents. Sellers shall have delivered duly executed copies of all Third Party approvals listed on Schedule 8.2(g), each in form and substance reasonably satisfactory to Purchasers.

(h) Credit Bid Approval. The Bankruptcy Court shall have entered an Order, binding on all parties in interest in the Chapter 11 Cases (which Order may be the DIP Order or Sale Order) unconditionally allowing (i) a Claim by the DIP Lenders in an amount equal to the DIP Amount and (ii) a Claim by the Prepetition Term Loan Lenders in an amount equal to the Prepetition Term Loan Lenders' claims under the Prepetition Term Loan Agreement (including the Prepayment Premium), and authorizing and approving any credit bid or series of credit bids by the DIP Lenders and the Prepetition Term Loan Lenders contemplated by this Agreement pursuant to Section 363(k) of the Bankruptcy Code.

(i) Closing Deliveries. Sellers shall have delivered to Purchasers the items set forth in Section 4.3 of this Agreement.

~~(j) Lane Sale. If the Lane Sale shall have been consummated, the Lane Net Proceeds shall have been applied in accordance with the DIP Facility.~~

~~(j) [Reserved]~~

(k) Certain Conditions. The condition set forth on Schedule 8.2(k) shall have been satisfied or waived in writing by Holdings.

~~(l) DIP Facility. (A) The DIP Facility shall not have been terminated (including, for the avoidance of doubt, pursuant to any refinancing thereof); and (B) there shall not have occurred a Default or Event of Default (as such terms are defined in the DIP Credit Agreement) under the DIP Facility (unless cured or waived by the DIP Lenders and, with respect to this Agreement, by Holdings) whereby the DIP Lenders or the Agent (as defined in the DIP Credit Agreement) has taken, or delivered written notice to FB Parent that it is taking or intends to take, any of the actions set forth in Section 7.2 of the DIP Credit Agreement.~~

8.3 Conditions to Sellers' Obligations. The obligations of Sellers under this Agreement are subject to the satisfaction of the following conditions precedent on or before the Closing Date, any one or more of which may be waived (but only in writing) by FB Parent (provided that no such waiver shall be deemed to have cured any breach of any representation, warranty or covenant made in this Agreement):

(a) Accuracy of Representations and Warranties. Purchasers shall make all of the representations and warranties set forth in Article VI on and as of the Closing Date, and each such representation and warranty that is qualified by Materiality Qualifiers shall be true and correct as of the Closing Date in all respects, and each such representation and warranty that is not qualified by Materiality Qualifiers shall be true and correct as of the Closing Date in all material respects (in each case except for those representations and warranties made as of a specified date, which shall be true and correct in all respects as of that date if qualified by Materiality Qualifiers or shall be true and correct in all material respects as of that date if not qualified by Materiality Qualifiers).

(b) Performance of Covenants. Purchasers shall have performed and complied in all material respects with the obligations and covenants required by this Agreement to be performed or complied with by Purchasers on or prior to the Closing Date.

(c) Officer's Certificate. Purchasers shall deliver to Sellers a certificate signed by each Purchaser, dated the date of the Closing Date (in form and substance reasonably satisfactory to Sellers), certifying that the conditions specified in Sections 8.1 and 8.3 have been satisfied as of the Closing;

(d) Bankruptcy Court Approval. The Bankruptcy Court shall have entered an order (which may be the Sale Order) approving the execution of this Agreement by Sellers and the consummation by Sellers of the transactions contemplated herein that is not subject to Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure.

(e) Closing Deliveries. Purchaser shall have delivered to Sellers the items set forth in Section 4.2 of this Agreement.

## ARTICLE IX TERMINATION

9.1 Termination. This Agreement may be terminated prior to the Closing as follows:

(a) by mutual written agreement of Holdings and FB Parent;

(b) by Holdings or FB Parent if there shall be in effect a Final Order restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(c) (i) by Holdings (provided that Purchasers are not then in material breach of any representation, warranty, covenant or other agreement contained herein), if there shall have been a material breach or misrepresentation of any of the representations or warranties or a material breach of any of the covenants set forth in this Agreement on the part of Sellers ~~(for~~ (for the avoidance of doubt, such breach not to include any breach, in and of itself, on the part of Sellers of the DIP Credit Agreement), which breach is not cured within ten (10) days following written notice to FB Parent or which breach is willful or deliberate; or (ii) by FB Parent (provided that Sellers are not then in material breach of any representation, warranty, covenant or other agreement contained herein), if there shall have been a material breach or misrepresentation of any of the representations or warranties or a material breach of any of the covenants set forth in this Agreement on the part of Purchasers, which breach is not cured within ten (10) days following written notice to Holdings or which breach is willful or deliberate; provided that Holdings shall not be permitted to terminate this Agreement due solely to any changes, including deterioration, to the Lane Business, so long as (i) the Lane Business has, in the aggregate, been operated substantially in accordance with the DIP Budget, (ii) the Lane Business has, in the aggregate, been operated substantially in accordance with Section 7.3(b) and (iii) except for resignations, terminations for cause in the Ordinary Course of Business, as set forth on Schedule 5.17, or as provided in Section 10.1, employees of the Lane Business have not been terminated by Seller without Purchaser's consent

(d) by Holdings (provided that no Purchaser is then in material breach of any representation, warranty, covenant or other agreement contained herein) if it shall have reasonably determined that one (1) or more conditions set forth in Section 8.2 ~~(other than the condition set forth in Section 8.2(1)(B))~~ has not been or cannot be fulfilled or satisfied prior to the

date specified in such condition (if such condition specifies a date other than the Closing Date by which such condition must be satisfied) or the Closing Date Deadline;

(e) by FB Parent (provided that no Seller is then in material breach of any representation, warranty, covenant or other agreement contained herein) if Sellers shall have reasonably determined that one (1) or more conditions set forth in Section 8.3 has not been or cannot be fulfilled or satisfied prior to the date specified in such condition (if such condition specifies a date other than the Closing Date by which such condition must be satisfied) or the Closing Date Deadline; and

(f) by FB Parent if any Seller (i) designates any Person other than Purchasers as the Successful Bidder of the Auction, (ii) seeks or supports Bankruptcy Court approval of an Alternative Transaction (other than to or by Purchasers) or (iii) executes and delivers a written agreement or understanding of any kind with respect to an Alternative Transaction;

(g) by Holdings or FB Parent, if the Bankruptcy Court enters an order approving any Alternative Transaction (other than the sale of the Business and the Acquired Assets to Purchasers);

(h) [Intentionally Omitted];

(i) by Holdings (i) as a result of the failure of the Bankruptcy Court to have entered the Bidding Procedures Order by no later than the Bidding Procedures Order Deadline Date (or such later date as Holdings may determine in its sole discretion) (provided that Holdings may not terminate this Agreement pursuant to this Section 9.1(i)(i) if Holdings is then in material breach of any provision of this Agreement and such breach is the primary cause of such failure), or (ii) if following the entry of the Bidding Procedures Order but prior to the entry of the Sale Order, the Bidding Procedures Order ceases to be in full force and effect, or is revoked, rescinded, vacated, materially modified, reversed or stayed, or otherwise rendered ineffective by a court of competent jurisdiction;

(j) by Holdings as a result of the failure of Sellers to have held the Auction by no later than the Auction Deadline Date (or such later date as Holdings may determine in its sole discretion) (provided that Holdings may not terminate this Agreement pursuant to this Section 9.1(j) if Holdings is then in material breach of any provision of this Agreement and such breach is the primary cause of such failure);

(k) by Holdings (i) as a result of the failure of the Bankruptcy Court to enter the Sale Order by no later than the Sale Order Deadline (provided that Holdings may not terminate this Agreement pursuant to this Section 9.1(k)(i) if Holdings is then in material breach of any provision of this Agreement and such breach is the primary cause of such failure), or (ii) on or after the date the Sale Order ceases to be in full force and effect, or is revoked, rescinded, vacated, materially modified, reversed or stayed, or otherwise rendered ineffective by a court of competent jurisdiction;

(l) by Holdings on any day on or after the Closing Date Deadline if the Closing shall not have been consummated by such date (or by such later date as shall be mutually agreed to by Holdings and FB Parent in writing), unless the Closing has not occurred



due to a material failure of Purchasers to perform or observe their obligations as set forth in this Agreement required to be performed or observed by them on or before the Closing Date;

(m) by FB Parent on any day on or after the Closing Date Deadline if the Closing shall not have been consummated by such date (or by such later date as shall be mutually agreed to by Holdings and FB Parent in writing), unless the Closing has not occurred due to a material failure of Sellers to perform or observe their obligations as set forth in this Agreement required to be performed or observed by them on or before the Closing Date;

~~(n) by Holdings if the DIP Facility is terminated (including, for the avoidance of doubt, pursuant to any refinancing thereof);~~

~~(n) by Holdings on or after the date that is ten by Holdings ten (10) Business Days following a Default or Event of Default (as such terms are defined in the DIP Credit Agreement) under the DIP Facility (unless cured or waived by the DIP Lenders and, with respect to this Agreement, by Holdings) whereby the DIP Lenders or the Agent (as defined in the DIP Credit Agreement) has taken, or delivered written notice to FB Parent that it is taking or intends to take, any of the actions set forth in Section 7.2 of the DIP Credit Agreement~~ accelerate the amounts due under the DIP Facility (and specifically excluding any full refinancing of the DIP Facility); provided that (i) this termination right shall not include a Default or Event of Default and associated acceleration due to a non-intentional technical breach of the DIP Budget and (ii) if the DIP Facility is terminated pursuant to a Default or Event of Default occurring because of a breach of the DIP Budget, neither the Purchaser nor their Affiliates shall acquire the Acquired Assets pursuant to the exercise of remedies under the DIP Credit Agreement or applicable Law and instead shall consummate such transaction pursuant to this Agreement subject to the satisfaction or waiver of all conditions to closing set forth in Article VIII of this Agreement in accordance with their terms; or

~~(o) by Holdings if the Bankruptcy Case Chapter 11 Cases is dismissed or converted into a case under Chapter 7 of the Bankruptcy Code and neither such dismissal nor conversion expressly contemplates the transactions provided for in this Agreement, or a trustee is appointed for Sellers and such trustee rejects the transactions contemplated by this Agreement.~~

## 9.2 Breakup Fee and Expense Reimbursement.

(a) Upon the first to occur of the date any Seller consummates (i) an Alternative Transaction or (ii) a Chapter 11 plan (other than a “liquidating” plan, except one in connection with or as a result of an Alternative Transaction or one in lieu thereof which accomplishes a comparable result) pursuant to the Bankruptcy Code, Sellers, jointly and severally, shall immediately pay (in cash) to Holdings a breakup fee in an amount equal to ~~Four Million Dollars (\$4,000,000.00)~~ \$4,000,000 (the “Breakup Fee”); provided, however, that the Breakup Fee shall not be payable to Purchasers if this Agreement has been terminated by FB Parent pursuant to Section 9.1(c)(ii).

(b) If this Agreement is terminated for any reason other than by FB Parent pursuant to Section 9.1(c)(ii), Sellers, jointly and severally, shall immediately upon demand from time to time pay (in cash) to Holdings an amount equal to the aggregate Fees and Expenses (the “Expense Reimbursement”).

(c) Sellers' obligation to pay the Breakup Fee and the Expense Reimbursement pursuant to this Section 9.2 shall survive termination of this Agreement and shall constitute a super-priority administrative expense of Sellers (which shall be a super-priority administrative expense claim senior to all other administrative expense claims and payable out of Sellers' cash or other collateral of Sellers under Section 364(c)(1) of the Bankruptcy Code) (subject to the Carve-Out).

(d) The parties acknowledge that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement and constitute liquidated damages and not a penalty, and that, without these agreements, Purchasers would not have entered into this Agreement.

9.3 Effect of Termination or Breach. If this Agreement is terminated in accordance with Section 9.1 (a) this Agreement shall become null and void and of no further force and effect, except (i) for the provisions of Section 9.2 and this Section 9.3, which shall expressly survive any such termination, (ii) solely in the case of a termination by FB Parent pursuant to Section 9.1(c)(ii), for the provisions of Section 11.21 in accordance with the terms and conditions thereof, (iii) for the provisions of Sections 11.1, 11.2, 11.5-11.13 and 11.16 hereof, and (iv) that the termination of this Agreement for any cause shall not relieve any party hereto from any Liability which at the time of termination had already accrued to any other party hereto or which thereafter may accrue in respect of any act or omission of such party prior to such termination; and (b) if this Agreement is terminated for any reason other than the termination of this Agreement by FB Parent pursuant to Section 9.1(c)(ii), Sellers shall not be entitled to any damages, losses, or payment from any Purchaser, and no Purchaser shall have any further Liability of any kind to Sellers, any of their Affiliates, or any Third Party on account of this Agreement.

## ARTICLE X ADDITIONAL COVENANTS

10.1 Employees. ~~Immediately following the~~ Subject to Seller's compliance with the DIP Budget and Schedule 7.3 of this Agreement, and except for employees under employment agreements with Sellers, immediately following Closing, ~~substantially all employees actively employed or engaged principally in the Business as of immediately prior to the Closing shall, unless otherwise determined by Purchasers in their sole discretion,~~ be offered employment by Purchasers (such employees who receive ~~and~~ an accept such offer of employment and commence active employment with Purchasers, the "Rehired Employees") on terms and conditions of employment (including compensation and benefits) as determined by Purchasers in their sole discretion, it being understood that immediately prior to the Closing, the employment of all employees of the Business shall cease. Nothing contained in this Agreement shall confer upon any Rehired Employee any right to any term or condition of employment or to continuance of employment by Purchasers or any of their Affiliates, nor shall anything herein interfere with the right of Purchasers or any of their Affiliates to terminate the employment of any employee, including any Rehired Employee, at any time, with or without notice and for any or no reason, or restrict Purchasers or any of their Affiliates in modifying any of the terms or conditions of employment of any employee, including any Rehired Employee, after the Closing.



10.2 Employee Benefit Plans. Except for the sponsorship and Liabilities of and related to the Assumed Employee Benefit Plans and Liabilities specifically assumed under Section 2.3(a)(iii) or 2.3(a)(iv), Purchasers shall not assume any Employee Benefit Plan or any Liability thereunder or related thereto, and Purchasers shall provide only those benefits to Rehired Employees as of or after the Closing as Purchasers shall determine. With respect to all claims by or benefits due to current and former employees, officers, directors or contractors of any Seller whenever arising under or in connection with any Employee Benefit Plan, other than an Assumed Employee Benefit Plan or specifically assumed under Section 2.3(a)(iii) or 2.3(a)(iv), whether insured or otherwise (including life insurance, medical and disability programs, retirement and pension plans), Sellers shall, at their own expense, honor, process, administer or pay or cause their respective insurance carriers (as applicable) to honor, process, administer or pay such claims or benefits, regardless of whether such claims are made or such benefits are due before or after the Closing, in accordance with the terms and conditions of such Employee Benefit Plans without regard to the employment by Purchasers of any such employees after the Closing. Sellers shall be responsible for complying with COBRA with respect to their and their ERISA Affiliates' employees (including their qualified beneficiaries) by reason of any such individual's qualifying event (within the meaning of COBRA) occurring at or prior to the Closing. To the extent required under applicable Law, Purchasers shall be responsible for providing COBRA health continuation coverage with respect to each "M&A qualified beneficiary" (as defined in Treasury Regulation Section 54.4980B-9, Q&A-4(a)) at such time and in accordance with Treasury Regulation 54.4980B-9, Q&A-8(c). On or immediately prior to the Closing Date, Sellers shall, or shall cause one of their ERISA Affiliates to, fully vest the unvested account balances of the employees in the Business who participate in any Employee Benefit Plan that is a defined contribution plan intended to be qualified under Section 401(a) of the Code (the "Seller 401(k) Plan"). Each such employee shall be given the opportunity to receive a distribution of his or her account balance (in cash, but also including any promissory notes for associated participant loans) from the Seller 401(k) Plan and elect to roll over such account into any defined contribution plan intended to qualify under Section 401(a) of the Code that may be established by Purchasers on or after the Closing Date for such employees. Nothing contained in this Agreement, express or implied: (a) shall be construed to establish, amend, or modify any benefit or compensation plan, program, agreement or arrangement; (b) shall alter or limit the ability of Sellers, Purchasers or any of their Affiliates to amend, modify or terminate any benefit or compensation plan, program, agreement or arrangement at any time assumed, established, sponsored or maintained by any of them; (c) is intended to or does confer upon any Person (including employees, retirees, or dependents or beneficiaries of employees or retirees) any rights as a third party beneficiary of this Agreement; or (d) shall be construed to create any right in any employee or former employee of Sellers or their Affiliates or any other Person to employment or continued employment for any specified period or to a particular term or condition of employment with Purchasers or their Affiliates or compensation or benefits of any nature or kind whatsoever.

10.3 WARN Act. Purchasers will indemnify and hold Sellers harmless from any WARN Act Liability with respect to any employees (~~other than employees of the Lane Business if a Lane Sale is consummated~~) employed by Purchasers after the Closing under the WARN Act due solely to Purchasers' actions or omissions occurring after the Closing Date ~~as well as any WARN Act Liability related to the employees~~ or (ii) not hired by Purchasers pursuant to Section 10.1.

10.4 Payroll Reporting and Withholding. Purchasers shall adopt the “standard procedure” for preparing and filing IRS Forms W-2 (Wage and Tax Statements), as described in Revenue Procedure 2004-53. Under this procedure, each Purchaser who employs Rehired Employees, as the successor employer of the Corresponding Seller, shall provide IRS Forms W-2 to all Rehired Employees employed by such Purchaser reflecting all wages paid and Taxes withheld by such Purchaser as the successor employer for the portion of the calendar year beginning on the day after the Closing Date. Sellers as the predecessor employer shall provide IRS Forms W-2 to all Rehired Employees reflecting all wages paid and Taxes withheld by Sellers for the portion of the calendar year ending on the Closing Date. Purchasers shall adopt the “standard procedure” of Rev. Proc. 2004-53 for purposes of IRS Forms W-4 (Employee’s Withholding Allowance Certificate) and W-5 (Earned Income Credit Advance Payment Certificate). Under this procedure, Sellers shall keep on file the IRS Forms W-4 and W-5 provided by the Rehired Employees for the period required by applicable Law concerning record retention. Purchasers shall obtain new IRS Forms W-4 and W-5 with respect to each Rehired Employee.

10.5 Certain Consents. If a consent of a Third Party which is required in order to assign any Acquired Asset (or claim, right or benefit arising thereunder or resulting therefrom) is not obtained prior to the Closing Date, or if an attempted assignment would be ineffective or would adversely affect the ability of any Seller to convey its interest in question to Purchasers, Sellers will cooperate with Purchasers and use commercially reasonable efforts in any lawful arrangement to provide that Purchasers shall receive the interests of any Seller in the benefits of such Acquired Asset. If any consent or waiver is not obtained before the Closing Date and the Closing is nevertheless consummated, each Seller agrees to continue to use commercially reasonable efforts to obtain, at Purchasers’ request and expense, all such consents as have not been obtained prior to such date.

10.6 Name Changes. On or within three (3) days after the Closing Date, each Seller shall take all necessary action to change its name and the names of all Affiliates of Sellers to a name that does not include the word “Furniture Brands,” “Broyhill,” ~~“Lane,”~~ “HDM,” “Maitland-Smith,” ~~“Lane,”~~ “Thomasville” or any other name or mark included in the Company Intellectual Property (including any name set forth on the signature pages to this Agreement) or any translations, adaptations, derivations or combinations of any of the foregoing or any name or mark confusingly similar thereto (collectively, the “Restricted Names”). Sellers shall promptly notify Holdings of such name changes and the new names chosen by each Seller and all Affiliates of Seller, as applicable, and shall provide Holdings with evidence, reasonably satisfactory to Holdings, of such name changes. From and after Closing, Sellers and all Affiliates of Sellers shall cease all use of any Restricted Name, including by removing all Restricted Names from, or otherwise destroying, all letterhead, stationary, signage and tangible assets included in the Excluded Assets except that the foregoing shall not apply to the use of any Restricted Name solely (i) as required for the Chapter 11 Cases or to pursue rights and claims against third parties, (ii) in connection with filing of tax returns, insurance claims and any other necessary filings, and (iii) in connection with publishing any notices required by the Bankruptcy Court.

10.7 Accounts Receivable; Collections. After the Closing, Sellers shall permit, and hereby authorize, Purchasers to collect, in the name of Sellers, all Accounts Receivable and other

amounts receivable as described in Section 2.1(a)(ii) and to endorse with the name of any applicable Seller for deposit in Purchasers' account any checks or drafts received in payment thereof. Sellers shall promptly deliver to Purchasers any cash, checks or other property that they may receive after the Closing in respect of any Accounts Receivable or other asset constituting part of the Acquired Assets. Purchasers shall promptly deliver to Sellers any cash, checks or other property that they may receive after the Closing in respect of any Excluded Assets (including without limitation, any cash, checks or other property constituting Excluded Assets that are in the bank accounts, safety deposit boxes, lock boxes and the like transferred to the Purchasers).

10.8 Confidentiality. Following the Closing, Sellers shall maintain as confidential and shall not use or disclose (except as required by Law or as authorized in writing by Holdings in advance) (a) any confidential or proprietary information or materials relating to the Business, operations and affairs of Sellers (other than to the extent related to the Excluded Assets and Excluded Liabilities), and (b) any materials developed by Purchasers or any of their representatives (including their accountants, advisors, environmental, labor, employee benefits and any other consultants, lenders and legal counsel). Except as otherwise permitted and provided above, in the event any Seller is required by Law to disclose any such confidential information, such Seller shall, to the extent permitted by Law, promptly notify Purchasers in writing, which notification shall include the nature of the legal requirement and the extent of the required disclosure, and shall cooperate with Purchasers to obtain a protective order and otherwise preserve the confidentiality of such information consistent with applicable Law at Purchasers' sole cost and expense. Information subject to the confidentiality obligations in this Section 10.8 does not include any information which (x) at the time of disclosure is generally available to or known by the public (other than as a result of any Seller's disclosure in breach of this Agreement), or (y) with respect to materials described in clause (b) foregoing of the first sentence of this Section, becomes available to Sellers on a non-confidential basis from a Person who is not known to be bound by a confidentiality agreement with Purchasers or their Affiliates, or who is not otherwise prohibited from transmitting the information to Sellers.

#### 10.9 Taxes.

(a) Purchasers shall bear and timely pay any sales, use, purchase, transfer, deed, fixed asset, stamp, documentary stamp or other similar Taxes, excluding any income or similar Tax, and recording charges due and payable with respect to the transactions contemplated by this Agreement (collectively "Transfer Taxes"), and Purchasers shall prepare any Tax Returns required to be filed in connection with any Transfer Taxes. Purchasers and Sellers shall cooperate in timely making all filings, returns, reports and forms as may be required to comply with the provisions of applicable Law in connection with the payment of any Transfer Taxes.

(b) Purchasers and Sellers shall cooperate in providing each other with appropriate resale exemption certification and other similar tax and fee documentation in connection with the transactions contemplated by this Agreement.

(c) Purchasers and Sellers shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns and any audit, litigation or other Proceeding with respect to Taxes. Such cooperation shall include the

retention and (upon the other party's request) the provision of records and information that are reasonably relevant to any such audit, litigation or other Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. All costs and expenses incurred in connection with this Section ~~10.9(b)~~10.9(c) shall be borne by the party that is subject to such Proceeding.

(d) Personal property Taxes, real property Taxes and other similar Taxes (the "Proration Items") with respect to the Acquired Assets for any Straddle Period shall be prorated as of the Closing Date on a per diem basis between Purchasers and Sellers. The amount of the Proration Items attributable to the portion of the Straddle Period ending on the Closing Date shall be equal to the amount of Tax for the period multiplied by a fraction, the numerator of which shall be the number of days from the beginning of the period through and including the Closing Date and the denominator of which shall be the number of days in the period. The amount of all such Proration Items shall be estimated as of the Closing Date and paid over to Purchasers or Sellers at the Closing; provided, however, that final payments with respect to the Proration Items that are not able to be calculated as of the Closing Date shall be calculated and paid over as soon as practicable after the Closing Date but no later than five (5) Business Days after determination of such additional amounts.

(e) Sellers shall prepare and timely file (or cause to be prepared and timely filed) all Tax Returns required to be filed with respect to Sellers for Pre-Closing Tax Periods in a manner consistent with past practices (except as otherwise required by Law), and shall provide Holdings opportunity for review and comment and shall obtain Holdings' written approval (not to be unreasonably withheld, conditioned or delayed) prior to filing any such Tax Return.

(f) The parties hereto intend that the transactions contemplated by this Agreement, in combination with the subsequent liquidation of Sellers, other than any transaction identified by Holdings in writing delivered to Sellers no later than three (3) days prior to the Closing Date (the transactions contemplated by this Agreement in combination with such liquidation, other than such identified transactions, collectively, the "Relevant Transactions"), be treated for federal income tax and other applicable income tax purposes as: reorganizations of each Seller that is a U.S. entity pursuant to Section 368(a)(1)(G) of the Code to the extent legally permissible ("G Reorganizations").

(g) With respect to each Relevant Transaction (i) Sellers shall use their reasonable best efforts, and Purchasers shall use reasonable best efforts to assist Sellers, to effectuate such treatment and the parties shall prepare and file all applicable income Tax Returns in a manner consistent with the foregoing and shall not take any action or position inconsistent with, or fail to take any necessary action in furtherance of, such treatment (subject to Section 10.9(h)10.9(i)); (ii) the parties agree that this Agreement shall constitute a "plan" of Sellers and Purchasers for purposes of Sections 368 and 354 of the Code; and (iii) the board of directors or board of managers of FB Parent and Holdings shall, by resolution, approve the execution of this Agreement and expressly recognize its treatment as a "plan" of Sellers and Purchasers for purposes of Sections 368 and 354 of the Code, and the treatment of the Relevant Transactions as G Reorganizations for U.S. federal income Tax purposes. In addition, Sellers shall provide Purchasers with any information or documents that Purchasers reasonably request and shall

direct Sellers' advisors or agents to cooperate fully with Purchasers and to provide Purchasers with any information or documents that Purchasers reasonably request from them.

(h) To the extent that the transactions contemplated by this Agreement are ~~identified by Holdings pursuant to Section 10.9(f) as not constituting~~ unable to constitute G Reorganizations, the parties hereto hereby agree, and Purchasers and Sellers hereby consent, to treat the sale of the Acquired Assets by the relevant Purchasers as taxable asset sales for all Tax purposes, to consummate the transactions set forth herein on such basis and to report consistently herewith.

(i) No party shall take any position with respect to the transactions contemplated by the Agreement that is inconsistent with the position determined in accordance with this Section 10.9, unless, and then only to the extent, otherwise required to do so by a final, non-appealable order from a court of competent jurisdiction; provided, that the Allocated Shares set forth on the Schedule of Sellers and Purchasers (A) shall not be binding upon the Sellers for purposes of any plan filed in connection with the Chapter 11 Cases, (B) shall not, and shall not be interpreted to, have any effect on the distributions to Sellers' creditors, (C) shall be prepared, to the extent reasonably possible, in a manner consistent with any distributions to Sellers' creditors, with any plan filed in connection with the Chapter 11 Cases, and with the characterization of the transactions set forth in Section 3.5 and (D) shall be adjusted to the extent necessary to be consistent with any distributions to Sellers' creditors, any plan filed in connection with the Chapter 11 Cases, and with the characterization of the transactions set forth in Section 3.5.

(j) Each Seller shall liquidate, as determined for U.S. federal income Tax purposes and to the satisfaction of Holdings, as promptly as reasonably practicable after the Closing Date but no later than July 1 of the year following the year in which the Closing Date occurs.

#### 10.10 Winding-Down and Liquidation of Sellers.

(a) Following payment by Sellers of the Cure Amounts payable at the Closing, the remaining portion of the Cash Amount received by Sellers under this Agreement shall be set aside and held in trust by Sellers to pay Cure Amounts with respect to any Designated Contract that becomes an Assumed Executory Contract pursuant to Section 2.6(c) (the "Cure Reserve"); provided that the Cure Reserve need not exceed the aggregate Cure Amounts for all such Designated Contracts set forth on Schedule 2.6(c). On the date that any Designated Contract becomes an Assumed Executory Contract pursuant to Section 2.6(c), an amount equal to the Cure Amount with respect to such Designated Contract shall be released from the Cure Reserve and paid by Seller to the applicable party. On the date that any Designated Contract becomes an Excluded Contract pursuant to Section 2.6(c), an amount equal to the Cure Amount with respect to such Designated Contract shall be released from the Cure Reserve and shall thereafter be set aside and held in trust by Sellers in the Wind-Down Reserve. After expiration of the Contract Retention Period, any remaining portion of the Cure Reserve shall be released from the Cure Reserve and shall thereafter be set aside and held in trust by Sellers in the Wind-Down Reserve.



(b) Following payment by Sellers of the Cure Amounts payable at the Closing, the remaining portion of the Cash Amount received by Sellers under this Agreement, net of the Cure Reserve from time to time, or such amount otherwise mutually agreeable to Purchasers and Sellers, shall be set aside and held in trust by Sellers to pay allowed administrative and priority claims through the effective date of Sellers' Chapter 11 plan (the "Wind-Down Reserve"); provided, that Sellers are authorized to satisfy such claims from the Wind-Down Reserve as such amounts become due. Any residual cash amounts after satisfaction of all administrative and priority claims shall be released from the Wind-Down Reserve to Sellers' estates.

10.11 Post-Closing Access to Information and Facilities.— Purchasers agree that, following the Closing, Sellers and their respective representatives shall, upon reasonable notice and so long as such access does not unreasonably interfere with the business operations of any Purchaser, have reasonable access during normal business hours to (a) Purchasers' personnel and (b) all Books and Records for periods prior to the Closing—, and Purchasers shall exercise reasonable efforts to preserve such Books and Records, subject to compliance with applicable Law, until the earlier of (i) the fifth (5th) anniversary of the Closing or (ii) the date the Bankruptcy Court enters an Order closing the ~~Bankruptcy Case~~ Chapter 11 Cases. Such access to Business Records shall include access to any such information in electronic form to the extent reasonably available. For a period ending on the earlier of (x) ~~two (2)~~ three (3) years following the Closing or (y) the date the Bankruptcy Court enters an Order closing the ~~Bankruptcy Case~~ Chapter 11 Cases, prior to destroying any Books and Records for periods prior to the Closing, Purchasers shall notify Sellers, no less than thirty (30) days in advance of any such proposed destruction of their intent to destroy such Books and Records, and Purchasers will permit Sellers to retain such Books and Records at Sellers' sole expense. ~~With respect to any litigation and claims,~~ Purchasers shall, at Sellers' sole expense, render all reasonable assistance that Sellers may reasonably request in (a) bringing or defending such litigation or claim litigation or claims and/or (b) facilitating the administration of the Chapter 11 Cases, the administration of and/or realization on the Excluded Assets or Excluded Liabilities, and other administrative activities, and shall make available to Sellers, for and at reasonable times, Purchasers' personnel most knowledgeable about the matter in question. Any information received or accessed by Sellers under this Section 10.11 shall be subject to the provisions of Section 10.8. Notwithstanding the foregoing, nothing herein shall require Purchasers to provide access or disclose any information to Sellers or any of their representatives if such access or disclosure would waive any legal privilege.

## ARTICLE XI MISCELLANEOUS

11.1 Non-Survival of Representations and Warranties. The representations and warranties respectively made by Sellers and Purchasers in this Agreement and in any certificate delivered hereunder will expire as of the Closing. Subsequent to Closing, no claim with respect to any breach of any representation or warranty contained in this Agreement may be pursued or maintained (either hereunder or otherwise) against any other party. The parties hereto agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive the Closing hereunder, and each party hereto shall be liable to the other after the Closing for any breach thereof.

11.2 Expenses.

(a) Except as otherwise provided herein, each party hereto shall bear its own costs and expenses, including attorneys' fees, with respect to the transactions contemplated hereby. Notwithstanding the foregoing, in the event of any Proceeding to interpret or enforce this Agreement, the prevailing party in such Proceeding (i.e., the party who, in light of the issues contested or determined in the Proceeding, was more successful) shall be entitled to have and recover from the non-prevailing party such costs and expenses (including all court costs and reasonable attorneys' fees) as the prevailing party may incur in the pursuit or defense thereof.

(b) The parties hereto agree that if any claims for commissions, fees or other compensation, including brokerage fees, finder's fees, or commissions are ever asserted against Purchasers or Sellers in connection with this transaction, all such claims shall be handled and paid by the party whose actions form the basis of such claim (with counsel reasonably satisfactory to the party(ies) entitled to indemnification), and such party shall indemnify and hold the other harmless from and against any and all such claims or demands asserted by any Person, firm or corporation in connection with the transaction contemplated hereby.

11.3 Amendment. This Agreement may not be amended, modified or supplemented except by a written instrument signed by FB Parent (on behalf of itself and Sellers) and Holdings (on behalf of itself and the other Purchasers); provided that any amendment, modification or supplement to Section 11.21 shall also require the written consent of Guarantors; provided, further, that Holdings may, without the consent of FB Parent, amend the Schedule of Sellers and Purchasers as permitted by Section ~~7.13~~-7.11 and/or to reflect any assignment made in compliance with Section 11.10 hereof.

11.4 Waivers. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing by FB Parent, in the case of a waiver by any Seller, or Holdings, in the case of any waiver by any Purchaser, and no waiver in any one (1) or more instances shall be deemed to be a further or continuing waiver of any such condition or breach of other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.

11.5 Notices. All notices, requests, demands and other communications permitted or required to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed conclusively to have been given (a) when personally delivered, (b) when sent by facsimile (with hard copy to follow) during a Business Day (or on the next business day if sent after 5:00 p.m. local time of the recipient or on any non-Business Day), (c) when sent by electronic mail (with hard copy to follow) during a Business Day (or on the next Business Day if sent after 5:00 p.m. local time of the recipient or on any non-Business Day), (d) one (1) Business Day after being sent by reputable overnight express courier (charges prepaid), or (e) three (3) Business Days following mailing by certified or registered mail, postage prepaid and return receipt requested. Unless another address is specified in writing, notices, requests, demands and communications to the parties shall be sent to the addresses indicated below (it being understood that the copies to counsel set forth below shall not constitute notice):

To FB Parent or Sellers: Furniture Brands International, Inc.  
1 North Brentwood Blvd.  
St. Louis, MO 63105  
Attn: General Counsel  
Fax: (828) 438-2475  
E-mail: mgraham@furniturebrands.com

~~with copies to: Paul Hastings LLP  
75 East 55th Street  
New York, NY 10022  
Attn: Leslie Plaskon  
Fax: (212) 230-5137~~

with copies to: Paul Hastings LLP  
75 East 55th Street  
New York, NY 10022  
Attn: Leslie Plaskon  
Fax: (212) 230-5137  
E-mail: leslieplaskon@paulhastings.com

~~Attn: Luc Despins  
Fax: (212) 230-7771~~ Attn: Luc Despins  
Fax: (212) 230-7771  
E-mail: lucdespins@paulhastings.com

~~Attn: Amit Mehta  
Fax: (312) 499-6119~~ Attn: Amit Mehta  
Fax: (312) 499-6119  
E-mail: amitmehta@paulhastings.com

~~To any Purchaser c/o Oaktree Capital Management, L.P.~~  
To any Purchaser or Guarantor: KPS Capital Partners, LP  
485 Lexington Avenue  
31st Floor  
New York NY 10017  
Attn: Raquel Vargas Palmer  
Fax: (212) 867-7980  
Email: rpalmer@kpsfund.com

with copies to: Proskauer Rose LLP  
70 West Madison Street  
Chicago, IL 60602  
Fax: (312) 962-3551  
Attn: Mark K. Thomas  
Email: mthomas@proskauer.com



Attn: Peter J. Young  
Email: pyoung@proskauer.com

~~or Guarantor: 333 S. Grand Avenue, 28th Floor  
Los Angeles, CA 90071  
Attn: Jordon Kruse  
Fax: (213) 830-6394  
E-mail: jkruse@oaktreecapital.com  
Attn: Kaj Vazales  
Fax: (213) 830-6499  
E-mail: kvazales@oaktreecapital.com~~

~~with copies to: Kirkland & Ellis LLP  
300 North LaSalle Street  
Chicago, IL 60654  
Attn: Christopher J. Greeno, P.C.  
Fax: (312) 862-2200  
E-mail: christopher.greeno@kirkland.com  
Attn: Hamed Meshki  
Fax: (213) 808-8145  
E-mail: hamed.meshki@kirkland.com~~

11.6 Counterparts; Electronic Execution. This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, may be executed in one (1) or more counterparts, all of which shall constitute one and the same instrument. Any such counterpart, to the extent delivered by means of a facsimile machine or by .pdf, .tif, .gif, .jpeg or similar attachment to electronic mail (any such delivery, an “Electronic Delivery”) shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto, each other party hereto or thereto shall reexecute the original form of this Agreement and deliver such form to all other parties. No party hereto shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent such defense relates to lack of authenticity.

11.7 Headings. The headings preceding the text of the Articles and Sections of this Agreement and the Exhibits and the Schedules are for convenience only and shall not be deemed part of this Agreement.

11.8 SUBMISSION TO JURISDICTION; WAIVER OF TRIAL BY JURY. THE PARTIES HEREBY AGREE THAT ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, SUITS, AND PROCEEDINGS RELATING TO THIS AGREEMENT OR THE OTHER AGREEMENTS CONTEMPLATED HEREIN SHALL BE FILED AND MAINTAINED ONLY IN THE BANKRUPTCY COURT, AND THE PARTIES HEREBY CONSENT TO THE JURISDICTION OF SUCH COURT. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY LITIGATION, ACTION, PROCEEDING, CROSS-CLAIM, OR COUNTERCLAIM IN ANY COURT

(WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF, RELATING TO OR IN CONNECTION WITH (I) THIS AGREEMENT OR THE VALIDITY, PERFORMANCE, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF OR (II) THE ACTIONS OF THE PARTIES IN THE NEGOTIATION, AUTHORIZATION, EXECUTION, DELIVERY, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

11.9 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the Delaware (regardless of the Laws that might otherwise govern under applicable Delaware principles of conflicts of Law) as to all matters, including matters of validity, construction, effect, performance and remedies.

11.10 Binding Nature; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without prior written consent of the other parties; except (a) that any Purchaser may assign any of its rights and obligations hereunder to any Affiliate or Subsidiary of any Purchaser (whether wholly owned or otherwise) or to its lender and, following the Closing, in whole or in part to any successor-in-interest to any Person acquiring all or any portion of the Business or the Acquired Assets; and (b) as otherwise expressly provided in this Agreement. Sellers hereby agree that Purchasers may grant a security interest in their rights and interests hereunder to its lenders, and Sellers will sign a consent with respect thereto if so requested by Purchaser or their lender, and that the terms of this Agreement shall be binding upon any subsequent trustee appointed under Chapter 11 or Chapter 7 of the Bankruptcy Code. Notwithstanding anything to the contrary set forth herein, the rights and interests of Sellers under this Agreement shall inure to the benefit of any trustee appointed under Chapter 11 or Chapter 7 of the Bankruptcy Code and/or any liquidating trust or any other entity appointed as a successor to Sellers pursuant to a confirmed plan under Chapter 11 of the Bankruptcy Code.

11.11 No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and nothing contained herein, express or implied, is intended to confer on any Person other than the parties hereto or their successors and permitted assigns, any rights, remedies, obligations, claims, or causes of action under or by reason of this Agreement.

11.12 Severability. Each provision of this Agreement is integral and of essence to the Agreement. If any provision of this Agreement is held to be prohibited by or invalid under applicable Law, or is stricken or revised by any court with jurisdiction over the transactions contemplated by this Agreement, then this Agreement shall be deemed invalid, void and terminated in all respects unless the parties hereto agree otherwise in writing.

11.13 Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to this Agreement to express their mutual intent, and no rule of strict construction shall be applied against any party. Any reference to any federal, state, local or foreign statute or Law shall be deemed also to refer to all rules and Laws promulgated thereunder, unless the context requires otherwise. Whenever a party's consent, approval or satisfaction is required under this Agreement, the decision as to whether or not to consent or

approve or be satisfied shall be in the sole and exclusive discretion of such party, and such party's decision shall be final and conclusive.

11.14 Public Announcements. Except as required by Law or by the applicable rules of any national stock exchange or in connection with the Chapter 11 Cases, neither Sellers nor Purchasers shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of FB Parent and Holdings relating to the contents and manner of presentation and publication thereof, which approval will not be unreasonably withheld, delayed or conditioned. Prior to making any public disclosure required by applicable Law or stock exchange rule, the disclosing parties shall give the other party (Holdings, on behalf of Purchasers, or FB Parent, on behalf of Sellers, as the case may be) a copy of the proposed disclosure and reasonable opportunity to comment on the same. Notwithstanding the foregoing, Purchasers shall not be restricted from making any public announcements or issuing any press releases after the Closing.

11.15 Disclosure Schedules. The information disclosed in any Schedules provided pursuant to Article V delivered by Sellers to Purchasers (collectively, the "Disclosure Schedules") shall be deemed to relate to and to qualify only the particular representation or warranty set forth in the corresponding numbered Section in this Agreement and shall not be deemed to relate to or to qualify any other representation or warranty except to the extent the applicability of such disclosure to such other representation or warranty is readily apparent on the face of the disclosure. Nothing in the Disclosure Schedules shall be deemed adequate to disclose an exception to a representation or warranty made herein, however, unless the Disclosure Schedules identify the exception with reasonable particularity and describe the relevant facts in reasonable detail. The mere listing (or inclusion of a copy) of a document or other item shall not be deemed adequate to disclose an exception to a representation or warranty made herein (unless the representation or warranty has to do with the existence of the document or other item itself).

11.16 Entire Understanding. This Agreement, the Exhibits and the Schedules set forth the entire agreement and understanding of the parties hereto in respect to the transactions contemplated hereby, ~~and this the Agreement, the Exhibits and the Schedules supersede all prior agreements, arrangements and understandings relating to the subject matter hereof and are not intended to confer upon any other Person any rights or remedies hereunder. For the avoidance of doubt, this Agreement, the Exhibits and the Schedules hereto supersede the Prior Agreement, and the exhibits and schedules thereto, and the Prior Agreement is in all respects terminated.~~

11.17 Closing Actions. All deliveries, payments and other transactions and documents relating to the Closing shall be interdependent, and none shall be effective unless and until all are effective (except to the extent that the party entitled to the benefit thereof has waived satisfaction or performance thereof as a condition precedent to the Closing).

11.18 Conflict Between Transaction Documents. The parties hereto agree and acknowledge that to the extent any terms and provisions of this Agreement are in any way inconsistent with or in conflict with any term, condition or provision of any other agreement or document referred to herein, this Agreement shall govern and control.

11.19 Final Schedules. Notwithstanding anything to the contrary ~~(but without limitation on the provisions of Section 2.5 or Section 2.6)~~, Purchasers and Sellers acknowledge that as of the date of this Agreement the Schedules other than Schedules 2.1(a)(vi), 2.1(a)(vii), 2.1(a)(xiii), 2.1(a)(xvii), 2.1(a)(xviii), 2.2(a)(ii), 2.2(a)(iii), 2.2(a)(iv), 2.2(a)(v), 2.2(a)(xi), 2.6(f), 7.3 and 8.2(k) have not been finalized ~~with respect to the Lane Business~~ (such Schedules not finalized, the “Postponed Schedules”). Purchasers acknowledge that Purchasers have no right to terminate this Agreement under this Section 11.19 as a result of the finalization and delivery of the Postponed Schedules, including as a result of not being satisfied with the contents of the Postponed Schedules; provided, that the foregoing shall not limit any of Purchasers’ termination rights under Article IX. Sellers agree to use reasonable efforts to provide Purchasers with the final Postponed Schedules as soon as possible after the date hereof, but in any event on or prior to ~~the date that is~~ five (5) Business Days ~~following~~ after the Effective Date.

11.20 Time Periods. Unless specified otherwise, any action required hereunder to be taken within a certain number of days shall be taken within that number of calendar days (and not Business Days); provided, however, that if the last day for taking such action falls on a day that is not a Business Day, the period during which such action may be taken shall be automatically extended to the next Business Day.

11.21 Guaranty. Guarantors hereby unconditionally and irrevocably guaranty, as primary obligors and not as surety, severally in accordance with Guarantors’ respective percentage shares (the “Guaranty Percentages”) set forth on the Schedule of Guarantors, the due and punctual payment and performance by Purchasers (and any permitted assignees thereof) of all of their obligations to Sellers pursuant to the terms of this Agreement (the “Guaranteed Obligations”); accordingly, for the avoidance of doubt, this guaranty is one of payment and performance and not one of collection. The foregoing sentence is an absolute, unconditional and continuing guaranty of the full and punctual discharge and performance of the Guaranteed Obligations. Should Purchasers default in the discharge or performance of all or any portion of the Guaranteed Obligations, the obligations of Guarantors hereunder shall become immediately due and payable to Sellers. Sellers agree that in no event shall Guarantors be required to pay any amount to Sellers or any other Person hereunder in respect of or in connection with this Agreement other than as expressly set forth in this Section 11.21. Notwithstanding anything to the contrary set forth herein, all obligations of Guarantors pursuant to this Section 11.21 shall terminate immediately and automatically upon the earliest to occur of (i) the Closing, (ii) any termination of this Agreement other than by FB Parent pursuant to Section 9.1(c)(ii), or (iii) the date that is 30 days after the termination of this Agreement by FB Parent pursuant to Section 9.1(c)(ii), except as to any claim asserted in writing against Guarantors prior to such date (in which case the obligations of Guarantors hereunder shall terminate when such claim is finally resolved or otherwise satisfied). Notwithstanding anything that may be expressed or implied in this Section 11.21 or any document or instrument delivered in connection herewith, by their acceptance of the benefits of this Section 11.21, Sellers further agree that none of them has any right of recovery against, and no personal liability shall attach to, any Guarantor, any former, current or future, direct or indirect, director, officer, employee, agent or affiliate of any Guarantor, any former, current or future, direct or indirect, holder of any equity interests or securities of any Guarantor (whether such holder is a limited or general partner, member, stockholder or otherwise), any former, current or future assignee of any Guarantor or any former, current or future director, officer, employee, agent, general or limited partner, manager, member,

stockholder, affiliate, controlling person, representative or assignee of any of the foregoing (each such Person, a “Related Person”), through any Purchaser, any Guarantor or otherwise, whether by or through any attempted piercing of the corporate, limited liability company or limited partnership veil, by or through a claim by or on behalf of any Purchaser against any Guarantor or any Related Person, or otherwise, except for the rights against Guarantors as expressly provided in this Section 11.21 or those against Purchasers arising under this Agreement. Recourse against Guarantors under this Section 11.21 shall be the sole and exclusive remedy of Sellers and all of their respective Affiliates and Subsidiaries against any Guarantor or any Related Person (including Purchasers) in respect of any liabilities or obligations arising under or in connection with this Agreement or the transactions contemplated hereby, including by piercing the corporate, limited liability company or limited partnership veil or by a claim by or on behalf of any Purchaser. Sellers hereby covenant and agree that none of them shall, and each of them shall cause each other Seller to not institute, directly or indirectly, and shall cause its and their respective affiliates and subsidiaries to not institute, any proceeding or bring any other claim arising under, or in connection with, this Agreement or the transactions contemplated hereby, against any Guarantor or any Related Person, except for claims of Sellers against Guarantors under this Section 11.21 or against Purchasers under this Agreement. Nothing set forth in this Section 11.21 shall confer or give or shall be construed to confer or give to any Person (including any Person acting in a representative capacity) other than Sellers any rights or remedies against any Person, including any Guarantor, except as expressly set forth in this Section 11.21. In the event that any Seller or any Affiliate thereof asserts in any Proceeding any theory of liability against any Guarantor or any Related Person with respect to the transactions contemplated by this Agreement other than the Liability of such Guarantor under this Section 11.21, then (i) the obligations of Guarantors under this Section 11.21 shall terminate *ab initio* and be null and void, (ii) if any Guarantor has previously made any payments under this Section 11.21, it shall be entitled to recover such payments from Sellers, and (iii) no Guarantor shall have any liability to Sellers or any of their respective Affiliates with respect to the transactions contemplated by this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be executed and delivered on the date first written above.

**FB PARENT:**

**FURNITURE BRANDS INTERNATIONAL,  
INC.**

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

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

Its:

**OTHER SELLERS:**

**LANE FURNITURE INDUSTRIES, INC.**

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

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

Its:

**ACTION TRANSPORT, INC.**

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

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

Its:

**LANEVENTURE, INC.**

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

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

Its:

**LANE HOME FURNISHINGS RETAIL, INC.**

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

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

Its:

**FURNITURE BRANDS RESOURCE  
COMPANY, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name:  
Its:

**FURNITURE BRANDS HOLDINGS, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name:  
Its:

**FURNITURE BRANDS OPERATIONS, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name:  
Its:

**BROYHILL FURNITURE INDUSTRIES, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name:  
Its:

**BROYHILL RETAIL, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name:  
Its:

**BROYHILL HOME FURNISHINGS, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name:  
Its:

**HDM FURNITURE INDUSTRIES, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name:  
Its:

**HDM RETAIL, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name:  
Its:



**MAITLAND-SMITH FURNITURE  
INDUSTRIES, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name:  
Its:

**THOMASVILLE FURNITURE INDUSTRIES,  
INC.**

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name:  
Its:

**THOMASVILLE RETAIL, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name:  
Its:

**THOMASVILLE HOME FURNISHINGS, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name:  
Its:

**HOLDINGS:**

~~FB GROUP HOLDINGS LLC~~

~~By: FB Group Parent LLC~~

~~**FBN ACQUISITION HOLDINGS, LLC**~~

~~\_\_\_\_\_ on behalf of itself and its designees,~~

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

~~Name: Raquel Palmer~~

~~Its: Authorized Signatory~~

~~Its: Managing Member~~

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

~~Name:—~~

~~Its:~~

~~**INTERMEDIATE HOLDINGS:**~~

~~FB INTERMEDIATE HOLDINGS LLC~~

~~By: FB Group Holdings LLC~~

~~Its: Managing Member~~

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

~~Name:—~~

~~Its:~~

~~**BROYHILL INTERMEDIATE HOLDINGS:**~~

~~FB BH INTERMEDIATE HOLDINGS LLC~~

~~By: FB Group Holdings LLC~~

~~Its: Managing Member~~

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

~~Name:—~~

~~Its:~~

~~**LANE INTERMEDIATE HOLDINGS:**~~

~~FB LANE INTERMEDIATE HOLDINGS LLC~~

~~By: FB Group Holdings LLC~~

~~Its: Managing Member~~

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

Name:—

Its:

~~OTHER PURCHASERS:~~

~~FB-OPCO-LLC~~

~~By: FB Intermediate Holdings LLC  
Its: Managing Member~~

~~By: \_\_\_\_\_  
Name:—  
Its:~~

~~FB-BH COMPANY LLC~~

~~By: FB-BH Intermediate Holdings LLC  
Its: Managing Member~~

~~By: \_\_\_\_\_  
Name:—  
Its:~~

~~FB-LANE COMPANY LLC~~

~~By: FB Lane Intermediate Holdings LLC  
Its: Managing Member~~

~~By: \_\_\_\_\_  
Name:—  
Its:~~

~~GUARANTORS:~~

~~OAKTREE PRINCIPAL FUND V, L.P.,~~

**GUARANTORS** (solely for purposes of Section 11.21):

**KPS SPECIAL SITUATIONS FUND III, LP**  
(solely for purposes of Section 11.21)

~~By: Oaktree Principal Fund V GP, L.P.~~  
~~Its: General Partner~~

~~By: Oaktree Principal Fund V GP Ltd.~~  
~~Its: General Partner~~

By: KPS Investors III, LP  
Its: general partner

By: KPS Capital Partners, LLC  
Its: general partner

=====

By: \_\_\_\_\_  
Name: Raquel Palmer  
Its: Authorized Signatory

~~By: Oaktree Capital Management, L.P.~~  
~~Its: Director~~

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

Its:

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

Its:

~~**OAKTREE PRINCIPAL FUND V**~~  
~~**(PARALLEL), L.P.,**~~  
**KPS SPECIAL SITUATIONS FUND III (A),**  
**L.P.** (solely for purposes of Section 11.21)

By: KPS Investors III, Ltd.  
Its: general partner

=====

~~By: Oaktree Principal Fund V GP, L.P.~~  
~~Its: General Partner~~

By: \_\_\_\_\_  
Name: Raquel Palmer  
Its: Vice President

~~By: Oaktree Principal Fund V GP Ltd.~~  
~~Its: General Partner~~

~~By: Oaktree Capital Management, L.P.~~  
~~Its: Director~~

~~By: \_\_\_\_\_~~  
~~Name: \_\_\_\_\_~~

Its:

~~By: \_\_\_\_\_~~  
~~Name: \_\_\_\_\_~~

Its:

~~OAKTREE FF INVESTMENT FUND, L.P.—  
CLASS A,~~

**KPS SPECIAL SITUATIONS FUND III  
(SUPPLEMENTAL), LP** (solely for purposes of  
Section 11.21)

By: KPS Investors III (AIV), LP

Its: general partner

~~By: Oaktree FF Investment Fund GP, L.P.~~

~~Its: General Partner~~

~~By: Oaktree FF Investment Fund GP Ltd.~~

By: KPS Investors III (AIV), Ltd.

Its: general partner

=====

By:

Name: Raquel Palmer

Its: Vice President

~~Its: General Partner~~

~~By: Oaktree Capital Management, L.P.~~

~~Its: Director~~

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

~~Name:—~~

Its:

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

~~Name:—~~

Its:

~~**OAKTREE VALUE OPPORTUNITIES FUND,  
L.P.,**~~

**KPS SPECIAL SITUATIONS FUND III  
(SUPPLEMENTAL – AIV), LP** (solely for  
purposes of Section 11.21)

By: KPS Investors III (AIV), LP

Its: general partner



~~By: Oaktree Value Opportunities Fund GP, L.P.~~  
~~Its: General Partner~~

~~By: Oaktree Value Opportunities Fund GP Ltd.~~  
By: KPS Investors III (AIV), Ltd.  
Its: general partner

=====

By: \_\_\_\_\_  
Name: Raquel Palmer  
Its: Vice President

~~Its:—General Partner~~

~~By:—Oaktree Capital Management, L.P.~~

~~Its:—Director~~

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

Name:—

Its:

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

Name:—

Its:

**Schedule of Sellers and Purchasers**

<u>Sellers</u>	<u>Purchasers</u>	<u>Allocated Share<sup>1</sup></u>				
		<u>Cash</u>	<u>Intermediate Holdings Units</u>	<u>Broyhill Intermediate Holdings Units</u>	<u>Lane Intermediate Holdings Units</u>	<u>Debt Interests</u>
Furniture Brands International, Inc., a Delaware corporation	<del>FB</del> -Intermediate Holdings LLC					
Furniture Brands Resource Company, Inc., a Delaware corporation	<del>FB</del> -Opco LLC					
Furniture Brands Holdings,	<del>FB</del> -Opco LLC					

<sup>1</sup> Allocated Shares to be determined in proportion to the relative value of assets to be sold/acquired by each Seller/Purchaser.

<u>Sellers</u>	<u>Purchasers</u>	<u>Allocated Share<sup>1</sup></u>				
		<u>Cash</u>	<u>Intermediate Holdings Units</u>	<u>Broyhill Intermediate Holdings Units</u>	<u>Lane Intermediate Holdings Units</u>	<u>Debt Interests</u>
Inc., a Delaware corporation						
Furniture Brands Operations, Inc., a Delaware corporation	<del>FB-Opc</del> LLC					
Broyhill Furniture Industries, Inc., a North Carolina corporation	<del>FB-BH-Company</del> LLC <u>Opc</u>					
Broyhill Retail, Inc., a Delaware corporation	<del>FB-BH-Company</del> LLC <u>Opc</u>					
Broyhill Home Furnishings, Inc., a Delaware corporation	<del>FB-BH-Company</del> LLC <u>Opc</u>					
HDM Furniture Industries, Inc., a Delaware corporation	<del>FB-Opc</del> LLC					
HDM Retail, Inc., a Delaware corporation	<del>FB-Opc</del> LLC					
Maitland-Smith Furniture Industries, Inc., a Delaware corporation	<del>FB-Opc</del> LLC					
Thomasville Furniture Industries, Inc., a Delaware corporation	<del>FB-Opc</del> LLC					
Thomasville Retail, Inc., a Virginia corporation	<del>FB-Opc</del> LLC					

<u>Sellers</u>	<u>Purchasers</u>	<u>Allocated Share<sup>1</sup></u>				
		<u>Cash</u>	<u>Intermediate Holdings Units</u>	<u>Broyhill Intermediate Holdings Units</u>	<u>Lane Intermediate Holdings Units</u>	<u>Debt Interests</u>
Thomasville Home Furnishings, Inc., a Delaware corporation	FB-Opco LLC					
Lane Furniture Industries, Inc., a Mississippi corporation	FB Lane Company LLC					
Action Transport, Inc., a Delaware corporation	FB Lane Company LLC					
Lane Home Furnishings Retail, Inc., a Delaware corporation	FB Lane Company LLC					
Laneventure, Inc., a Delaware corporation	FB Lane Company LLC					

**Schedule of Guarantors**

[Intentionally Omitted]

Comparison Details	
Title	<b>pdfDocs compareDocs Comparison Results</b>
Date & Time	9/30/2013 7:40:27 PM
Comparison Time	7.07 seconds
compareDocs version	v3.4.14.14

Sources	
Original Document	[#4361389] [v1] FB - Oaktree Revised Asset Purchase Agreement (Execution Version)(106042804_13).docDMS Information
Modified Document	[#4361391] [v1] KPS Furniture Brands APA (9_30).docxDMS information

Comparison Statistics	
Insertions	277
Deletions	328
Changes	126
Moves	22
TOTAL CHANGES	753

Word Rendering Set Markup Options	
Name	Standard
<u>Insertions</u>	
<del>Deletions</del>	
<u>Moves</u> / Moves	
Inserted cells	
Deleted cells	
Merged cells	
Formatting	Color only.
Changed lines	Mark left border.
Comments color	ByAuthorcolor options]
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	True
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False

**EXHIBIT C**

## **BIDDING PROCEDURES**

By the Motion dated as of the Petition Date, Furniture Brands International, Inc. and its affiliated debtors and debtors in possession (collectively, the “Debtors”) sought approval of, among other things, the procedures through which they will determine the highest or otherwise best offer for the Acquired Assets as defined in the Asset Purchase Agreement, a copy of which is attached to the Bidding Procedures Order (as defined below) as **Exhibit 1**.

On October [•], 2013, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order (the “Bidding Procedures Order”),<sup>1</sup> which, among other things, authorized the Debtors to determine the highest or otherwise best offer for the Acquired Assets through the process and procedures set forth below (the “Bidding Procedures”).

### **Marketing Process**

#### ***Contact Parties.***

The Debtors, in consultation with their advisors and the Official Committee of Unsecured Creditors (the “Committee”), have and will continue to develop with input from the Committee a list of parties (in addition to the Stalking Horse Purchaser) who the Debtors believe may potentially be interested in and who the Debtors reasonably believe would have the financial resources to consummate an Alternative Transaction (as defined in the Asset Purchase Agreement), which list includes both potential strategic investors and potential financial investors (each, individually, a “Contact Party” and, collectively, the “Contact Parties”). The Debtors and their advisors will contact the Contact Parties to explore their interest in pursuing an Alternative Transaction. The Contact Parties may include parties whom the Debtors or their advisors have previously contacted regarding a transaction, regardless of whether such parties expressed any interest, at such time, in pursuing a transaction. The Debtors will continue to discuss and may supplement the list of Contact Parties throughout the marketing process, as appropriate.

The Debtors shall distribute to each Contact Party an “Information Package,” which may comprise:

- (a) a cover letter;
- (b) a copy of these Bidding Procedures and the Motion;
- (c) a copy of a confidentiality agreement; and

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.



- (d) such other materials as the Debtors in consultation with their advisors and the Committee deem appropriate under the circumstances, which may include preliminary “teaser” information.

Any entity desiring to obtain a copy of the Asset Purchase Agreement may do so by accessing the website of the Debtors’ notice and claims agent at <http://dm.epiq11.com/fbn>. A copy may also be obtained by contacting: (a) the Debtors’ investment banking advisor, Miller Buckfire & Co., LLC, 601 Lexington Avenue, Twenty-Second Floor, New York, New York 10022, Attn: Morgan Suckow, Telephone (212) 895-1825, Facsimile (212) 895-1852, Email: [morgan.suckow@millerbuckfire.com](mailto:morgan.suckow@millerbuckfire.com); or (b) the Debtors’ counsel at Paul Hastings LLP, 191 North Wacker Drive, Thirtieth Floor, Chicago, Illinois 60606, Attn: Marc J. Carmel, Telephone (312) 499-6040, Facsimile (312) 499-6140, Email: [marccarmel@paulhastings.com](mailto:marccarmel@paulhastings.com) and Attn: Amit Mehta, Telephone (312) 499-6019, Facsimile (312) 499-6119, Email: [amitmehta@paulhastings.com](mailto:amitmehta@paulhastings.com). For additional information, parties in interest can call the Debtors’ restructuring information line at (877) 797-6087 or (503) 597-7678 (for international callers).

***Access to Diligence Materials.***

To participate in the bidding process and to receive access to due diligence (the “Diligence Materials”), a party (other than the Stalking Horse Purchaser) must submit to the Debtors an executed confidentiality agreement in form and substance satisfactory to the Debtors and evidence demonstrating the party’s financial capability with respect to an Alternative Transaction as determined by the Debtors and the Committee.

A party (other than the Stalking Horse Purchaser) who qualifies for access to Diligence Materials shall be a “Preliminary Interested Party.” All due diligence requests must be directed to Miller Buckfire & Co.

For any Preliminary Interested Party who is a competitor of the Debtors or is affiliated with any competitor of the Debtors, the Debtors reserve the right to withhold any Diligence Materials that the Debtors determine are business-sensitive or otherwise not appropriate for disclosure to such Preliminary Interested Party.

***Due Diligence from Bidders.***

Each Preliminary Interested Party and Qualified Bidder (as defined herein) shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Bidder (as defined herein) and its contemplated transaction. Failure by a Preliminary Interested Party to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors to determine, in consultation with the Committee, that such bidder is not a Qualified Bidder. Failure by a Qualified Bidder (other than the Stalking Horse Purchaser) to comply with requests for additional information and due diligence access may be a basis for the Debtors, in consultation with the Committee, to determine that a bid made by such Qualified Bidder is not a Qualified Bid.

### Auction Qualification Process

To be eligible to participate in the Auction (as defined herein), each offer, solicitation, or proposal (each, a “Bid”), and each party submitting such a Bid (each, a “Bidder”), must be determined by the Debtors to satisfy each of the conditions set forth below. A Bid will not be considered qualified for the Auction if such Bid does not satisfy each of the following conditions:

- (a) Good Faith Deposit: Each Bid must be accompanied by a deposit in the amount of 6% of the total purchase price of such Bid (excluding any Assumed Obligations (as defined in the Asset Purchase Agreement)) to an escrow account to be identified and established by the Debtors (the “Good Faith Deposit”).

The Stalking Horse Purchaser shall not be required to submit a Good Faith Deposit.

- (b) Same or Better Terms: Each Bid must be on terms that, in the Debtors’ business judgment, after consultation with their financial advisors, legal advisors and the Committee, are the same or better than the terms of the Asset Purchase Agreement (taken as a whole).
- (c) Executed Agreement: Each Bid must be based on the Asset Purchase Agreement and must include executed transaction documents, signed by an authorized representative of such Bidder, pursuant to which the Bidder proposes to effectuate an Alternative Transaction (the “Modified Asset Purchase Agreement”). A Bid shall also include a copy of the Asset Purchase Agreement marked against the Modified Asset Purchase Agreement to show all changes requested by the Bidder, including those related to purchase price and to remove all provisions that apply only to the Stalking Horse Purchaser (*e.g.*, the Bid Protections (as defined herein)).
- (d) Bids for Portions of Debtors’ Assets: A Bid must offer to purchase all of the Acquired Assets or only a portion of such assets; provided, however, that if the Bid is for a portion of the Acquired Assets, the Debtors must be able to combine such Bid with another Bid or combination of other Bids for a portion of the Acquired Assets, such that the combination of such Bids results in a combination of binding offers to purchase all of the Acquired Assets; provided, further, however, if a Bid offers to purchase only a portion of the Debtors’ assets, the Debtors, in consultation with the Committee, may allow the Bid to participate in the Auction if such offer would repay the DIP Facility and Existing Term Loan in full.
- (e) Minimum Bid: A Bid (or any combination of other Bids) must propose a minimum purchase price, or otherwise have value for the benefit of the Debtors’ estates sufficient to satisfy (without duplication):

- (1) the Credit Bid Amount and the Cash Amount; *plus*
  - (2) the dollar value of the DIP Termination Fee, in cash which must be payable immediately to the Stalking Horse Purchaser (or a designated affiliate thereof) from the cash portion of the purchase price of such Bid; *plus*
  - (3) the dollar value of the Breakup Fee and the Expense Reimbursement (together, the Breakup Fee and the Expense Reimbursement, the “Bid Protections”)<sup>2</sup> each in cash and which must be payable immediately to the Stalking Horse Purchaser (or a designated affiliate thereof) from the cash portion of the purchase price of such Bid; *plus*
  - (4) an assumption of the Assumed Obligations (as defined in the Asset Purchase Agreement) or the dollar value of any such Assumed Obligations (as defined in the Asset Purchase Agreement) that are not “Assumed Obligations” in such Bid or Bids; *plus*
  - (5) \$1,000,000.00 in cash;
- (f) Designation of Assigned Contracts and Leases: A Bid must identify any and all Contracts and Leases that the Bidder wishes to have assumed and assigned to it at closing pursuant to the Alternative Transaction or provide that such Contracts and Leases will be identified at a later date, but in no event, later than 3 days prior to the Closing Date.
- (g) Corporate Authority: A Bid must include written evidence reasonably acceptable to the Debtors and the Committee demonstrating appropriate corporate authorization to consummate the proposed Alternative Transaction; provided, however, that, if the Bidder is an entity specially formed for the purpose of effectuating the Alternative Transaction, then the Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the Alternative Transaction by the equity holder(s) of such Bidder.
- (h) Proof of Financial Ability to Perform: A Bid must include written evidence that the Debtors conclude, in consultation with their advisors and the Committee, demonstrates that the Bidder has the necessary financial ability and/or has received debt and/or equity funding commitments (or has cash) sufficient in the aggregate to finance and consummate the Alternative Transaction contemplated thereby and provide adequate assurance of future performance under all Contracts and Leases to be assumed and assigned in

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<sup>2</sup> Counsel for the Stalking Horse Purchaser will, upon reasonable request of counsel for the Debtors prior to the commencement of the Bid Deadline, provide counsel for the Debtors with a reasonable estimate of the Expense Reimbursement through and including the Auction, which amount shall be used by the Debtors to calculate the Expense Reimbursement for purposes of determining Qualified Bids.

such Alternative Transaction, including proof of the Good Faith Deposit in cash and one of (i) evidence of sufficient cash to consummate the Alternative Transaction, (ii) an unconditional lending commitment from a recognized banking institution in the amount of any cash portion of the purchase price of such Bid, (iii) the posting of an unconditional, irrevocable letter of credit from a recognized banking institution issued in favor of the Debtors in the amount of any cash portion of the purchase price of such Bid, or (iv) a guarantee from another person or entity in favor of the Debtors in the amount of any cash portion of the purchase price of such Bid (with such person or entity providing written evidence of its financial wherewithal reasonably acceptable to the Debtors). Such information shall include the following:

- (1) contact names and numbers for verification of financing sources;
  - (2) the Bidder's current financial statements (audited if they exist) or other similar financial information reasonably acceptable to the Debtors; and
  - (3) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors and Committee demonstrating that such Bidder has the ability to close the Alternative Transaction.
- (i) Contingencies: Each Bid (1) may not contain representations and warranties, covenants, or termination rights more onerous than those set forth in the Asset Purchase Agreement (when considering all such provisions as a whole) and (2) may not be conditioned on financing or due diligence contingencies of any kind or any other conditions precedent to such Bidder's obligation to purchase the Acquired Assets subject to such Bid other than as may be included in the Asset Purchase Agreement.
- (j) Irrevocable: Each Bid must be irrevocable through the Auction, provided that if such Bid is accepted as the Successful Bid or the Backup Bid (each as defined herein), such Bid shall continue to remain irrevocable, subject to the terms and conditions of the Bidding Procedures.
- (k) Bid Deadline: The following parties must receive a Bid in writing, on or before December 6, 2013 at 4:00 p.m. (prevailing Eastern time) (the "Bid Deadline"): (1) the Debtors, Furniture Brands International, Inc., 1 North Brentwood Boulevard, St. Louis, MO 63105, Attn: Meredith M. Graham; (2) counsel for the Debtors, Paul Hastings LLP, 75 East 55th Street, First Floor, New York, New York 10022, Attn: Luc A. Despins and Leslie A. Plaskon and 191 N. Wacker Drive, Thirtieth Floor, Chicago, Illinois 60606, Attn: Marc J. Carmel; (3) Miller Buckfire, 601 Lexington Avenue, 22nd Floor, New York, New York 10022, Attn: Morgan Suckow; (4) counsel for the Committee, Hahn & Hessen LLP, 488 Madison Avenue, New York NY 10022, Attn: Mark S. Indelicato and Mark T. Power; and (5) Houlihan

Lokey, 123 N. Wacker Drive, 4th Floor, Chicago, IL 60606, Attn: Andrew Turnbull.

A Bid (or combination of Bids) that is actually received from a Bidder before the Bid Deadline and which meets the above requirements for the Acquired Assets shall collectively constitute a “Qualified Bid” for the Acquired Assets, and such Bidder (or combination of Bidders) shall collectively constitute a “Qualified Bidder” for the Acquired Assets. The Debtors shall not consider any Bids received after the Bid Deadline. Notwithstanding anything herein to the contrary, the Asset Purchase Agreement submitted by the Stalking Horse Purchaser shall be deemed a Qualified Bid, and the Stalking Horse Purchaser shall be deemed a Qualified Bidder.

In addition, each Qualified Bidder (including the Stalking Horse Purchaser) will receive from the Debtors a copy of any Qualified Bids following the Bid Deadline as soon as reasonably practicable prior to (but no later than two (2) days before) the Auction.

### **Auction**

If one or more Qualified Bids for the Debtors’ assets (other than the Asset Purchase Agreement submitted by the Stalking Horse Purchaser) are received by the Bid Deadline, the Debtors will conduct an auction (the “Auction”) to determine, in consultation with the Committee, the highest or otherwise best Qualified Bid for the Acquired Assets. This determination shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to their estates and may include, among other things, the following: (a) the number, type, and nature of any changes to the Asset Purchase Agreement requested by each Bidder; (b) the extent to which such modifications are likely to delay closing of the sale of the Acquired Assets and the cost to the Debtors of such modifications or delay; (c) the total consideration to be received by the Debtors; (d) the likelihood of the Bidder’s ability to close a transaction and the timing thereof; and (f) the net benefit to the Debtors’ estate, taking into account Stalking Horse Purchaser’s rights to the Bid Protections (collectively, the “Bid Assessment Criteria”).

If no Qualified Bid (other than the Asset Purchase Agreement) is received by the Bid Deadline, the Debtors shall not conduct the Auction. Only parties that the Debtors and the Committee determine in accordance with these Bidding Procedures are Qualified Bidders may participate in the Auction.

### **Procedures for Auction**

The Auction shall take place on December 10, 2013 at 10:00 a.m. (prevailing Eastern time) at the offices of counsel for the Debtors, Paul Hastings LLP, 75 East 55th Street, First Floor, New York, New York 10022, or such other place and time as the Debtors shall notify all Qualified Bidders, including the Stalking Horse Purchaser, the Committee, the Committee’s financial advisor and investment banker, counsel for the Stalking Horse Purchaser and other invitees.

Only the Debtors, the Committee, the Stalking Horse Purchaser, and any other Qualified Bidder, in each case, along with their representatives, financial advisors, and counsel, shall attend the Auction in person, and only the Stalking Horse Purchaser and such other Qualified Bidders will be entitled to make any Bids at the Auction. At the Auction, the holders of secured debt are entitled to “credit bid” (as such term is defined pursuant to section 363(k) of the Bankruptcy Code) the accrued and outstanding amount of its portion of the Debtors’ secured indebtedness, including each of (i) the DIP Facility and (ii) the Existing Term Loan (including any Prepayment Premium, if applicable (as such term is defined in the Existing Term Loan Agreement), subject to the Committee’s rights to challenge the extent, amount and value of such secured position).

***The Debtors Shall Conduct the Auction.***

The Debtors and their advisors, in consultation with the Committee, shall direct and preside over the Auction. Subject to their compliance with these Bidding Procedures, the Debtors, in consultation with the Committee, may conduct the Auction in the manner they determine will result in the highest, best, or otherwise superior offer for any of the Debtors’ assets. At the start of the Auction, the Debtors shall describe the terms of the highest or otherwise best Qualified Bid or Qualified Bids received prior to the Bid Deadline (each such highest or otherwise best Qualified Bid, the “Auction Baseline Bid”). The Debtors shall advise each Qualified Bidder (including the Stalking Horse Purchaser), in writing, regarding which Qualified Bid shall be the Auction Baseline Bid as soon as reasonably practicable prior to the commencement of the Auction. Each Qualified Bidder participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein and (b) has reviewed and understands and accepts the Bidding Procedures.

***Overbids.***

An “Overbid” is any bid made at the Auction subsequent to the Debtors’ announcement of the respective Auction Baseline Bid for such Auction. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

- (a) Minimum Overbid Increments: Any Overbid after and above the respective Auction Baseline Bid shall be made in increments valued at not less than \$1,000,000.00. Additional consideration in excess of the amount set forth in the respective Auction Baseline Bid may include cash and/or noncash consideration.
- (b) Bids: All Qualified Bidders attending the Auction (including the Stalking Horse Purchaser) shall be permitted to bid at the Auction, if any. For the avoidance of doubt, the Stalking Horse Purchaser shall be permitted to include the full amount of the Bid Protections in each bid by the Stalking Horse Purchaser for the purposes of comparison to any Overbid in connection with each round of bidding in the Auction.



- (c) Remaining Terms Are the Same as for Qualified Bids: Except as modified herein, an Overbid at the Auction must comply with the conditions for a Qualified Bid set forth above, provided, however, that the Bid Deadline shall not apply. Any Overbid must remain open and binding on the Bidder until and unless the Debtors accept a higher or otherwise better Overbid from such Bidder.

To the extent not previously provided, a Bidder submitting an Overbid at any Auction must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Bidder's ability to close the Alternative Transaction proposed by such Overbid.

- (d) Announcement of Overbids: The Debtors shall announce at the Auction the material terms of each Overbid and the basis for calculating the total consideration offered in each such Overbid.

***Closing the Auction.***

The Auction shall continue until there is only one Qualified Bid for the Acquired Assets that the Debtors determine, in consultation with the Committee, in their reasonable business judgment, after consultation with their financial and legal advisors, is the highest or otherwise best Qualified Bid at the Auction for the Acquired Assets. Thereafter, the Debtors, in consultation with the Committee, shall select the Qualified Bid that produces the highest or otherwise best recovery to the estates, as the overall highest or otherwise best Qualified Bid (such Qualified Bid a "Successful Bid," and each Bidder submitting such Successful Bid, a "Successful Bidder"). In determining the Successful Bid, the Debtors, in consultation with their financial advisors, legal advisors and the Committee, shall consider the Bid Assessment Criteria.

The Auction shall close when the Successful Bidder submits fully executed sale and transaction documents memorializing the terms of its respective Successful Bid.

Promptly following the Debtors and Committee's selection of the Successful Bid and the conclusion of the Auction (and in no event later than 1 business day after the close of the Auction), the Debtors shall announce the Successful Bid and Successful Bidder and shall file with the Bankruptcy Court notice of the Successful Bid and Successful Bidder.

The Debtors shall not consider any Bids submitted after the close of the Auction.

***Backup Bidder.***

Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the Bidder (or Bidders) with the next highest or otherwise best Bid or combination of Bids at the Auction, as determined by the Debtors and the Committee, in the exercise of their reasonable business judgment, after consultation with their advisors, will be designated as the potential backup bidder (collectively, the "Potential Backup

Bidder”). In the event that a Bidder or Bidders other than the Stalking Horse Purchaser are identified by the Debtors, in consultation with the Committee, as the Potential Backup Bidder, such Bidder or Bidders shall be required to serve as the backup bidder or backup bidders (collectively, the “Backup Bidder”). The Backup Bidder shall be required to keep its initial Bid or combination of Bids (or if the Backup Bidder submitted one or more Overbids at the Auction, the final respective Overbid) (the “Backup Bid”) open and irrevocable until the earlier of 4:00 p.m. (prevailing Eastern time) on the date that is thirty (30) days after the date of the Auction (the “Outside Backup Date”) or the closing of the transaction with the Successful Bidder (defined herein). The Debtors may not compel the Stalking Horse Purchaser to serve as the Backup Bidder without the Stalking Horse Purchaser’s express written consent.

### **Sale Hearing**

The Successful Bid will be subject to approval by the Bankruptcy Court. The hearing to approve the sale of the assets subject to the Bidding Procedures Order to the Successful Bidder (including to the Stalking Horse Purchaser, if the Stalking Horse Purchaser is the Successful Bidder) (the “Sale Hearing”) is scheduled to take place on December 12, 2013 at [•] (prevailing Eastern time). The Sale Hearing may be adjourned from time to time without further notice to parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearings or a notice filed with the Bankruptcy Court, as applicable; provided, however, that if the Stalking Horse Purchaser is the Successful Bidder, the Sale Hearing shall not be adjourned (unless extended with the express written consent of the Stalking Horse Purchaser).

Following the Sale Hearing, if the Successful Bidder (defined herein) fails to consummate its transaction, the Debtors, in consultation with the Committee, may designate the Backup Bidder to be the new Successful Bidder, in which case the Backup Bidder shall be deemed to be the “Successful Bidder,” and the Debtors will be authorized, but not required, to consummate the transaction or transactions, with the Backup Bidder (as the Successful Bidder) without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder’s deposit shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available damages from the defaulting Successful Bidder (defined herein). The deposit of the Backup Bidder shall be held by the Debtors until the earlier of 72 hours after (i) the closing of the transaction or transactions with the Successful Bidder (defined herein) and (ii) the Outside Backup Date.

### ***Additional Procedures.***

The Debtors, reserve their rights, in the exercise of their fiduciary obligations and in consultation with the Committee, to modify the Bidding Procedures or impose, at or prior to the Auction, different and/or additional terms and conditions on the sale subject to the Bidding Procedures; provided, however, that such rules are not inconsistent in any material respect with the Bidding Procedures or the Asset Purchase Agreement.

The Debtors, with the consent of the Committee, may schedule the Bid Deadline for a date earlier than December 6, 2013 and may schedule the Auction Date for a date earlier



than December 10, 2013, upon fifteen (15) days written notice to all creditors, all parties that have expressed interest in potentially submitting a bid for all or part(s) of the Debtors' assets and have executed a non-disclosure agreement with the Debtors, and the Notice Parties.

***Consent to Jurisdiction as Condition to Bidding.***

The Stalking Horse Purchaser and all other Qualified Bidders at the Auction shall be deemed to have (a) consented to the core jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors, the Chapter 11 Cases, the Bidding Procedures, the Asset Purchase Agreement, the Auction, or the construction and enforcement of any Qualified Bid or related documents and (b) waived any right to a jury trial in connection with any disputes relating to the Debtors, the Chapter 11 Cases, the Bidding Procedures, the Asset Purchase Agreement, the Auction, or the construction and enforcement of any Qualified Bid or related documents.

**Bid Protections**

Pursuant to the Bidding Procedures Order, the Stalking Horse Purchaser is entitled to the Bid Protections in accordance with the terms of the Asset Purchase Agreement and the Bidding Procedures Order.

Pursuant to the Bidding Procedures Order, except for the Stalking Horse Purchaser, no other party submitting an offer or Bid or a Qualified Bid shall be entitled to any expense reimbursement or breakup, termination, or similar fee, or postpetition claim, including any administrative expense claim or substantial contribution claim under section 503 of the Bankruptcy Code or otherwise, unless the Debtors and the Stalking Horse Purchaser (in each of their sole discretion) in consultation with the Committee expressly agree otherwise, and by submitting a Bid, a Bidder (other than the Stalking Horse Purchaser) shall be deemed to waive any right with respect thereto.

**Return of Good Faith Deposits**

The Good Faith Deposits of all Qualified Bidders shall be held in one or more escrow accounts by the Debtors, but shall not become property of the Debtors' estates absent further order of the Bankruptcy Court except as set forth herein. The Good Faith Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearing. The Good Faith Deposit of each Backup Bidder, if any, shall be returned to the respective Backup Bidder on the date that is the earlier of 72 hours after (a) the closing of the transaction with the Successful Bidder or Successful Bidders (defined herein) for the assets bid upon by such Backup Bidder and (b) the Outside Backup Date. If a Successful Bidder or Successful Bidders timely closes their winning transactions, their respective Good Faith Deposits shall be credited towards their respective purchase prices.

*[Remainder of page intentionally left blank.]*

Dated: [\_\_\_\_\_, 2013]  
Wilmington, Delaware

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*Proposed Attorneys for the Debtors and Debtors in Possession*

**EXHIBIT D**

## **BIDDING PROCEDURES**

By the Motion dated as of the Petition Date, Furniture Brands International, Inc. and its affiliated debtors and debtors in possession (collectively, the “Debtors”) sought approval of, among other things, the procedures through which they will determine the highest or otherwise best offer for the Acquired Assets as defined in the Asset Purchase Agreement, a copy of which is attached to the Bidding Procedures Order (as defined below) as **Exhibit 1**.

On October [•], 2013, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order (the “Bidding Procedures Order”),<sup>1</sup> which, among other things, authorized the Debtors to determine the highest or otherwise best offer for the Acquired Assets through the process and procedures set forth below (the “Bidding Procedures”).

### **Marketing Process**

#### ***Contact Parties.***

The Debtors, in consultation with their advisors, ~~have developed~~ and the Official Committee of Unsecured Creditors (the “Committee”), have and will continue to develop with input from the Committee a list of parties (in addition to the Stalking Horse Purchaser) who the Debtors believe may potentially be interested in and who the Debtors reasonably believe would have the financial resources to consummate an Alternative Transaction (as defined in the Asset Purchase Agreement), which list includes both potential strategic investors and potential financial investors (each, individually, a “Contact Party” and, collectively, the “Contact Parties”). The Debtors and their advisors will contact the Contact Parties to explore their interest in pursuing an Alternative Transaction. The Contact Parties may include parties whom the Debtors or their advisors have previously contacted regarding a transaction, regardless of whether such parties expressed any interest, at such time, in pursuing a transaction. The Debtors will continue to discuss and may supplement the list of Contact Parties throughout the marketing process, as appropriate.

The Debtors shall distribute to each Contact Party an “Information Package,” which may comprise:

- (a) a cover letter;
- (b) a copy of these Bidding Procedures and the Motion;
- (c) a copy of a confidentiality agreement; and

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.

- (d) such other materials as the Debtors in consultation with their advisors and the Committee deem appropriate under the circumstances, which may include preliminary “teaser” information.

Any entity desiring to obtain a copy of the Asset Purchase Agreement may do so by accessing the website of the Debtors’ notice and claims agent at <http://dm.epiq11.com/fbn>. A copy may also be obtained by contacting: (a) the Debtors’ investment banking advisor, Miller Buckfire & Co., LLC, 601 Lexington Avenue, Twenty-Second Floor, New York, New York 10022, Attn: Morgan Suckow, Telephone (212) 895-1825, Facsimile (212) 895-1852, Email: [morgan.suckow@millerbuckfire.com](mailto:morgan.suckow@millerbuckfire.com); or (b) the Debtors’ counsel at Paul Hastings LLP, 191 North Wacker Drive, Thirtieth Floor, Chicago, Illinois 60606, Attn: Marc J. Carmel, Telephone (312) 499-6040, Facsimile (312) 499-6140, Email: [marccarmel@paulhastings.com](mailto:marccarmel@paulhastings.com) and Attn: Amit Mehta, Telephone (312) 499-6019, Facsimile (312) 499-6119, Email: [amitmehta@paulhastings.com](mailto:amitmehta@paulhastings.com). For additional information, parties in interest can call the Debtors’ restructuring information line at (877) 797-6087 or (503) 597-7678 (for international callers).

***Access to Diligence Materials.***

To participate in the bidding process and to receive access to due diligence (the “Diligence Materials”), a party (other than the Stalking Horse Purchaser) must submit to the Debtors an executed confidentiality agreement in form and substance satisfactory to the Debtors and evidence demonstrating the party’s financial capability with respect to an Alternative Transaction as determined by the Debtors and the Committee.

A party (other than the Stalking Horse Purchaser) who qualifies for access to Diligence Materials shall be a “Preliminary Interested Party.” All due diligence requests must be directed to Miller Buckfire & Co.

For any Preliminary Interested Party who is a competitor of the Debtors or is affiliated with any competitor of the Debtors, the Debtors reserve the right to withhold any Diligence Materials that the Debtors determine are business-sensitive or otherwise not appropriate for disclosure to such Preliminary Interested Party.

***Due Diligence from Bidders.***

Each Preliminary Interested Party and Qualified Bidder (as defined herein) shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Bidder (as defined herein) and its contemplated transaction. Failure by a Preliminary Interested Party to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors to determine ~~-,~~ in consultation with the Committee, that such bidder is not a Qualified Bidder. Failure by a Qualified Bidder (other than the Stalking Horse Purchaser) to comply with requests for additional information and due diligence access may be a basis for the Debtors ~~-,~~ in consultation with the Committee, to determine that a bid made by such Qualified Bidder is not a Qualified Bid.

### Auction Qualification Process

To be eligible to participate in the Auction (as defined herein), each offer, solicitation, or proposal (each, a “Bid”), and each party submitting such a Bid (each, a “Bidder”), must be determined by the Debtors to satisfy each of the conditions set forth below. A Bid will not be considered qualified for the Auction if such Bid does not satisfy each of the following conditions:

- (a) Good Faith Deposit: Each Bid must be accompanied by a deposit in the amount of 6% of the total purchase price of such Bid (excluding any Assumed Obligations (as defined in the Asset Purchase Agreement)) to an escrow account to be identified and established by the Debtors (the “Good Faith Deposit”).

The Stalking Horse Purchaser shall not be required to submit a Good Faith Deposit.

- (b) Same or Better Terms: Each Bid must be on terms that, in the Debtors’ business judgment, after consultation with their financial ~~and~~ advisors, legal advisors and the Committee, are the same or better than the terms of the Asset Purchase Agreement (taken as a whole).
- (c) Executed Agreement: Each Bid must be based on the Asset Purchase Agreement and must include executed transaction documents, signed by an authorized representative of such Bidder, pursuant to which the Bidder proposes to effectuate an Alternative Transaction (the “Modified Asset Purchase Agreement”). A Bid shall also include a copy of the Asset Purchase Agreement marked against the Modified Asset Purchase Agreement to show all changes requested by the Bidder, including those related to purchase price and to remove all provisions that apply only to the Stalking Horse Purchaser (*e.g.*, the Bid Protections (as defined herein)).
- (d) Bids for Portions of Debtors’ Assets: A Bid must offer to purchase all of the Acquired Assets or only a portion of such assets; provided, however, that if the Bid is for a portion of the Acquired Assets, the Debtors must be able to combine such Bid with another Bid or combination of other Bids for a portion of the Acquired Assets, such that the combination of such Bids results in a combination of binding offers to purchase all of the Acquired Assets; provided, further, however, if a Bid offers to purchase only a portion of the Debtors’ assets, the Debtors, in consultation with the Committee, may allow the Bid to participate in the Auction if such offer would repay the DIP Facility and Existing Term Loan in full.
- (e) Minimum Bid: A Bid (or any combination of other Bids) must propose a minimum purchase price, or otherwise have value for the benefit of the Debtors’ estates sufficient to satisfy (without duplication):

- (1) the Credit Bid Amount and the Cash Amount; *plus*
  - (2) the dollar value of the DIP Termination Fee, in cash which must be payable immediately to the Stalking Horse Purchaser (or a designated affiliate thereof) from the cash portion of the purchase price of such Bid; *plus*
  - (3) the dollar value of the Breakup Fee and the Expense Reimbursement (together, the Breakup Fee and the Expense Reimbursement, the “Bid Protections”)<sup>2</sup> each in cash and which must be payable immediately to the Stalking Horse Purchaser (or a designated affiliate thereof) from the cash portion of the purchase price of such Bid; *plus*
  - (4) an assumption of the Assumed Obligations (as defined in the Asset Purchase Agreement) or the dollar value of any such Assumed Obligations (as defined in the Asset Purchase Agreement) that are not “Assumed Obligations” in such Bid or Bids; *plus*
  - (5) \$1,000,000.00 in cash;
- (f) Designation of Assigned Contracts and Leases: A Bid must identify any and all Contracts and Leases that the Bidder wishes to have assumed and assigned to it at closing pursuant to the Alternative Transaction or provide that such Contracts and Leases will be identified at a later date, but in no event, later than 3 days prior to the Closing Date.
- (g) Corporate Authority: A Bid must include written evidence reasonably acceptable to the Debtors and the Committee demonstrating appropriate corporate authorization to consummate the proposed Alternative Transaction; provided, however, that, if the Bidder is an entity specially formed for the purpose of effectuating the Alternative Transaction, then the Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the Alternative Transaction by the equity holder(s) of such Bidder.
- (h) Proof of Financial Ability to Perform: A Bid must include written evidence that the Debtors conclude, in consultation with their advisors and the Committee, ~~conclude~~ demonstrates that the Bidder has the necessary financial ability and/or has received debt and/or equity funding commitments (or has cash) sufficient in the aggregate to finance and consummate the Alternative Transaction contemplated thereby and provide adequate assurance of future performance under all Contracts and Leases to be assumed and assigned in

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<sup>2</sup> Counsel for the Stalking Horse Purchaser will, upon reasonable request of counsel for the Debtors prior to the commencement of the Bid Deadline, provide counsel for the Debtors with a reasonable estimate of the Expense Reimbursement through and including the Auction, which amount shall be used by the Debtors to calculate the Expense Reimbursement for purposes of determining Qualified Bids.

such Alternative Transaction, including proof of the Good Faith Deposit in cash and one of (i) evidence of sufficient cash to consummate the Alternative Transaction, (ii) an unconditional lending commitment from a recognized banking institution in the amount of any cash portion of the purchase price of such Bid, (iii) the posting of an unconditional, irrevocable letter of credit from a recognized banking institution issued in favor of the Debtors in the amount of any cash portion of the purchase price of such Bid, or (iv) a guarantee from another person or entity in favor of the Debtors in the amount of any cash portion of the purchase price of such Bid (with such person or entity providing written evidence of its financial wherewithal reasonably acceptable to the Debtors). Such information shall include the following:

- (1) contact names and numbers for verification of financing sources;
  - (2) the Bidder's current financial statements (audited if they exist) or other similar financial information reasonably acceptable to the Debtors; and
  - (3) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors and Committee demonstrating that such Bidder has the ability to close the Alternative Transaction.
- (i) Contingencies: Each Bid (1) may not contain representations and warranties, covenants, or termination rights more onerous than those set forth in the Asset Purchase Agreement (when considering all such provisions as a whole) and (2) may not be conditioned on financing or due diligence contingencies of any kind or any other conditions precedent to such Bidder's obligation to purchase the Acquired Assets subject to such Bid other than as may be included in the Asset Purchase Agreement.
- (j) Irrevocable: Each Bid must be irrevocable through the Auction, provided that if such Bid is accepted as the Successful Bid or the Backup Bid (each as defined herein), such Bid shall continue to remain irrevocable, subject to the terms and conditions of the Bidding Procedures.
- (k) Bid Deadline: The following parties must receive a Bid in writing, on or before ~~January [3], 2014~~ December 6, 2013 at 4:00 p.m. (prevailing Eastern time) (the "Bid Deadline"): (1) the Debtors, Furniture Brands International, Inc., 1 North Brentwood Boulevard, St. Louis, MO 63105, Attn: Meredith M. Graham; (2) counsel for the Debtors, Paul Hastings LLP, 75 East 55th Street, First Floor, New York, New York 10022, Attn: Luc A. Despins and Leslie A. Plaskon and 191 N. Wacker Drive, Thirtieth Floor, Chicago, Illinois 60606, Attn: Marc J. Carmel; (3) Miller Buckfire, 601 Lexington Avenue, 22nd Floor, New York, New York 10022, Attn: Morgan Suckow; ~~and~~ (4) counsel for the ~~official committee of unsecured creditors appointed in Debtors' chapter 11 cases pursuant to section 1102 of the Bankruptcy Code (the~~



~~“Committee”~~, ~~[], Attn: []~~[Committee, Hahn & Hessen LLP, 488 Madison Avenue, New York NY 10022, Attn: Mark S. Indelicato and Mark T. Power; and \(5\) Houlihan Lokey, 123 N. Wacker Drive, 4th Floor, Chicago, IL 60606, Attn: Andrew Turnbull.](#)

A Bid (or combination of Bids) that is actually received from a Bidder before the Bid Deadline and which meets the above requirements for the Acquired Assets shall collectively constitute a “Qualified Bid” for the Acquired Assets, and such Bidder (or combination of Bidders) shall collectively constitute a “Qualified Bidder” for the Acquired Assets. The Debtors shall not consider any Bids received after the Bid Deadline. Notwithstanding anything herein to the contrary, the Asset Purchase Agreement submitted by the Stalking Horse Purchaser shall be deemed a Qualified Bid, and the Stalking Horse Purchaser shall be deemed a Qualified Bidder.

In addition, each Qualified Bidder (including the Stalking Horse Purchaser) will receive from the Debtors a copy of any Qualified Bids following the Bid Deadline as soon as reasonably practicable prior to (but no later than two (2) days before) the Auction.

### **Auction**

If one or more Qualified Bids for the Debtors’ assets (other than the Asset Purchase Agreement submitted by the Stalking Horse Purchaser) are received by the Bid Deadline, the Debtors will conduct an auction (the “Auction”) to determine, in consultation with the Committee, the highest or otherwise best Qualified Bid for the Acquired Assets. This determination shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to their estates and may include, among other things, the following: (a) the number, type, and nature of any changes to the Asset Purchase Agreement requested by each Bidder; (b) the extent to which such modifications are likely to delay closing of the sale of the Acquired Assets and the cost to the Debtors of such modifications or delay; (c) the total consideration to be received by the Debtors; (d) the likelihood of the Bidder’s ability to close a transaction and the timing thereof; and (f) the net benefit to the Debtors’ estate, taking into account Stalking Horse Purchaser’s rights to the Bid Protections (collectively, the “Bid Assessment Criteria”).

If no Qualified Bid (other than the Asset Purchase Agreement) is received by the Bid Deadline, the Debtors shall not conduct the Auction. Only parties that the Debtors and the Committee determine in accordance with these Bidding Procedures are Qualified Bidders may participate in the Auction.

### **Procedures for Auction**

The Auction shall take place on ~~January [8], 2014~~ December 10, 2013 at 10:00 a.m. (prevailing Eastern time) at the offices of counsel for the Debtors, Paul Hastings LLP, 75 East 55th Street, First Floor, New York, New York 10022, or such other place and time as the Debtors shall notify all Qualified Bidders, including the Stalking Horse Purchaser, the Committee, the Committee’s financial advisor and investment banker, counsel for the Stalking Horse Purchaser, ~~;~~ and other invitees.

Only the Debtors, the Committee, the Stalking Horse Purchaser, and any other Qualified Bidder, in each case, along with their representatives, financial advisors, and counsel, shall attend the Auction in person, and only the Stalking Horse Purchaser and such other Qualified Bidders will be entitled to make any Bids at the Auction. At the Auction, the ~~Stalking Horse Purchaser is~~ holders of secured debt are entitled to “credit bid” (as such term is defined pursuant to section 363(k) of the Bankruptcy Code) the accrued and outstanding amount of its portion of the Debtors’ secured indebtedness, including each of (i) the DIP Facility and (ii) the Existing Term Loan (including any Prepayment Premium, if applicable (as such term is defined in the Existing Term Loan Agreement), subject to the Committee’s rights to challenge the extent, amount and value of such secured position).

***The Debtors Shall Conduct the Auction.***

The Debtors and their advisors, in consultation with the Committee, shall direct and preside over the Auction. Subject to their compliance with these Bidding Procedures, the Debtors, in consultation with the Committee, may conduct the Auction in the manner they determine will result in the highest, best, or otherwise superior offer for any of the Debtors’ assets. At the start of the Auction, the Debtors shall describe the terms of the highest or otherwise best Qualified Bid or Qualified Bids received prior to the Bid Deadline (each such highest or otherwise best Qualified Bid, the “Auction Baseline Bid”). The Debtors shall advise each Qualified Bidder (including the Stalking Horse Purchaser), in writing, regarding which Qualified Bid shall be the Auction Baseline Bid as soon as reasonably practicable prior to the commencement of the Auction. Each Qualified Bidder participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein and (b) has reviewed and understands and accepts the Bidding Procedures.

***Overbids.***

An “Overbid” is any bid made at the Auction subsequent to the Debtors’ announcement of the respective Auction Baseline Bid for such Auction. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

- (a) Minimum Overbid Increments: Any Overbid after and above the respective Auction Baseline Bid shall be made in increments valued at not less than \$1,000,000.00. Additional consideration in excess of the amount set forth in the respective Auction Baseline Bid may include cash and/or noncash consideration.
- (b) Bids: All Qualified Bidders attending the Auction (including the Stalking Horse Purchaser) shall be permitted to bid at the Auction, if any. For the avoidance of doubt, the Stalking Horse Purchaser shall be permitted to include the full amount of the Bid Protections in each bid by the Stalking Horse Purchaser for the purposes of comparison to any Overbid in connection with each round of bidding in the Auction.

- (c) Remaining Terms Are the Same as for Qualified Bids: Except as modified herein, an Overbid at the Auction must comply with the conditions for a Qualified Bid set forth above, provided, however, that the Bid Deadline shall not apply. Any Overbid must remain open and binding on the Bidder until and unless the Debtors accept a higher or otherwise better Overbid from such Bidder.

To the extent not previously provided, a Bidder submitting an Overbid at any Auction must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Bidder's ability to close the Alternative Transaction proposed by such Overbid.

- (d) Announcement of Overbids: The Debtors shall announce at the Auction the material terms of each Overbid and the basis for calculating the total consideration offered in each such Overbid.

***Closing the Auction.***

The Auction shall continue until there is only one Qualified Bid for the Acquired Assets that the Debtors determine, in consultation with the Committee, in their reasonable business judgment, after consultation with their financial and legal advisors, is the highest or otherwise best Qualified Bid at the Auction for the Acquired Assets. Thereafter, the Debtors, in consultation with the Committee, shall select the Qualified Bid that produces the highest or otherwise best recovery to the estates, as the overall highest or otherwise best Qualified Bid (such Qualified Bid a "Successful Bid," and each Bidder submitting such Successful Bid, a "Successful Bidder"). In determining the Successful Bid, the Debtors, in consultation with their financial ~~and~~ advisors, legal advisors and the Committee, shall consider the Bid Assessment Criteria.

The Auction shall close when the Successful Bidder submits fully executed sale and transaction documents memorializing the terms of its respective Successful Bid.

Promptly following the Debtors' ~~and Committee's~~ selection of the Successful Bid and the conclusion of the Auction (and in no event later than 1 business day after the close of the Auction), the Debtors shall announce the Successful Bid and Successful Bidder and shall file with the Bankruptcy Court notice of the Successful Bid and Successful Bidder.

The Debtors shall not consider any Bids submitted after the ~~conclusion~~ close of the Auction.

***Backup Bidder.***

Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the Bidder (or Bidders) with the next highest or otherwise best Bid or combination of Bids at the Auction, as determined by the Debtors and the Committee, in the exercise of their reasonable business judgment, after consultation with their advisors,

will be designated as the potential backup bidder (collectively, the “Potential Backup Bidder”). In the event that a Bidder or Bidders other than the Stalking Horse Purchaser are identified by the Debtors—, in consultation with the Committee, as the Potential Backup Bidder, such Bidder or Bidders shall be required to serve as the backup bidder or backup bidders (collectively, the “Backup Bidder”). The Backup Bidder shall be required to keep its initial Bid or combination of Bids (or if the Backup Bidder submitted one or more Overbids at the Auction, the final respective Overbid) (the “Backup Bid”) open and irrevocable until the earlier of 4:00 p.m. (prevailing Eastern time) on the date that is thirty (30) days after the date of the Auction (the “Outside Backup Date”) or the closing of the transaction with the Successful Bidder (defined herein). The Debtors may not compel the Stalking Horse Purchaser to serve as the Backup Bidder without the Stalking Horse Purchaser’s express written consent.

### **Sale Hearing**

The Successful Bid will be subject to approval by the Bankruptcy Court. The hearing to approve the sale of the assets subject to the Bidding Procedures Order to the Successful Bidder (including to the Stalking Horse Purchaser, if the Stalking Horse Purchaser is the Successful Bidder) (the “Sale Hearing”) is scheduled to take place on ~~January [10], 2014~~ December 12, 2013 at [•] (prevailing Eastern time). The Sale Hearing may be adjourned from time to time without further notice to parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearings or a notice filed with the Bankruptcy Court, as applicable; provided, however, that if the Stalking Horse Purchaser is the Successful Bidder, the Sale Hearing shall not be adjourned (unless extended with the express written consent of the Stalking Horse Purchaser).

Following the Sale Hearing, if the Successful Bidder (defined herein) fails to consummate its transaction, the Debtors—, in consultation with the Committee, may designate the Backup Bidder to be the new Successful Bidder, in which case the Backup Bidder shall be deemed to be the “Successful Bidder,” and the Debtors will be authorized, but not required, to consummate the transaction or transactions, with the Backup Bidder (as the Successful Bidder) without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder’s deposit shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available damages from the defaulting Successful Bidder (defined herein). The deposit of the Backup Bidder shall be held by the Debtors until the earlier of 72 hours after (i) the closing of the transaction or transactions with the Successful Bidder (defined herein) and (ii) the Outside Backup Date.

### ***Additional Procedures.***

The Debtors—, reserve their rights, in the exercise of their fiduciary obligations and in consultation with the Committee, to modify the Bidding Procedures or impose, at or prior to the Auction, different and/or additional terms and conditions on the sale subject to the Bidding Procedures; provided, however, that such rules are not inconsistent in any material respect with the Bidding Procedures or the Asset Purchase Agreement.

The Debtors, with the consent of the Committee, may schedule the Bid Deadline for a date earlier than December 6, 2013 and may schedule the Auction Date for a date earlier than December 10, 2013, upon fifteen (15) days written notice to all creditors, all parties that have expressed interest in potentially submitting a bid for all or part(s) of the Debtors' assets and have executed a non-disclosure agreement with the Debtors, and the Notice Parties.

***Consent to Jurisdiction as Condition to Bidding.***

The Stalking Horse Purchaser and all other Qualified Bidders at the Auction shall be deemed to have (a) consented to the core jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors, the Chapter 11 Cases, the Bidding Procedures, the Asset Purchase Agreement, the Auction, or the construction and enforcement of any Qualified Bid or related documents and (b) waived any right to a jury trial in connection with any disputes relating to the Debtors, the Chapter 11 Cases, the Bidding Procedures, the Asset Purchase Agreement, the Auction, or the construction and enforcement of any Qualified Bid or related documents.

**Bid Protections**

Pursuant to the Bidding Procedures Order, the Stalking Horse Purchaser is entitled to the Bid Protections in accordance with the terms of the Asset Purchase Agreement and the Bidding Procedures Order.

Pursuant to the Bidding Procedures Order, except for the Stalking Horse Purchaser, no other party submitting an offer or Bid or a Qualified Bid shall be entitled to any expense reimbursement or breakup, termination, or similar fee, or postpetition claim, including any administrative expense claim or substantial contribution claim under section 503 of the Bankruptcy Code or otherwise, unless the Debtors and the Stalking Horse Purchaser (in each of their sole discretion) in consultation with the Committee expressly agree otherwise, and by submitting a Bid, a Bidder (other than the Stalking Horse Purchaser) shall be deemed to waive any right with respect thereto.

**Return of Good Faith Deposits**

The Good Faith Deposits of all Qualified Bidders shall be held in one or more escrow accounts by the Debtors, but shall not become property of the Debtors' estates absent further order of the Bankruptcy Court except as set forth herein. The Good Faith Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearing. The Good Faith Deposit of each Backup Bidder, if any, shall be returned to the respective Backup Bidder on the date that is the earlier of 72 hours after (a) the closing of the transaction with the Successful Bidder or Successful Bidders (defined herein) for the assets bid upon by such Backup Bidder and (b) the Outside Backup Date. If a Successful Bidder or Successful Bidders timely closes their winning transactions, their respective Good Faith Deposits shall be credited towards their respective purchase prices.

*[Remainder of page intentionally left blank.]*

Dated: [\_\_\_\_\_, 2013]  
Wilmington, Delaware

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*Proposed Attorneys for the Debtors and Debtors in Possession*



Comparison Details	
Title	<b>pdfDocs compareDocs Comparison Results</b>
Date & Time	9/30/2013 6:43:23 PM
Comparison Time	1.22 seconds
compareDocs version	v3.4.14.14

Sources	
Original Document	[#4360485] [v1] Furniture Brands - Bidding Procedures.docxDMS Information
Modified Document	[#4360485] [v3] Furniture Brands - Bidding Procedures.docxDMS information

Comparison Statistics	
Insertions	17
Deletions	3
Changes	22
Moves	0
TOTAL CHANGES	42

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<del>Deletions</del>	
<u>Moves / Moves</u>	
Inserted cells	
Deleted cells	
Merged cells	
Formatting	Color only.
Changed lines	Mark left border.
Comments color	ByAuthorcolor options]
Balloons	False

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Include Moves	Word	True
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False



**EXHIBIT E**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

	X	
<i>In re:</i>	:	<b>Chapter 11</b>
FURNITURE BRANDS	:	
INTERNATIONAL, INC., <i>et al.</i> ,	:	<b>Case No. 13-12329 (CSS)</b>
	:	
Debtors. <sup>1</sup>	:	<b>Jointly Administered</b>
	:	
	:	<b>Docket Ref. No. 21</b>
	:	
	X	

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN  
POST-PETITION FINANCING ON A SUPERPRIORITY, SENIOR SECURED  
BASIS, (B) USE CASH COLLATERAL, (C) REPAY EXISTING POST-PETITION  
LOAN IN FULL, (II) GRANTING ADEQUATE PROTECTION TO CERTAIN  
PREPETITION LENDERS AND (III) MODIFYING THE AUTOMATIC STAY**

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Upon the motion (the “Filed Motion”) [*Docket No. 21*] dated September 9, 2013 of Furniture Brands International, Inc., Broyhill Furniture Industries, Inc., HDM Furniture Industries, Inc., Lane Furniture Industries, Inc., Maitland-Smith Furniture Industries, Inc., and Thomasville Furniture Industries, Inc. (each, a “Borrower” and, collectively, the “Borrowers”), and the other persons designated as a “Credit Party” (each, a “Credit Party” and, collectively, the “Credit Parties”) in the DIP Agreement (as defined below), each as a debtor and debtor-in-possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases, pursuant to sections 105, 361, 362, 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), and 507 of

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: Furniture Brands International, Inc. (7683); Action Transport, Inc. (7587); Broyhill Furniture Industries, Inc. (3217); Broyhill Home Furnishings, Inc. (8844); Broyhill Retail, Inc. (8843); Broyhill Transport, Inc. (1721); Furniture Brands Holdings, Inc. (2837); Furniture Brands Operations, Inc. (4908); Furniture Brands Resource Company, Inc. (1288); HDM Furniture Industries, Inc. (7484); HDM Retail, Inc. (6125); HDM Transport, Inc. (4378); Lane Furniture Industries, Inc. (5064); Lane Home Furnishings Retail, Inc. (9085); Laneventure, Inc. (8434); Maitland-Smith Furniture Industries, Inc. (7486); Thomasville Furniture Industries, Inc. (6574); Thomasville Home Furnishings, Inc. (3139); Thomasville Retail, Inc. (f/k/a Classic Design Furnishings, Inc.) (6174). The Debtors’ corporate headquarters is located at 1 N. Brentwood Blvd., St. Louis, Missouri 63105.

chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), and upon further oral motion (together with the Filed Motion, the “Motion”), seeking entry of a final order (this “Final Order”) providing for, among other things:

(i) authority for the Debtors to obtain senior secured post-petition financing on a superpriority basis pursuant to the terms and conditions of that certain Senior Secured Superpriority Debtor in Possession Credit Agreement dated [\_\_\_\_\_], 2013, by and among the Borrowers, Furniture Brands International, Inc., as Borrower Representative, the other Persons party thereto that are designated as Credit Parties, Bank of America, N.A., as agent for the DIP Lenders (as defined below) (the “DIP Agent”), and the lenders party thereto from time to time (collectively, the “DIP Lenders”), substantially in the form attached hereto as **Exhibit 1** (as such agreement may be amended, restated, amended and restated, extended, modified, supplemented, or replaced from time to time in accordance with its terms, the “DIP Agreement”<sup>2</sup> and the financing made available pursuant to the DIP Agreement and the other DIP Documents (as defined below), the “DIP Facility”);

(ii) authority for the Debtors to (a) execute, deliver, and perform under the DIP Agreement and all other related or ancillary documents and agreements (including the Budget (as defined below)) (collectively with the DIP Agreement, the “DIP

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms as set forth in the DIP Agreement.

Documents”) and (b) perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(iii) authority for the Debtors to (a) use cash collateral on the terms described herein, and (b) access and use the liquidity provided under the DIP Facility on a final basis, as follows: (1) access and use of the postpetition term loan made available under the DIP Facility in the amount of \$90,000,000 (the “Take-Out Term Loan”) to permanently repay in full all Existing DIP Loan Obligations (as defined below); (2) pay fees and expenses; and (3) access and use of up to \$50 million of the revolving commitment made available under the DIP Facility (the “DIP Revolver” and, together with the Take-Out Term Loan, the “DIP Financing”) to (x) fund the Debtors’ chapter 11 cases and the continued operation of their businesses as Debtors and (y) fund certain fees and expenses associated with the consummation of the transactions contemplated in the DIP Documents, each on the terms set forth herein and the DIP Documents;

(iv) a grant of an automatically perfected, valid, enforceable, unavoidable, and first-priority security interest and lien, pursuant to section 364(c)(2) of the Bankruptcy Code, on all DIP Collateral (as defined herein) and assets of the Borrowers and the other Credit Parties of any kind (other than Avoidance Actions (as defined below), but including the proceeds therefrom as set forth herein), whether now existing or hereafter acquired, that was not subject to a valid, perfected, and non-avoidable lien in existence on the Petition Date (as defined below), subject only to the Carve-Out (as defined below);

(v) a grant of an automatically perfected, valid, enforceable, unavoidable and junior lien, pursuant to section 364(c)(3) of the Bankruptcy Code, on the property of the

Borrowers and the other Credit Parties as more fully described herein subject to Permitted Liens (as such term is defined and as set forth in the DIP Agreement) and the Carve-Out;

(vi) a grant of an automatically perfected first priority, valid, enforceable, unavoidable, senior, priming lien, pursuant to section 364(d)(1) of the Bankruptcy Code, on all property of the Borrowers and the other Credit Parties that is subject to a valid and perfected lien securing all obligations owed to the Prepetition Secured Parties (as defined herein);

(vii) a grant, with respect to the obligations of the Borrowers and the other Credit Parties hereunder and under the other DIP Documents (and subject only to the Carve-Out described in paragraph 31 hereof), of an allowed superpriority administrative expense claim in each of the Debtors' bankruptcy cases (and against each of the Debtors' estates created pursuant to section 541 of the Bankruptcy Code) pursuant to section 364(c)(1) of the Bankruptcy Code having priority over all administrative expenses of the kind specified in or arising under any section of the Bankruptcy Code (including, sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546(c) or 726 thereof);

(viii) authority for the Debtors to pay the principal, interest, fees, expenses, and other amounts payable under the DIP Documents as such become due, including, the reasonable and documented fees and disbursements of the DIP Agent's and the DIP Lenders' attorneys, advisers, accountants, and other consultants, all to the extent provided in and in accordance with the terms of the DIP Agreement and DIP Documents;

(ix) authority to use cash collateral (as such term is defined in section 363(a) of the Bankruptcy Code and/or under the DIP Documents, as applicable), subject to the restrictions set forth in the DIP Documents, and providing adequate protection to the

Term Loan Parties for any Diminution in Value of their interests in the Prepetition Collateral (each as defined herein);

(x) a modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Final Order, as set forth herein; and

(xi) approval of the Chapter 11 Case Milestones (Section 7.1(m) of the DIP Agreement, the “Milestones”) in respect of the Bankruptcy Sale (as defined in the DIP Agreement), in accordance with the DIP Agreement through the implementation of the process and procedures set forth in the Bidding Procedures Order (as defined in the DIP Agreement) through an auction whereby the DIP Agent, the DIP Lenders, the Term Loan Agent (as defined below), the Term Loan Lenders (as defined below), and their respective affiliates, shall have the right to credit bid up to the full amount of the DIP Obligations (as defined below) and the Term Loan Obligations (as defined below), as applicable, and upon execution of the Asset Purchase Agreement (as defined in the DIP Agreement), such credit bid, together with any cash required under the Asset Purchase Agreement, shall be the “stalking horse” bid (with an associated breakup fee and expense reimbursement), with an auction (if necessary) and sale hearing scheduled in accordance with the Milestones;

and the Court having considered the Motion, the Declaration of Vance Johnston in Support of Debtors’ Chapter 11 Petitions and First Day Motions [*Docket No. 16*], the Declaration of Morgan Suckow in Support of the Motion attached as Exhibit D to the Motion, the Declaration of Shawn Hassel in Support of the Motion attached as Exhibit E to the Motion, the DIP Documents, the evidence submitted or proffered at the final hearing to consider the relief

requested in the Motion held on October 2, 2013 (the “Final Hearing”); and the Court having entered the Interim Order (as defined below) effective as of September 11, 2013 (the “Interim Order Entry Date”); and pursuant to the Interim Order, the Court having authorized and approved during the period commencing on the Interim Order Entry Date but prior to the date upon which this Final Order is entered (the “Final Order Entry Date”), the Debtors’ entry into the Existing DIP Loan Agreement (as defined below), and borrowings by the Borrowers to access and use the postpetition term loan made available under the Existing DIP Loan Agreement (as defined below) in the amount of \$90,000,000 to (a) permanently repay in full all Revolver Obligations (as defined below) pursuant to that certain payoff letter by the Revolver Agent (as defined below) (collectively with all related or ancillary documents and agreements, including cash collateral agreements, the “Revolver Payoff Letter”) attached to the Motion as Exhibit C and, concurrently therewith, terminate the Revolver (as defined below) and fund the indemnification account provided for in the Revolver Payoff Letter (the “Revolver Indemnification Account”), and (b) cash collateralize all outstanding letters of credit and purchase charge cards under the Revolver (as defined below), subject to compliance with the terms, conditions, and covenants described in the Existing DIP Loan Agreement (as defined below); and notice of the Final Hearing having been given in accordance with Bankruptcy Rules 4001(b), (c) and (d), and 9014; and the Final Hearing to consider entry of this Final Order granting the relief requested in the Motion on a final basis and authorizing the borrowings under the DIP Documents on a final basis and the repayment of all amounts due, including all fees, costs, and expenses having been held and concluded; and all objections to the interim and final relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and based on all pleadings filed with this Court, and all proceedings held before the Court; and it

appearing to the Court that granting the relief requested in the Motion is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors and equity holders, and is essential for the continued operation of the Debtors' businesses; and it further appearing that the Debtors are unable to obtain unsecured credit for money borrowed allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code; and adequate protection being provided on account of the interests of certain holders of liens on the property of the estates on which liens are to be granted; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

BASED UPON THE RECORD ESTABLISHED AT THE FINAL HEARING BY THE DEBTORS, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. *Petition Date*. On September 9, 2013 (the "Petition Date"), each of the Debtors filed a separate voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court") commencing these chapter 11 cases.

B. *Debtors-in-Possession*. The Debtors continue to operate their businesses and properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases.

C. *Jurisdiction and Venue*. This Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over these proceedings, and over the persons and property affected hereby. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for these cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.



D. Joint Administration. By order dated September 11, 2013, the Court directed the joint administration of these chapter 11 cases and the consolidation thereof for administrative purposes only [*Docket No. 69*].

E. Committee Formation. On September 18, 2013, the United States Trustee (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”) in these chapter 11 cases pursuant to section 1102 of the Bankruptcy Code.

F. Existing DIP Loan. On September 11, 2013, the Court entered an *Interim Order (i) Authorizing the Debtors to (a) Obtain Post-Petition Financing on a Superpriority, Senior Secured Basis, (b) Use Cash Collateral, (c) Repay the Prepetition Revolver in Full, (ii) Granting Adequate Protection to Certain Prepetition Lenders, (iii) Modifying the Automatic Stay, and (iv) Scheduling a Final Hearing* [*Docket No. 78*] (the “Interim Order”). Thereafter, the Debtors, the other persons party thereto that were designated as “Credit Parties,” the financial institutions party thereto, as lenders, and NexBank, SSB, as agent, entered into the “Existing DIP Loan Agreement” and, thereunder, incurred the “Existing DIP Loan Obligations.” Pursuant to the Interim Order, the Debtors were authorized, among other things, to incur certain senior secured superpriority borrowings from the DIP lenders under the Existing DIP Loan Agreement, pursuant to the terms of the Existing DIP Loan Agreement, on an interim basis pending a final hearing on the Motion, to (i) permanently repay in full all Revolver Obligations (as defined below) pursuant to the Revolver Payoff Letter and, concurrently therewith, terminate the Revolver (as defined below) and fund the Revolver Indemnification Account, and (ii) cash collateralize all outstanding letters of credit and purchase charge cards under the Revolver (as defined below). Pursuant to the Interim Order, (i) the Final Hearing was scheduled for October 2, 2013 and (ii) any party in interest objecting to the entry of the Final Order must have filed a

written objection with the Clerk of the Court no later than September 25, 2013, at 4:00 p.m. (prevailing Eastern time), in accordance with the Interim Order.<sup>3</sup>

G. Debtors' Stipulations. Subject only to the rights of parties in interest as set forth in paragraph 34 hereof, after consultation with their attorneys and financial advisors, the Debtors (on behalf of, and for themselves) admit, stipulate, acknowledge, and agree to the following:

(i) Revolver. Prior to the Interim Order Entry Date, Furniture Brands International, Inc., as Borrower Representative, the other Borrowers, certain other parties designated as "Credit Parties" thereto, the financial institutions from time to time party thereto (collectively, the "Revolver Lenders"), General Electric Capital Corporation, as agent for the Revolver Lenders (the "Revolver Agent"), General Electric Capital Corporation, Bank of America, N.A., and Wells Fargo Bank, National Association, as co-collateral agents, General Electric Capital Corporation and Bank of America, N.A., as syndication agent, and Wells Fargo Bank, National Association, GE Capital Markets, Inc., and Bank of America, N.A., as lead arrangers and bookrunners were parties to that certain Credit Agreement, dated as of September 25, 2012 (as may be amended, restated, modified, supplemented, or replaced from time to time the "Revolver Credit Agreement"). The Revolver Credit Agreement provided the Debtors with an asset-based credit facility (the "Revolver") with \$200 million maximum availability, subject to a borrowing base (and as reduced by reserves), all set forth in the Revolver Credit Agreement. As of the Petition Date, approximately \$91 million was outstanding under the Revolver (together with any other amounts outstanding under the Revolver as

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<sup>3</sup> Subsequent to the entry of the Interim Order, the Debtors agreed to extend until September 30, 2013 the Committee's deadline to object to the entry of the Final Order.

provided in the Revolver Credit Agreement, including obligations in respect of letters of credit, cash collateral for letters of credit, purchase charge cards, purchase card services, fees, expenses and indemnity, the “Revolver Obligations”). The Revolver was secured by a first priority lien on all of the Debtors’ accounts receivables, inventory, cash deposit and securities accounts and such other assets related to or arising out of, evidencing or governing any of the foregoing, including, without limitation, all cash, money and cash equivalents and proceeds thereof (subject only to certain liens granted to the Term Loan Agent as described below), and a second priority lien on the Prepetition Term Loan Collateral (as defined herein) (collectively, the “Prepetition Revolver Collateral”) pursuant to the “Collateral Documents” (as such term is defined and as set forth in the Revolver Credit Agreement) (the “Revolver Collateral Documents,” and, together with the Revolver Credit Agreement, the “Revolver Documents”). The Debtors assert that as of the Final Order Entry Date, (A) all Revolver Obligations have been paid in full, (B) the Revolver has been terminated, (C) the Revolver Indemnification Account has been funded, and (D) all outstanding letters of credit and purchase charge cards under the Revolver have been cash collateralized.

(ii) *Term Loan.* Furniture Brands International, Inc., as Borrower Representative, the other Borrowers, certain other parties designated as “Credit Parties” thereto, the financial institutions party thereto (collectively, the “Term Loan Lenders”), Nexbank SSB as successor agent to Pathlight Capital LLC, as administrative agent and collateral agent (the “Term Loan Agent” and, together with the Term Loan Lenders, the “Term Loan Parties”), and Wells Fargo Bank, National Association, as documentation agent, are parties to that certain Term Loan Agreement, dated as of September 25, 2012

(the “Term Loan Agreement”). The Term Loan Agreement provides for a \$50 million term loan (the “Term Loan”), of which approximately \$49.7 million remains outstanding as of the Petition Date (together with (x) any and all obligations outstanding under the Term Loan, including the Prepayment Premium (as such term is defined in the Term Loan Agreement) and (y) any obligations created pursuant to this Final Order, including the adequate protection provided in paragraph 12 hereof, the “Term Loan Obligations”). The Term Loan is secured by a first priority lien on substantially all of the Debtors’ property other than the Prepetition Revolver Collateral, including without limitation intellectual property, real estate, fixtures, furniture and equipment, and capital stock of the Debtors’ subsidiaries, subject to certain exceptions set forth in the Term Loan Agreement, and a second priority lien on the Prepetition Revolver Collateral (collectively, the “Prepetition Term Loan Collateral,” and, together with the Prepetition Revolver Collateral, the “Prepetition Collateral”), pursuant to “Collateral Documents” (as such term is defined and as set forth in the Term Loan Agreement) (the “Term Loan Collateral Documents,” and together with the Term Loan Agreement, the “Term Loan Documents” and the Term Loan Documents, together with the Revolver Documents and the Intercreditor Agreement, the “Prepetition Loan Documents”). As of the Petition Date, the value of the Prepetition Collateral securing the Revolver Obligations and Term Loan Obligations exceeded the amount of the Revolver Obligations and Term Loan Obligations.

(iii) *Intercreditor Agreement.* On September 25, 2012, the Revolver Agent and the Term Loan Agent entered into that certain Intercreditor Agreement that, among

other things, assigned relative priorities to certain claims and liens arising under the Revolver and the Term Loan (the “Intercreditor Agreement”).

(iv) *Validity and Priority of Pre-Petition Indebtedness and Liens.* After consultation with their attorneys and financial advisors, the Debtors, the Revolver Agent, and the Term Loan Agent acknowledge and agree that (a) the liens on the Prepetition Collateral granted pursuant to the Prepetition Loan Documents, respectively, are valid, binding, enforceable, non-avoidable, and perfected liens, and are not subject to any challenge or defense, including avoidance, reduction, offset, attachment, disallowance, disgorgement, counterclaim, surcharge, recharacterization, or subordination, pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (b) as of the Petition Date, the liens granted pursuant to the Revolver Collateral Documents were senior to all security interests and liens in the Prepetition Collateral, subject only to the senior liens of the Term Loan Agent in certain Prepetition Collateral in accordance with the Intercreditor Agreement, and to certain other liens otherwise permitted by the Revolver Credit Agreement (to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable, and senior in priority to the liens of the Revolver Agent in the Prepetition Revolver Collateral); (c) the liens granted pursuant to the Term Loan Collateral Documents are senior to all security interests and liens in the Prepetition Collateral, and as of the Petition Date, subject only to the senior liens of the Revolver Agent in certain Prepetition Collateral in accordance with the Intercreditor Agreement, and to certain other liens otherwise permitted by the Term Loan Agreement (to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable, and senior in priority to the liens of the Term Loan Agent in the Prepetition

Term Loan Collateral); (d) as of the Petition Date, the Revolver Documents were valid and enforceable by the Revolver Agent and Revolver Lenders against each of the Debtors; (e) the Term Loan Documents are valid and enforceable by the Term Loan Agent and the Term Loan Lenders against each of the Debtors; (f) the obligations under the Revolver constituted as of the Petition Date, and the obligations under the Term Loan constitute, legal, valid, binding, and unavoidable obligations of the Debtors, enforceable in accordance with the terms and conditions of the Revolver Documents and the Term Loan Documents; (g) no offsets, challenges, defenses, claims, or counterclaims of any kind or any nature to any of the obligations under the Revolver or to any of the obligations under the Term Loan exist, and no portion of such obligations (including, as applicable, the Revolver Obligations and the Term Loan Obligations) is subject to avoidance, recharacterization, disallowance, or subordination pursuant to the Bankruptcy Code or other applicable law, except as expressly set forth in the Prepetition Loan Documents; (h) the Debtors and their estates have no offsets, defenses, claims, objections, challenges, causes of action, and/or choses in action, including, without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code, against the Revolver Agent, the Term Loan Agent, the Revolver Lenders, the Term Loan Lenders (collectively, the “Prepetition Secured Parties”), and/or any of the Prepetition Secured Parties’ respective affiliates, parents, subsidiaries, controlling persons, agents, attorneys, advisors, professionals, officers, directors, or employees whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to Sections 105, 510, or 542 through 553 of the Bankruptcy Code) or arising under or in connection with any of the Revolver

Documents or the Term Loan Documents (or the transactions contemplated thereunder), the obligations under the Revolver and the Term Loan, or the security interests and liens in the Prepetition Collateral; (i) as of the Petition Date, the value of the Prepetition Collateral securing the Revolver Obligations and the Term Loan Obligations exceeded the amount of those obligations, and accordingly, the Revolver Obligations constituted, and the Term Loan Obligations constitute, allowed, secured claims within the meaning of Sections 506(c) and 502 of the Bankruptcy Code, together with accrued and unpaid interest, fees, including, attorneys' fees and related expenses, costs, expenses, and other charges of whatever nature owing in respect thereof; (j) the Debtors have waived, discharged, and released any right to challenge any of the obligations under the Revolver and the Term Loan, the priority of the Debtors' obligations thereunder, and the security for (and the priority of the liens securing) such obligations, and to assert any offsets, defenses, claims, objections, challenges, causes of action, and/or choses in action against the Prepetition Secured Parties, and/or any of their respective officers, directors, or employees; and (k) any payments made on account of the obligations under the Revolver and the obligations under the Term Loan (including, as applicable, the Revolver Obligations and the Term Loan Obligations) to or for the benefit of the Prepetition Secured Parties prior to the Petition Date were on account of amounts in respect of which the Prepetition Secured Parties were oversecured, were payments out of the Prepetition Collateral in accordance with the Intercreditor Agreement, and such payments did not diminish any property otherwise available for distribution to unsecured creditors.

(v) *Cash Collateral.* The Debtors acknowledge and stipulate that substantially all of the Debtors' cash, including the cash in their deposit accounts,

wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes “cash collateral” (as such term is defined in section 363(a) of the Bankruptcy Code) of the Prepetition Secured Parties.

(vi) *Default by the Debtors.* The Debtors acknowledge and stipulate that the Debtors are in default of their debts and obligations under the Term Loan Documents and, as of the Petition Date, the Revolver Documents. Furthermore, the Debtors acknowledge and stipulate that by filing petitions for relief under chapter 11 of the Bankruptcy Code and commencing these chapter 11 cases, all of their debts and obligations under the Revolver Documents and the Term Loan Documents (including, without limitation, the “Prepayment Premium,” as such term is defined in the Term Loan Agreement), were immediately due and payable.

H. *Consent to Adequate Protection.* The Term Loan Agent has provided its consent to the adequate protection provided in paragraph 12 of this Final Order.



I. Findings Regarding the Postpetition Financing.

(i) *Request for Postpetition Financing.* The Debtors seek authority on a final basis to: (a) use cash collateral on the terms described herein, and (b) access and use the liquidity provided under the DIP Financing to: (1) access and use the Take-Out Term Loan (and, to the extent necessary, the DIP Revolver) to (x) permanently repay in full all Existing DIP Loan Obligations (and cash collateralize all outstanding letters of credit and purchase charge cards), (y) fund the indemnity account provided for under the Revolver Payoff Letter, and (z) pay fees and expenses; and (2) access and use the DIP Revolver to fund their chapter 11 cases on the terms set forth herein and the DIP Documents (including, for the avoidance of doubt, the Budget, as defined below);

(ii) *Priming of Certain Prepetition Liens.* The priming of the liens of the Term Loan Agent and the Term Loan Lenders on the Prepetition Collateral, as contemplated by the DIP Facility and as further described below, will enable the Debtors to obtain the DIP Facility and to continue to operate their businesses for the benefit of their estates and creditors. However, the Term Loan Agent and the Term Loan Lenders are entitled to receive adequate protection as set forth in this Final Order pursuant to sections 361, 363, and 364 of the Bankruptcy Code, for and to the extent of any postpetition diminution in the value of each of their respective interests in the Prepetition Collateral (including cash collateral) resulting from the Debtors' use, sale, or lease of such collateral, the imposition of the automatic stay, the priming of the prepetition liens granted on the Prepetition Collateral, and the subordination to the Carve-Out described in paragraph 31 hereof and the DIP Liens (as defined herein) (collectively, the "Diminution in Value"). The Revolver Agent, for the benefit of itself and the Revolver Lenders, was

entitled, as of the Petition Date, to receive adequate protection. Pursuant to sections 361, 363, and 507(b), as adequate protection, the Debtors, pursuant to the Interim Order, (1) paid the amounts required under the Revolver Obligations, (2) funded the Revolver Indemnification Account in the amount of \$250,000 upon closing of the Existing DIP Loan facility, and (3) granted the liens in the Revolver Indemnification Account.

(iii) *Need for Postpetition Financing and Use of Cash Collateral.* The Debtors' need to use cash collateral and to obtain credit pursuant to the DIP Facility as provided for herein is necessary to enable the Debtors to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, and otherwise to finance their operations requires the availability of working capital from the DIP Facility and the use of cash collateral. Without the ability to access the DIP Facility or cash collateral, the Debtors, their estates, their creditors, and the possibility for a successful reorganization would suffer immediate and irreparable harm. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business without the DIP Facility and authorized use of cash collateral.

(iv) *No Credit Available on More Favorable Terms.* Given their current financial condition, financing arrangements, and capital structure, the Debtors are unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facility. The Debtors have been unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain credit (a) having priority over that of

administrative expenses of the kind specified in Sections 503(b), 507(a), and 507(b) of the Bankruptcy Code, (b) secured by a lien on property of the Debtors and their estates that is not otherwise subject to a lien, or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis is not otherwise available without granting the DIP Agent, for the benefit of itself and the DIP Lenders, (a) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth herein, (b) superpriority claims and liens, and (c) the other protections set forth in this Final Order. The DIP Lenders have been unwilling to provide financing under the DIP Facility absent the requirement that immediately upon entry of this Final Order, proceeds of the Take-Out Term Loan (and, to the extent necessary, the DIP Revolver) be used to permanently repay the amounts outstanding under the Existing DIP Loan.

(v) *Adequacy of the Budget.* As set forth in the DIP Documents, the Debtors have prepared and delivered a budget, a copy of which is annexed to the DIP Agreement attached as **Exhibit 1** hereto (as may be modified, amended, restated or supplemented by the debtors in consultation with the Committee and with the consent of KPS, in its sole discretion on the terms set forth in the DIP Documents and paragraph 15 hereof, the "Budget"), to the DIP Agent and DIP Lenders.<sup>4</sup> The Budget has been thoroughly reviewed by the Debtors, their management, and their advisors. The Debtors, their management, and their advisors believe the budget and the estimate of administrative expenses due or accruing during the period covered by the DIP Facility were developed using reasonable assumptions.

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<sup>4</sup> For the avoidance of doubt, the Agreed Budget is one of the DIP Documents.

J. Sections 506(c) and 552(b). In exchange for (i) the DIP Agent's and the DIP Lenders' agreement to subordinate their liens and superpriority claims to the Carve-Out and (ii) the Term Loan Agent's, and the Term Loan Lenders' agreement to subordinate their liens and claims to the Carve-Out and the DIP Liens, the DIP Agent, the DIP Lenders, the Term Loan Agent, and the Term Loan Lenders shall each receive (i) a waiver of any "equities of the case" claims under Section 552(b) of the Bankruptcy Code and (ii) a waiver of the provisions of Section 506(c) of the Bankruptcy Code.

K. Good Faith of the DIP Agent and the DIP Lenders.

(i) *Willingness to Provide Financing.* The DIP Lenders have indicated a willingness to provide financing to the Debtors subject to: (a) the entry by this Court of this Final Order; (b) approval by this Court of the terms and conditions of the DIP Facility and the DIP Documents; and (c) entry of findings by this Court that such financing is essential to the Debtors' estates, that the DIP Agent and DIP Lenders are extending credit to the Debtors pursuant to the DIP Documents in good faith, and that the DIP Agent's and DIP Lenders' claims, superpriority claims, security interests, and liens and other protections granted pursuant to this Final Order and the DIP Documents will have the protections provided in section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument, or reconsideration of this Final Order, or any other order.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e).* The terms and conditions of this Final Order, the DIP Facility, and the DIP Documents, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent and sound

business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The DIP Facility and the use of cash collateral were negotiated in good faith and at arms' length among the Debtors, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties. The use of cash collateral and credit to be extended under the DIP Facility shall be deemed to have been so allowed, advanced, made, used, and extended in good faith, and for valid business purposes and uses, within the meaning of section 364(e) of the Bankruptcy Code, and the DIP Agent and the DIP Lenders are therefore entitled to the protection and benefits of section 364(e) of the Bankruptcy Code and this Final Order.

L. Notice. Notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, email, overnight courier, or hand delivery, to certain parties-in-interest, including, (i) the U.S. Trustee; (ii) the Internal Revenue Service; (iii) the parties included on the Debtors' consolidated list of their thirty (30) largest unsecured creditors; (iv) counsel to the Revolver Agent for itself and for the Revolver Lenders; (v) the Term Loan Agent for itself and for the Term Loan Lenders; (vi) counsel to the DIP Agent for itself and for the DIP Lenders; and (vii) all parties holding security interests in any of the Debtors' assets. The parties have made reasonable efforts to afford the best notice possible under the circumstances and such notice is good and sufficient to permit the relief set forth in this Final Order.

Based upon the foregoing findings and conclusions, the Motion, and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. DIP Financing Approved. The DIP Financing is authorized and approved, and the use of cash collateral is authorized, subject to the terms and conditions set forth in this Final Order and the DIP Documents (including the Budget).

2. Objections Overruled. All objections to the DIP Financing and/or entry of this Final Order to the extent not withdrawn or resolved are hereby overruled.

**DIP Facility Authorization**

3. Authorization of the DIP Financing and Entry Into the DIP Documents.  
The DIP Facility and the DIP Documents, and the Revolver Payoff Letter are hereby approved on a final basis. The Debtors are expressly and immediately authorized and empowered to incur and to perform the DIP Obligations (as defined herein) in accordance with, and subject to, the terms of this Final Order and the DIP Documents, and to deliver all instruments and documents that may be necessary or required for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens (as defined below) provided for by this Final Order and the DIP Documents. The DIP Documents evidence valid and binding obligations of the Debtors, which shall be enforceable against the Debtors, their estates, and their creditors in accordance with the terms and conditions of the DIP Documents and this Final Order. The Debtors are hereby authorized to pay, in accordance with this Final Order, the principal, interest, fees, expenses, and other amounts described in the DIP Documents and all other documents comprising the DIP Facility as such become due and without need to obtain further Court approval, all to the extent provided in the DIP Documents. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations, or otherwise, will be deposited and applied as required by this Final Order and the DIP Documents. All of the obligations described in the DIP Documents shall represent valid

and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with the terms of the DIP Documents.

4. Authorization to Access the DIP Financing and Apply the Proceeds of the Take-Out Term Loan to Repay the Existing DIP Obligations. Subject to the terms and conditions set forth in the DIP Documents, the DIP Facility, and this Final Order, the Debtors are hereby authorized to access the DIP Financing pursuant to the terms herein and the terms of the DIP Documents. Additionally, the Debtors are expressly and immediately authorized, and empowered to incur the debt made available under the Take-Out Term Loan and use the proceeds of the Take-Out Term Loan (and, to the extent necessary, the DIP Revolver) to permanently repay in full all outstanding obligations (and cash collateralize all outstanding letters of credit and purchase charge cards) under the Existing DIP Agreement and, concurrently therewith, terminate the Existing DIP Facility.

5. DIP Obligations. Upon entry of this Final Order, the DIP Documents and this Final Order shall constitute and evidence the validity and binding effect of the Debtors' obligations under the DIP Facility, the other DIP Documents, and this Final Order (the "DIP Obligations"), which DIP Obligations shall be enforceable against the Debtors, their estates, and any successors thereto, including, any trustee appointed in these cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of these cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). Upon entry of this Final Order, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Agent or to any of the DIP Lenders, under the DIP Documents, or this Final Order, including all principal, accrued interest, costs, fees, expenses, and other amounts under

the DIP Documents. The DIP Obligations shall be due and payable as provided for herein and in the DIP Documents.

6. DIP Liens. To secure the DIP Obligations, effective immediately upon entry of this Final Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Agent, for the benefit of itself and the DIP Lenders, is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition priming, first-priority security interests in and liens upon (collectively, the “DIP Liens”) each of Borrowers’ and the Credit Parties’ right, title, and interest in, to, and under all personal property and other assets (provided, that with respect to any leased real property of the Debtors, the DIP Liens will be limited to and shall attach solely to any proceeds of the disposition of such lease), whether now owned by or owing to, or hereafter acquired by or arising in favor of the Borrowers and the Credit Parties (including under any trade names, styles, or derivations thereof), and whether owned or consigned by or to, or leased from or to, such Borrowers or Credit Parties, and regardless of where located, including the Prepetition Collateral (collectively, the “DIP Collateral”), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration, or otherwise) of the DIP Obligations. The DIP Collateral shall include (as each such term is defined in the DIP Documents) all: (a) all accounts (including health-care insurance receivables), all monies, all cash and cash equivalents, chattel paper (including electronic chattel paper), collateral security, deposit accounts, securities accounts, futures accounts (and all amounts and assets contained in such deposit accounts, securities accounts and futures accounts or created thereon), documents (as defined in the UCC and, including, if applicable, electronic documents), equipment, general intangibles (including all payment intangibles and Intellectual Property), guarantees, instruments



(including promissory notes), inventory, investment property, securities, insurance claims and proceeds, tort claims, letter of credit rights (whether or not the letter of credit is evidenced by a writing), any other contract rights or rights to the payment of money and any supporting obligations related to any of the foregoing; (b) the Commercial Tort Claims described on Schedule 1 to the Guaranty and Security Agreement and on any supplement thereto received by the DIP Agent pursuant to Section 5.8 of the Guaranty and Security Agreement; (c) all books and records pertaining to the collateral; (d) all equipment, goods and fixtures; (e) all securities accounts, deposit accounts, Cash Collateral Accounts and the Collection Account; (f) all Intellectual Property; (g) all property of such Credit Party held by any Secured Party, including all property of every description, in the custody of or in transit to such Secured Party for any purpose, including safekeeping, collection or pledge, for the account of such Grantor or as to which such Grantor may have any right or power, including but not limited to cash; (h) all Inventory; (i) all Pledged Collateral and Pledged Investment Property; (j) all Letter-of-Credit Rights; (k) the proceeds of any avoidance actions under chapter 5 of the Bankruptcy Code (“Avoidance Actions”), subject to the limitations set forth herein; (l) all other personal property of such Grantor, whether tangible or intangible and wherever located; and (m) to the extent not otherwise included, all products and proceeds and all accessions to, substitutions and replacements for, and rents, profits, and products of, each of the foregoing, and any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such Grantor from time to time with respect to any of the foregoing (in whatever form and including business interruption insurance) including, without limitation, any equity interests or assets constituting indebtedness received or acquired by any Grantor in exchange for, or proceeds from the sale of, assets which constituted DIP Collateral prior to such exchange or sale; provided, however, that “DIP

Collateral” shall not include (x) Avoidance Actions (but will include the proceeds thereof, subject to the limitations set forth herein), (y) any Excluded Property (as defined in the DIP Agreement), and (z) prior to the occurrence of the Revolver Adequate Protection Termination Date (as defined in paragraph 12(c) hereof), the Revolver Indemnification Account and any cash collateral accounts required pursuant to the Revolver Payoff Letter (it being understood that any residual amounts in such accounts shall constitute DIP Collateral following the Revolver Adequate Protection Termination Date without further action by any party or court order); provided, further, that the DIP Collateral shall include the proceeds of Avoidance Actions but the DIP Lenders agree to only seek utilization of the proceeds of Avoidance Actions once the proceeds of all other DIP Collateral has been applied to satisfy the DIP Obligations; provided, further, that if and when any property shall cease to be Excluded Property, immediately at and from such time (and without any action by any the Debtors or any other person), the DIP Collateral shall include, and the security interest granted by the Borrowers and each Credit Party shall attach to, such property.

7. DIP Lien Priority. Subject only to the Carve-Out described in paragraph 31 hereof, the DIP Liens securing the DIP Obligations shall be senior in priority to all other security interests in, liens on, or claims against the DIP Collateral. The DIP Liens shall not otherwise be made subject to or *pari passu* with any lien or security interest and shall be valid and enforceable against any trustee appointed in these chapter 11 cases or any Successor Cases, and/or upon the dismissal of any of these chapter 11 cases or any Successor Cases. The DIP Liens shall not be subject to sections 506(c), 510, 549, 550, or 551 of the Bankruptcy Code.

8. DIP Superpriority Claim. Subject only to the Carve-Out described in paragraph 31 hereof, upon entry of this Final Order, the DIP Agent and the DIP Lenders are

hereby granted pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of these chapter 11 cases and any Successor Cases for all of the DIP Obligations with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of these chapter 11 cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b) (except as set forth herein), 546(c), 546(d), 726 (to the extent permitted by law), 1113, and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative (the “DIP Superpriority Claim”).

9. Extension of Credit. The DIP Agent and the DIP Lenders shall have no obligation to make any loan or advance unless all of the conditions precedent to the making of such extension of credit under the DIP Documents and this Final Order have been satisfied in full or waived by the Required Lenders in their sole discretion.

10. Use of DIP Facility Proceeds; Repayment of the Existing DIP Loan Obligations. From and after the Petition Date, the Debtors shall use advances of credit under the DIP Facility only pursuant to the terms herein and the terms of the DIP Documents. The Debtors are authorized to use the proceeds of the DIP Facility to make the adequate protection payments provided for in paragraph 12 of this Final Order. Immediately upon entry of this Final Order, the Debtors shall use proceeds of the Take-Out Term Loan (and, to the extent necessary, the DIP Revolver) to (a) pay fees and expenses and (b) permanently repay in full all outstanding obligations (and cash collateralize all outstanding letters of credit and purchase charge cards)

under the Existing DIP Agreement and, concurrently therewith, terminate the Existing DIP Agreement.

**Authorization to Use Cash Collateral and Adequate Protection**

11. Authorization to Use Cash Collateral. Subject to the terms and conditions set forth in, and in accordance with, this Final Order, the DIP Facility, and the DIP Documents, the Debtors are authorized to use cash collateral. Except as expressly permitted in this Final Order (including paragraph 3 hereof), the DIP Facility, and the DIP Documents, nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any of the Debtors' use of any cash collateral or other proceeds resulting therefrom. Upon the occurrence of an Event of Default (as defined herein and in the DIP Documents), the Debtors' consensual use of cash collateral shall terminate.

12. Adequate Protection.

(a) Subject only to the Carve-Out described in paragraph 31 hereof, as adequate protection for the use of the DIP Collateral securing the Term Loan before entry of this Final Order, the Term Loan Agent and the Term Loan Lenders shall receive (i) payment in cash on a monthly basis of all interest accruing on the Term Loan at the interest rate set forth in the Term Loan per annum with any fees, and commissions (including, for the avoidance of doubt, any accrued pre- and post-petition interest and letter of credit fees and commissions due under the Term Loan Agreement) all paid as paid-in-kind (PIK) interest at the non-default rate set forth in the Term Loan Agreement; provided, however, that to the extent a final, non-appealable order of a court of competent jurisdiction determines that the Term Loan Lenders were undersecured on the Petition Date, the payments of current interest provided for in this paragraph shall be reallocated to payment of principal outstanding under the Term Loan; provided, further,

that notwithstanding anything to the contrary contained herein, the Term Loan Agent and the Term Loan Lenders shall be entitled to retain any such adequate protection payments to the extent necessary to compensate them for any Diminution in Value of the Prepetition Collateral; (ii) payment in cash on a current basis of all reasonable and documented out-of-pocket fees and expenses of the Term Loan Agent and the Term Loan Lenders solely in connection with the Term Loan (including any accrued pre- and postpetition interest and letter of credit fees and commissions and the reasonable and documented out-of-pocket fees and expenses of their respective professional advisors); (iii) replacement liens to the extent of Diminution in Value of the Prepetition Collateral, including replacement liens on all unencumbered assets of the Debtors (except any Avoidance Actions, but including the proceeds thereof), which liens will be junior to the liens of the DIP Lenders under the DIP Facility; and (iv) superpriority administrative expense claims with respect to each of the foregoing and to the extent of Diminution in Value of the Prepetition Collateral, which claims will be junior to the DIP Obligations and be payable from and have recourse to all assets and property of the Debtors (except any Avoidance Actions, but including the proceeds thereof). As additional adequate protection for the Term Loan Agent and the Term Loan Lenders, the DIP Agent and the DIP Lenders shall establish a segregated account (the "Term Loan Adequate Protection Account") into which the DIP Lenders shall deposit an amount equal to the sum of any and all obligations outstanding under the Term Loan, including the Prepayment Premium (as such term is defined in the Term Loan Agreement). If the Stalking Horse Purchaser is the successful bidder at the auction for the Debtors' assets, then the proceeds of the Term Loan Adequate Protection Account shall be paid to the Term Loan Agent and the Term

Loan Lenders. If the Stalking Horse Purchaser is not the successful bidder at the auction for the Debtors' assets, then the proceeds of the Term Loan Adequate Protection Account shall be returned to the DIP Lenders, and the Term Loan Agent and the Term Loan Lenders shall be entitled to payment in full, upon the closing of the sale to the successful bidder.

(b) Subject to the terms and conditions set forth in the DIP Documents, the DIP Agent, the DIP Lenders, the Term Loan Agent, and the Term Loan Lenders shall each have the right to credit bid, as applicable, the full amount of each of the DIP Obligations and the Term Loan Obligations, in connection with any sale of the Debtors' assets and property, including, any sale occurring pursuant to section 363 of the Bankruptcy Code or included as part of any plan of reorganization subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code.

(c) As adequate protection, effective immediately upon entry of this Final Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the Revolver Agent, for the benefit of itself and the Revolver Lenders, is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition priming, first-priority security interests in and liens upon (i) the Revolver Indemnification Account and all funds therein and (ii) all cash collateral accounts created pursuant to or related to the Revolver Payoff Letter. The Revolver Indemnification Account and the liens granted therein shall terminate and all remaining amounts held in the Revolver Indemnification Account shall be released to the Debtors, if all Revolver Obligations have been indefeasibly and irrevocably paid in full in cash, upon the earliest to occur of (such earliest date, the "Revolver Adequate Protection

Termination Date”): (i) ten (10) days following the expiration of the Challenge Period (as defined herein) if, as of such date, no party has filed a contested matter, an adversary proceeding, cause of action, objection, claim, defense, or other claim or Challenge as contemplated in paragraph 34 hereof in respect of any claim, security interest, or any other rights of the Revolver Agent or the Revolver Lenders; (ii) if, as of the end of the Challenge Period, any party has filed or commenced any adversary proceeding, cause of action, objection, claim, defense, or other challenge, as appropriate, as set forth herein, in respect of any claim, security interest, or any other rights of the Revolver Agent or the Revolver Lenders, then ten (10) days following entry of a final order (that is not subject to a stay, or vacatur, appeal or reconsideration) effecting the termination or final settlement of all such contested matters, adversary proceedings, causes of action, objections, claims, defenses, and/or other claims or Challenges; and (iii) the effective date of a chapter 11 plan. Following the occurrence of the Revolver Adequate Protection Termination Date, (x) the liens granted to the Revolver Agent and the Revolver Lenders in the Revolver Indemnification Account and any cash collateral accounts required pursuant to the Revolver Payoff Letter shall automatically terminate without any further action by any party or court order and (y) the Revolver Agent’s and the Revolver Lenders’ right to adequate protection from the Debtors or any other party shall forever terminate without any further action by any party or court order. Notwithstanding anything to the contrary in this Final Order to the contrary, the Debtors’ residual interest in the Revolver Indemnification Account shall be subject to the DIP Liens and the Replacement Liens (as defined below) in accordance with the priorities set forth in this Final Order and the DIP Documents.

13. Section 507(b) Reservation. Subject only to the Carve-Out described in paragraph 31 hereof, nothing contained herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided in this Final Order is insufficient to compensate for any Diminution in Value of the respective interests of the Term Loan Agent and the Term Loan Lenders in the Prepetition Collateral during these chapter 11 cases or any Successor Cases.

**Provisions Common to DIP Financing and Use of Cash Collateral Authorizations**

14. Amendment of the DIP Documents. The DIP Documents may, from time to time, be amended, amended and restated, modified, or supplemented by the parties thereto, in consultation with the Committee, without notice or a hearing if the amendment, amendment and restatement, modification, or supplement is (a) in accordance with the DIP Documents and (b) not prejudicial in any material respect to the rights of third parties; provided, however, that notwithstanding the foregoing, except for actions expressly permitted to be taken by the DIP Agent or the DIP Lenders, no amendment, modification, supplement, termination, or waiver of any provision of the DIP Documents, or any consent to any departure by any of the Borrowers or the Credit Parties therefrom, shall in any event be effective without the express written consent of the Required Lenders (it being understood that any necessary signatures may be on a document consenting to such amendment, modification, termination, or waiver) to the extent required by the DIP Documents. To the extent reasonably practicable, the Debtors shall provide three days' written notice to the Committee and the U.S. Trustee prior to entry of any amendment, modification, supplement, or waiver of any provision of the DIP Documents.

15. Budget Compliance. The Borrowers and the Credit Parties shall not, and shall not permit any subsidiary to directly or indirectly, use any cash or the proceeds of the DIP Facility in a manner or for a purpose other than those consistent with the DIP Documents and



this Final Order. The Budget annexed to the DIP Agreement is hereby approved, and any modification to, or amendment or update of, the Budget shall be in form and substance acceptable to and approved by KPS as provided in the DIP Documents. The Budget may be amended or modified in writing only with the written consent of KPS, in its sole discretion.

16. Modification of Automatic Stay. The automatic stay imposed by section 362(a) of the Bankruptcy Code is hereby modified to permit (a) the Debtors to grant the DIP Liens and the DIP Superpriority Claim, and to perform such acts as the DIP Agent may request in its sole discretion to assure the perfection and priority of the DIP Liens, (b) the Debtors to take all appropriate action to grant the adequate protection set forth in paragraph 12, above (the "Replacement Liens"), and to take all appropriate action to ensure that the Replacement Liens granted thereunder are perfected and maintain the priority set forth herein, (c) the Debtors to incur all liabilities and obligations to the DIP Agent as contemplated under the DIP Documents, (d) the Debtors to pay all amounts referred to, required under, in accordance with, and subject to this Final Order, and (e) the implementation of the terms of this Final Order.

17. Perfection of DIP Liens and Adequate Protection Liens. This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted herein including the DIP Liens and the Replacement Liens without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, real property mortgage or aircraft security agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens, the Replacement Liens, or to entitle the DIP Agent, the DIP Lenders, the Term Loan Agent, and the Term Loan Lenders to the

priorities granted herein. Notwithstanding the foregoing, the DIP Agent, and the Term Loan Agent each are authorized to file, as it in its sole discretion deems necessary, such financing statements, mortgages, notices of lien, and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens, and the Replacement Liens, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens and/or the Replacement Liens. The Debtors are authorized to execute and promptly deliver to the DIP Agent all such financing statements, mortgages, notices, and other documents as the DIP Agent may reasonably request. The DIP Agent, in its discretion, may file a photocopy of this Final Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien, or similar instruments.

18. After-Acquired Property. Except as otherwise provided in this Final Order, pursuant to section 552(a) of the Bankruptcy Code, all property acquired by the Debtors after the Petition Date, including all DIP Collateral pledged or otherwise granted to the DIP Agent, on behalf of the DIP Lenders, pursuant to the DIP Documents and this Final Order is not and shall not be subject to any lien of any person or entity resulting from any security agreement entered into by the Debtors prior to the Petition Date, except to the extent that such property constitutes proceeds of property of the Debtors that is subject to a valid, enforceable, perfected, and unavoidable lien as of the Petition Date that is not subject to subordination under section 510(c) of the Bankruptcy Code or other provision or principles of applicable law.

19. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed in these chapter 11 cases or any Successor Cases, shall obtain credit or incur debt pursuant to section 364(b), (c), or (d) of the Bankruptcy Code in violation of the DIP Documents at any time prior to the indefeasible payment in full of all DIP Obligations, the cancellation, backing, or cash collateralization of the letters of credit provided for under the DIP Agreement, the satisfaction of the DIP Superpriority Claims, and the termination of the DIP Agent's and DIP Lenders' obligations to extend credit under the DIP Facility, then all of the cash proceeds derived from such credit or debt shall (a) immediately be turned over first to the DIP Agent and (ii) thereafter, after the DIP Obligations have been satisfied in full and fully and indefeasibly paid, to the Term Loan Agent, as applicable, to satisfy outstanding prepetition secured indebtedness in accordance with the Prepetition Loan Documents (as defined below).

20. Maintenance of DIP Collateral. Until the indefeasible payment in full of all DIP Obligations, all indebtedness outstanding in accordance with the Prepetition Loan Documents, and the termination of the DIP Agent's and the DIP Lenders' obligation to extend credit under the DIP Facility, the Debtors shall (a) insure the DIP Collateral as required under the DIP Facility and the Prepetition Loan Documents, as applicable and (b) maintain the cash management system in effect as of the Petition Date, as modified by any order that may be entered by the Court in accordance with the DIP Documents.

21. Insurance Policies. Upon entry of this Final Order, the DIP Agent and the DIP Lenders are, and are deemed to be, without any further action or notice (including endorsements), named as additional insureds and loss payees on each insurance policy maintained by the Debtors which in any way relates to the DIP Collateral.

22. Disposition of DIP Collateral. Except as expressly provided for in the DIP Documents, the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral other than in the ordinary course of business without the prior written consent of the DIP Lenders, except to the extent such disposition of DIP Collateral shall result in the DIP Obligations being paid in full.

23. Events of Default. The term “Event of Default” shall have the same meaning under this Final Order as such term has under the DIP Documents and shall include, for the avoidance of doubt, the Milestones.

24. Rights and Remedies Upon Event of Default. Unless otherwise ordered by the Court in accordance with the terms hereof, as of 12:00 a.m. prevailing Eastern Time on the sixth business day after the date the DIP Agent files a notice of an Event of Default on the docket of the Debtors’ chapter 11 cases (such period, the “Default Notice Period”), the automatic stay under section 362 of the Bankruptcy Code will be automatically lifted without further order of this Court to allow the DIP Agent to take any and all actions permitted by law, as if no case were pending under the Bankruptcy Code. Unless otherwise ordered by the Court, the sole basis on which the Debtors can contest the automatic lifting of the automatic stay pursuant to this paragraph is on the grounds that an Event of Default has not occurred, and the Debtors and other parties-in-interest may request an expedited hearing on any motion seeking such a finding, and the DIP Lenders and the Term Loan Parties shall consent to such expedited hearing. In the event the automatic stay is lifted in accordance with this paragraph, any further order of this Court authorizing (a) the use of cash collateral, including accounts receivable, inventory, and the proceeds thereof, of the Debtors in which the DIP Agent or any of the DIP Lenders has an interest, or (b) under section 364 of the Bankruptcy Code, the obtaining of credit or the incurring

of indebtedness secured by a lien or security interest that is equal or senior to a lien or security interest held by the DIP Agent or which is entitled to priority administrative status which is equal or superior to that granted to the DIP Agent for the benefit of the DIP Lenders or the Term Loan Lenders, as the case may be, shall be prohibited. Upon the DIP Agent having delivered a notice of an Event of Default in accordance with the DIP Documents and this Final Order, at any hearing with respect to whether an Event of Default has occurred, there shall be a presumption in favor the DIP Lenders and the DIP Agent that an Event of Default has occurred, which presumption may be rebutted by the Debtors and/or the Committee. In accordance with Section 7.2(a) of the DIP Agreement, and subject to any applicable grace periods (including, without limitation, under Section 7.1(l)(ii), (iii) and (iv) and Section 7.1(o), upon the occurrence of any Event of Default, the DIP Agent may, without notice or demand, immediately suspend or terminate all or any portion of the DIP Lenders' obligations to make additional loans under the DIP Facility. Upon the occurrence of an Event of Default, all loans under the DIP Facility shall become due and payable in accordance with Section 7.2(b) of the DIP Agreement. Nothing herein shall be construed to limit or otherwise restrict the availability of the rights and remedies provided for in Section 7.2 of the DIP Agreement.

25. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Order. Each of the DIP Agent, the DIP Lenders, the Term Loan Agent, and the Term Loan Lenders have acted in good faith in connection with this Final Order, and their reliance on this Final Order is in good faith. Based on the findings set forth in this Final Order and the record made during the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court, the DIP

Agent, the DIP Lenders, the Term Loan Agent, and the Term Loan Lenders are entitled to fullest extent to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment, or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder, or lien, claim or priority authorized or created hereby. Any liens or claims granted to the DIP Agent, the DIP Lenders, the Term Loan Agent, and/or the Term Loan Lenders arising prior to the effective date of any such modification, amendment, or vacatur of this Final Order shall be governed in all respects by the original provisions of this Final Order, including entitlement to all rights, remedies, privileges, and benefits granted herein.

26. DIP and Other Expenses. The Debtors are authorized to pay all reasonable out-of-pocket expenses of the DIP Agent, the DIP Lenders, and KPS (as defined in the DIP Agreement), solely in connection with the financing transactions under the DIP Facility, to the extent provided in the DIP Documents (including, without limitation, Section 9.5 of the DIP Agreement) (including, without limitation, whether the DIP Documents are terminated by the DIP Agent or the DIP Lenders in accordance with the terms of the applicable DIP Documents), including, without limitation, legal, accounting, collateral examination and monitoring fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of fees and expenses. For the avoidance of doubt, the fees and expenses described in the foregoing sentence shall include, to the extent set forth in Section 9.5 of the DIP Agreement, all reasonable and documented out-of-pocket costs, fees, and expenses incurred in connection with the preparation, negotiation, execution, interpretation or administration of, any modification of any term of or termination of, any of the DIP Documents, any commitment or proposal letter therefor, any other document prepared in connection therewith. Payment of all

such fees and expenses shall not be subject to allowance by this Court, and parties entitled under the DIP Documents to receive such payment of fees and expenses shall not be required to comply with the U.S. Trustee fee guidelines; provided, however, that any time that such professionals seek payment of fees and expenses that are incurred from and after the Petition Date from the Debtors, each professional shall provide copies of its fee and expense statements (redacted to remove confidential or attorney-client privileged information) to the U.S. Trustee and counsel for the Committee (if appointed) contemporaneously with the delivery of such fee and expense statements to the Debtors. To the extent that the U.S. Trustee or the Committee (if appointed) has an objection to the fees and expenses of any such professional, they shall be afforded 10 days after receipt of such fee and expense statement to raise a specific written objection, including quantification of the disputed amount, with the applicable professional (it being understood that the Debtors shall be authorized to pay all amounts that are not disputed in a timely received written objection), and such professional shall only be required to disgorge any amounts paid to such professional pursuant to such fee and expense statement upon being “so ordered” to do so pursuant to a final order of this Court.

27. Indemnification. The Debtors shall indemnify and hold harmless the DIP Agent, the DIP Lenders, and each of their respective shareholders, controlling persons, directors, agents, officers, subsidiaries, affiliates, successors, assigns, directors, managers, principals, officers, employees, agents, investor funds, advisors, attorneys, professionals, representatives, investment bankers, and consultants, each in their respective capacities as such, from and against any and all damages, losses, settlement payments, obligations, liabilities, claims, actions, or causes of action, whether groundless or otherwise, and reasonable costs and expenses incurred, suffered, sustained, or required to be paid by an indemnified party of every nature and character

arising solely in connection with the financing transactions pursuant to the DIP Documents and by this Final Order, whether such indemnified party is party thereto, as provided in and pursuant to the terms of the DIP Documents and as further described therein and herein, except to the extent resulting from such indemnified party's gross negligence or willful misconduct as finally determined by a final non-appealable order of a court of competent jurisdiction. The indemnity includes indemnification for the DIP Agent's and any of the DIP Lenders' exercise of discretionary rights granted under the DIP Facility. In all such litigation, or the preparation therefor, the DIP Agent and the DIP Lenders shall be entitled to select their own counsel and, in addition to the foregoing indemnity, the Debtors agree to promptly pay the reasonable fees and expenses of such counsel.

28. Released Parties. Without limiting the rights of the parties in interest as set forth in paragraph 34 hereof, the Debtors hereby waive any and all actions related to, and hereby release, each of (a) the DIP Lenders, (b) the Prepetition Secured Parties, and (c) each of their respective shareholders, controlling persons, directors, agents, officers, subsidiaries, affiliates, successors, assigns, directors, managers, principals, officers, employees, agents, investors, funds, advisors, attorneys, professionals, representatives, accountants, investment bankers, and consultants, each in their respective capacity as such (each such person or entity identified in sub-clauses (a) through (c) of this paragraph 28, a "Released Party" and, collectively, the "Released Parties") from any and all damages, losses, settlement payments, obligations, liabilities, claims, actions, causes of action, or any Challenge (as defined herein), whether groundless or otherwise, and reasonable costs and expenses incurred, suffered, sustained, or required to be paid by an indemnified party of every nature and character arising prior to the Petition Date and to the extent related to the Prepetition Loan Documents, the DIP Agreement, or



this Final Order, any documents related to the Prepetition Loan Documents, the DIP Agreement, or this Final Order, any aspect of the prepetition relationship with the Released Parties, any Debtor, or any other acts or omissions by the Released Parties in connection with the Prepetition Loan Documents, the DIP Agreement, or this Final Order, any documents related to the Prepetition Loan Documents, the DIP Agreement, or this Final Order, or any aspect of their prepetition relationship with any Debtor.

29. Proofs of Claim. The DIP Agent, the DIP Lenders, and the Term Loan Parties shall not be required to file proofs of claim in any of these chapter 11 cases or Successor Cases for any claim allowed herein. Any proof of claim filed by the DIP Agent and the Term Loan Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the Term Loan Parties. Any order entered by this Court in relation to the establishment of a bar date in any of these cases or Successor Cases shall not apply to the DIP Agent, the DIP Lenders, and the Term Loan Parties.

30. Access to Collateral/No Landlord's Liens. Subject to applicable state law, notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Agent, for the benefit of the DIP Lenders, contained in this Final Order or the DIP Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Documents and this Final Order, upon written notice to the landlord of any leased premises that an Event of Default has occurred and is continuing under the DIP Documents, the DIP Agent may, subject to any separate agreement by and between such landlord and the DIP Agent (a "Separate Agreement"), enter upon any leased premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon and, subject to any Separate Agreement, shall be entitled to all of the Debtors' rights and privileges as lessee under

such lease without interference from such landlord; provided, however, that, subject to any such Separate Agreement, the DIP Agent shall only pay rent of the Debtors that first accrues after the written notice referenced above and that is payable during the period of such occupancy by the DIP Agent, calculated on a per diem basis. Nothing herein shall require the DIP Agent to assume any lease as a condition to the rights afforded to the DIP Agent in this paragraph.

31. Carve-Out.

(a) For the purposes of this Final Order, the term “Carve-Out” means, collectively: (i) all unpaid fees required to be paid by the debtors to the Clerk of the Bankruptcy Court and to the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717; (ii) all reasonable and documented fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code in an amount not to exceed \$50,000; (iii) to the extent allowed at any time, all accrued and unpaid reasonable and documented fees, disbursements, costs, and expenses incurred at any time before or on the first business day following delivery by the DIP Agent or the Required Lenders of a Carve Out Trigger Notice (as defined below) by any professionals or professional firms retained by the Borrowers or the Committee, whether allowed by the Bankruptcy Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) after the first business day following delivery by the DIP Agent or the Required Lenders of the Carve Out Trigger Notice, to the extent allowed at any time, all reasonable and documented unpaid fees, disbursements, costs, and expenses incurred by professionals or professional firms retained by the Borrowers or any Committee in an aggregate amount not to exceed \$1,000,000 (the amount set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a

written notice delivered by the DIP Agent or the Required Lenders (which delivery may be made via electronic mail) to the Borrowers and their counsel, the U.S. Trustee, and lead counsel to any Committee, which notice may be delivered following the occurrence and continuance of an Event of Default, and stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) The Carve-Out shall be senior to all liens and claims (including administrative and superpriority claims and any such claims held by the Stalking Horse Purchaser) securing the DIP Obligations, the Debtors' prepetition obligations, the Replacement Liens, and all other liens or claims (including administrative and superpriority claims), including all other forms of adequate protection, liens or claims (including administrative and superpriority claims) securing the DIP Obligations and prepetition obligations granted or recognized as valid, including the liens, security interests, and claims (including administrative and superpriority claims) granted herein or pursuant to the DIP Documents to the DIP Lenders.

32. Limitation on Investigation.

(a) No DIP Collateral, cash collateral, proceeds of the DIP Facility, portion of the Carve-Out, the Revolver Indemnification Account, or any other amounts may be used directly or indirectly by any of the Borrowers or any other Credit Party, the Committee, if any, or any trustee or other estate representative appointed in these chapter 11 cases or any Successor Cases or any other person (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith) for any of the following actions or activities (the “Proscribed Actions”):

(i) to seek authorization to obtain liens or security interests that are senior to, or on a parity with, the liens granted under the DIP Documents or this Final Order (including, the DIP Superpriority Claims); or

(ii) to investigate (including by way of examinations or discovery proceedings), prepare, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, against the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties, and each of their respective shareholders, controlling persons, directors, agents, officers, subsidiaries, affiliates, successors, assigns, directors, managers, principals, officers, employees, agents, investors, funds, advisors, attorneys, professionals, representatives, accountants, investment bankers, and consultants with respect to any transaction, occurrence, omission, action, or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation,

(A) any Avoidance Actions, (B) any so-called “lender liability” claims and causes of action, (C) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the DIP Obligations, the DIP Superpriority Claims, the DIP Liens granted under the DIP Documents, or the claims liens granted under the Prepetition Loan Documents, (D) any action seeking to invalidate, modify, reduce, expunge, disallow, set aside, avoid or subordinate, in whole or in part, the DIP Obligations, the Revolver Obligations, or the Term Loan Obligations (including, for the avoidance of doubt, the “Prepayment Premium” as defined in the Term Loan Agreement); (E) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to either (1) the DIP Agent or the DIP Lenders under this Final Order or under any of the DIP Documents or (2) the Prepetition Secured Parties (in each case, as applicable, including, claims, proceedings or actions that might prevent, hinder or delay any of their respective assertions, enforcements, realizations or remedies on or against the DIP Collateral in accordance with the DIP Documents and this Final Order); or (F) objecting to, contesting, or interfering with, in any way, DIP Agent’s and the DIP Lenders’ enforcement or realization upon any of the DIP Collateral once an Event of Default has occurred (as set forth in the DIP Documents).

(b) Notwithstanding anything to the contrary herein, the Committee may use up to \$50,000 in the aggregate amount of the Carve-Out, any cash-collateral, or proceeds of the DIP Facility to investigate the Prepetition Secured Parties (the “Committee Investigation Budget”). Any and all claims incurred by the Committee related to or in

connection with any Proscribed Activities other than up to the Committee Investigation shall not be satisfied by the Carve-Out, any cash collateral or proceeds of the DIP Facility, and shall be satisfied solely from the unencumbered assets of the Credit Parties (if any) (the “Unencumbered Assets”), thereby reducing recoveries to the holders of unsecured claims (other than any deficiency claim held by the Prepetition Secured Parties); provided, however, that to the extent there are no Unencumbered Assets available to satisfy such claims, then such claims shall be automatically disallowed without further action by any party or Court order and shall not receive a recovery in the chapter 11 cases and any Successor Cases.

33. Payment of Compensation. So long as an unwaived Event of Default has not occurred, and to the extent permitted under the DIP Documents (including, for the avoidance of doubt, the Budget), the Debtors shall be permitted to pay fees and expenses allowed and payable, as applicable, by any interim, procedural, or final order of this Court (that has not been vacated or stayed, unless the stay has been vacated) under sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable.

34. Challenge Period.

(a) Subject only to the terms of this paragraph 34, the grant of adequate protection to the Term Loan Agent, the Term Loan Lenders, the Revolver Agent, and Revolver Lenders, and the repayment of the Revolver pursuant to this Final Order and the various stipulations and waivers contained in paragraph G of this Final Order shall be without prejudice to the rights of the Committee to seek to disallow the Prepetition Secured Parties’ claims in respect of the Prepetition Loan Documents (including, for the avoidance of doubt, the “Prepayment Premium” as defined in the Term Loan

Agreement), pursue any claims or seek appropriate remedies against Prepetition Secured Parties in connection with the Prepetition Loan Documents or avoid all or substantially all of the security interests or liens in the Prepetition Collateral or in any other asset or property of Debtors in which Prepetition Secured Parties claim an interest, including any claim, action, or proceeding brought against the Prepetition Secured Parties in accordance with this paragraph 34 that requires Prepetition Secured Parties to give up adequate protection liens and superpriority claims, to disgorge adequate protection interest payments received or accruals credited, or to disgorge as repaid pursuant to this Final Order any amounts repaid on account of the Revolver as a result of any of the Prepetition Secured Parties' claims against Debtors or liens upon and security interests in the assets and properties of Debtors (including the Prepetition Collateral) being invalidated, avoided, subordinated, impaired or compromised in any way, either by an order of this Court (or other court of competent jurisdiction) or by settlement. Any party (other than the Debtors, which have waived all such rights), including the Committee, must commence, as appropriate, a contested matter or adversary proceeding raising any objection, claim, defense, suit or other challenge (a "Challenge") with respect to any claim, security interest, or any other rights of the Prepetition Secured Parties under the Revolver Documents or the Term Loan Documents, as applicable, including in the nature of a setoff, counterclaim, or defense on or before the earlier of the first to occur of (i) sixty (60) calendar days from the date the U.S. Trustee appoints the Committee and (ii) seventy-five (75) calendar days following the date of entry of this Final Order (the "Challenge Period"). The Challenge Period may only be extended (x) as to the Revolver Agent and/or the Revolver Lenders, with the prior written consent of both of the

Revolver Agent and the Term Loan Lenders, (y) as to the Term Loan Agent and the Term Loan Lenders, with the prior written consent of the Term Loan Lenders, or (z) by consent of the Court for good cause shown. In the event of a timely and successful Challenge to the repayment of the Revolver Obligations, this Court shall fashion the appropriate remedy with respect to the Revolver Lenders after hearing from all parties in interest.

(b) Upon the expiration of the Challenge Period, to the extent not specifically included in a timely and properly filed pleading asserting a Challenge: (i) any other possible Challenge, whether such Challenge is separately filed or otherwise asserted through an amendment of any timely and properly filed pleading asserting a Challenge, shall be deemed to be forever waived and barred, unless such amendment shall be approved by the Bankruptcy Court or other court of competent jurisdiction and such amendment is deemed to relate back to the time of the originally filed Challenge; (ii) all of the Debtors' agreements, acknowledgments, stipulations, waivers, releases, and affirmations as to the priority, extent, and validity of the Prepetition Secured Parties' claims, liens, and interests, of any nature, under the Prepetition Loan Documents, or otherwise incorporated or set forth in this Final Order, shall be of full force and effect and forever binding upon the Debtors, the Debtors' bankruptcy estates, and all creditors, interest holders, and other parties-in-interest in these chapter 11 cases and any Successor Cases without further action by any party or this Court, and any Committee and any other party in interest, and any and all successors-in-interest as to any of the foregoing, shall thereafter be forever barred from bringing any Challenge with respect thereto; (iii) the liens granted pursuant to the Prepetition Loan Documents shall (to the extent not otherwise satisfied in full) be deemed to constitute valid, binding, enforceable, and



perfected liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy Code or applicable bankruptcy law; and (iv) without further order of the Court, the obligations under the Prepetition Loan Documents shall (to the extent not otherwise satisfied in full) be allowed as fully secured claims within the meaning of section 506 of the Bankruptcy Code for all purposes in connection with these cases and any Successor Cases and shall not be subject to challenge by any party in interest as to validity, priority, or otherwise.

(c) This Final Order shall vest the Committee with standing to pursue any cause of action, claim, defense, or other right belonging to the Debtors or their estates as required to institute a Challenge as set forth in Paragraph 34 hereof.

35. No Third Party Rights. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

36. Section 506(c) Claims. No costs or expenses of administration which have been or may be incurred in these cases at any time shall be charged against the DIP Agent, the DIP Lenders, the Prepetition Secured Parties or any of their respective claims, the DIP Collateral, the Revolver Indemnification Account, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent, as applicable, of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders; provided, however, that the foregoing shall automatically terminate as to the Revolver Agent and the Revolver Lenders upon the occurrence of the Revolver Adequate Protection Termination Date.

37. Section 552(b). The Revolver Agent and the Term Loan Agent shall be entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under Section 552(b) shall not apply to the Revolver Agent (on behalf of itself and the Revolver Lenders) or to the Term Loan Agent (on behalf of itself and the Term Loan Lenders), with respect to proceeds, products, offspring, or profits of any of the Prepetition Collateral; provided, however, that the foregoing shall automatically terminate as to the Revolver Agent and the Revolver Lenders upon the occurrence of the Revolver Adequate Protection Termination Date.

38. No Marshaling/Application of Proceeds. The DIP Agent, the DIP Lenders, and the Term Loan Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as the case may be, and all proceeds shall be received and applied in accordance with the DIP Documents, provided, however, the DIP Agent and DIP Lender agree to only seek utilization of the proceeds of Avoidance Actions, proceeds of any potential causes of action against third-parties including proceeds from director and officer liability insurance policies and proceeds of the Tort Claims once the proceeds of all other DIP Collateral has been applied to satisfy the DIP Obligations.

39. Joint and Several Liability. Nothing in this Final Order shall be construed to constitute a substantive consolidation of any of the Debtors’ estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and in accordance with the terms of the DIP Facility and the DIP Documents.

40. Discharge Waiver. The DIP Obligations and the Term Loan Obligations shall not be discharged by the entry of an order confirming any plan of reorganization in these

cases, notwithstanding the provisions of Section 1141(d) of the Bankruptcy Code, unless the DIP Obligations have been indefeasibly paid in full in cash on or before the effective date of such confirmed plan of reorganization. None of the Debtors shall propose or support any plan of reorganization or sale of all or substantially all of the Debtors' assets or entry of any confirmation order or sale order that is not conditioned upon the indefeasible payment in full in cash (or, with respect to any letters of credit, such letters of credit have been treated in a manner satisfactory to the DIP Agent) on or prior to the earlier to occur of the effective date of such plan of reorganization or sale.

41. Rights Preserved. Except as expressly set forth in paragraph 12(c) of this Final Order, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the DIP Agent's, the DIP Lenders', and/or the Prepetition Secured Parties' right to seek any other or supplemental relief in respect of the Debtors, including, without limitation, the right of the Revolver Agent and the Revolver Lenders to seek court authorization to increase the funds in the Revolver Indemnification Account; (b) any of the rights of any of the DIP Agent, the DIP Lenders, and/or the Prepetition Secured Parties under the Bankruptcy Code or under applicable non-bankruptcy law, including the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code or (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans of reorganization; or (d) any other rights, claims, or privileges (whether legal, equitable or otherwise) of any of the DIP Agent, DIP Lenders, and/or the Prepetition Secured Parties.

42. No Waiver by Failure to Seek Relief. The failure of the DIP Agent, the DIP Lenders, and/or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Final Order the DIP Documents, the Prepetition Loan Documents

or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Agent, the DIP Lenders, and/or the Prepetition Secured Parties.

43. Binding Effect of Final Order. Immediately upon execution by this Court, the terms and provisions of this Final Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, all other creditors of the Debtors, the Committee, any other statutory committee that may be appointed in these chapter 11 cases, and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of these cases, any Successor Cases, or upon dismissal of any of these cases or Successor Cases.

44. Effect on Certain Pre-Petition Agreements. Except as expressly set forth in this Final Order the terms and conditions, validity, and enforceability of the Prepetition Loan Documents shall not be affected by this Final Order.

45. Leases. Notwithstanding anything to the contrary in this Final Order or the DIP Documents, upon an Event of Default, the rights of the Prepetition Secured Parties, the DIP Agent, or the DIP Lenders to enter onto the Debtors' leased premises shall be limited to (a) any such rights agreed to in writing by the applicable landlord prior to entry onto the leased premises, (b) any rights that the Prepetition Secured Parties, the DIP Agent, or the DIP Lenders have under applicable non-bankruptcy law, if any, and (c) such rights as may be granted by the Court on a separate motion with notice to the applicable landlords of the leased premises and an opportunity for such landlords to respond and be heard.

46. Notwithstanding anything to the contrary contained in this Final Order, the DIP Agreement, the other DIP Documents, the Revolver Payoff Letter or otherwise, all liens,

security interests, superpriority administrative expense claims, rights and remedies of DIP Agent and DIP Lenders authorized under this Final Order shall be expressly subject to the rights, liens, security interests and claims of Wells Fargo Bank, National Association and the Debtors' other depository and disbursement banks as provided for under this Final Order, Pursuant To Bankruptcy Code Sections 105(A), 345(B), 363(C)(1), 364(A), 364(B), And 503(B)(1), Bankruptcy Rules 6003 And 6004 And Local Rule 2015-2 (A) Authorizing Debtors To Use Existing Cash Management System, (B) Authorizing And Directing Banks And Financial Institutions To Honor And Process Checks And Transfers, (C) Authorizing Continued Use Of Intercompany Transactions, (D) Waiving Requirements Of Section 345(B) Of Bankruptcy Code And (E) Authorizing Debtors To Use Existing Bank Accounts And Existing Business Forms.

47. Final Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Documents or the Revolver Payoff Letter and this Final Order, the provisions of this Final Order shall govern and control.

48. No Right to Seek Modification. Unless requested by the DIP Agent, the Debtors irrevocably waive any right to seek any modification or extension of this Final Order (in whole or in part) without the prior consent of the Required Lenders, and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Agent or the Required Lenders.

49. Survival.

(a) The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any plan of reorganization in any of these chapter 11 cases, (ii) converting any of these chapter 11 cases to a case under chapter 7 of the Bankruptcy Code, (iii) dismissing any of these

chapter 11 cases or any Successor Cases, or (iv) pursuant to which this Court abstains from hearing any of these chapter 11 cases or Successor Cases.

(b) The terms and provisions of this Final Order, including the claims, liens, security interests, and other protections (as applicable) granted to the DIP Agent, the DIP Lenders, the Term Loan Agent, and the Term Loan Lenders, pursuant to this Final Order and/or the DIP Documents, notwithstanding the entry of any such order, shall continue in these cases, in any Successor Cases, or following dismissal of these cases or any Successor Cases, and shall maintain their priority as provided by this Final Order until, (i) in respect of the DIP Facility, all the DIP Obligations, pursuant to the DIP Documents and this Final Order, have been indefeasibly paid in full and all commitments to extend credit under the DIP Facility are terminated, and (ii) in respect of the Term Loan, all of the Term Loan Obligations have been indefeasibly paid in full. The terms and provisions concerning the indemnification of the DIP Agent and the DIP Lenders shall continue in these chapter 11 cases, in any Successor Cases, following dismissal of these chapter 11 cases or any Successor Cases, termination of the DIP Documents, and/or the indefeasible repayment of the DIP Obligations.

50. Waiver of Applicable Stay. Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Final Order.

51. Nunc Pro Tunc Effect of this Final Order. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof.

52. Retention of Jurisdiction. The Court has retained and will retain jurisdiction to implement, interpret, and enforce this Final Order according to its terms.

SO ORDERED by the Court this \_\_\_\_ day of October, 2013.

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CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**



**EXHIBIT F**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

-----X  
***In re:*** : **Chapter 11**  
: :  
: **Case No. 13-12329 (CSS)**  
**FURNITURE BRANDS** :  
**INTERNATIONAL, INC., et al.,** : **Jointly Administered**  
: :  
**Debtors.**<sup>1</sup> : **Docket Ref. No. 21,~~78,207,225~~**  
-----X

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN  
POST-PETITION FINANCING ON A SUPERPRIORITY, SENIOR SECURED  
BASIS, (B) USE CASH COLLATERAL, (C) REPAY ~~THE PREPETITION REVOLVER~~  
EXISTING POST-PETITION LOAN IN FULL, (II) GRANTING ADEQUATE  
PROTECTION TO CERTAIN PREPETITION LENDERS, AND (III) MODIFYING  
THE AUTOMATIC STAY**

Upon the motion (the "Filed Motion") [*Docket No. 21*] dated September 9, 2013 of Furniture Brands International, Inc., Broyhill Furniture Industries, Inc., HDM Furniture Industries, Inc., Lane Furniture Industries, Inc., Maitland-Smith Furniture Industries, Inc., and Thomasville Furniture Industries, Inc. (each, a "Borrower" and, collectively, the "Borrowers"), and the other persons designated as a "Credit Party" (each, a "Credit Party" and, collectively, the "Credit Parties") in the DIP Agreement (as defined below), each as a debtor and debtor-in-possession (collectively, the "Debtors") in the above-captioned chapter 11 cases, pursuant to sections 105, 361, 362, 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), and 507 of

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's tax identification number, as applicable, are: Furniture Brands International, Inc. (7683); Action Transport, Inc. (7587); Broyhill Furniture Industries, Inc. (3217); Broyhill Home Furnishings, Inc. (8844); Broyhill Retail, Inc. (8843); Broyhill Transport, Inc. (1721); Furniture Brands Holdings, Inc. (2837); Furniture Brands Operations, Inc. (4908); Furniture Brands Resource Company, Inc. (1288); HDM Furniture Industries, Inc. (7484); HDM Retail, Inc. (6125); HDM Transport, Inc. (4378); Lane Furniture Industries, Inc. (5064); Lane Home Furnishings Retail, Inc. (9085); Laneventure, Inc. (8434); Maitland-Smith Furniture Industries, Inc. (7486); Thomasville Furniture Industries, Inc. (6574); Thomasville Home Furnishings, Inc. (3139); Thomasville Retail, Inc. (f/k/a Classic Design Furnishings, Inc.) (6174). The Debtors' corporate headquarters is located at 1 N. Brentwood Blvd., St. Louis, Missouri 63105.

chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), [and upon further oral motion \(together with the Filed Motion, the “Motion”\)](#), seeking entry of a final order (this “Final Order”) providing for, among other things:

- (i) authority for the Debtors to obtain senior secured post-petition financing on a superpriority basis pursuant to the terms and conditions of that certain Senior Secured ~~Super Priority~~ Superpriority Debtor in Possession Credit Agreement dated ~~September 11~~ [11], 2013, by and among the Borrowers, Furniture Brands International, Inc., as Borrower Representative, the other Persons party thereto that are designated as Credit Parties, ~~NexBank SSB~~ Bank of America, N.A., as agent for the DIP Lenders (as defined below) (the “DIP Agent”), and the lenders party thereto from time to time (collectively, the “DIP Lenders”), substantially in the form attached hereto as **Exhibit 1** (as such agreement may be amended, restated, amended and restated, extended, modified, supplemented, or replaced from time to time in accordance with its terms, the “DIP Agreement”<sup>2</sup> and the financing made available pursuant to the DIP Agreement and the other DIP Documents (as defined below), the “DIP Facility”);
- (ii) authority for the Debtors to (a) execute, deliver, and perform under the DIP Agreement and all other related or ancillary documents and agreements (including the Budget (as defined below)) (collectively with the DIP Agreement, the “DIP

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms as set forth in the DIP Agreement.

Documents”) and (b) perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(iii) authority for the Debtors to (a) use cash collateral on the terms described herein, and (b) access and use the liquidity provided under the DIP Facility on a final basis, as follows: (1) ~~pay fees and expenses (including original issue discount in respect of the total amount of committed financing under the DIP Facility) and~~ access and use of the postpetition term loan made available under the DIP Facility in the amount of \$90,000,000 (the “Take-Out Term Loan”) to permanently repay in full all Existing DIP Loan Obligations (as defined below); (2) pay fees and expenses; and (3) access and use of up to \$50 million of the ~~full~~-revolving commitment made available under the DIP Facility (the “DIP Revolver” and, together with the Take-Out Term Loan ~~(as defined below) made available under the DIP Facility pursuant to the Interim Order,~~ collectively the “DIP Financing”) to ~~fund~~ (x) fund the Debtors’ chapter 11 cases and the continued operation of their businesses as Debtors and (y) fund certain fees and expenses associated with the consummation of the transactions contemplated in the DIP Documents, each on the terms set forth herein and the DIP Documents;

(iv) a grant of an automatically perfected, valid, enforceable, unavoidable, and ~~first-priority security interest~~ first-priority security interest and lien, pursuant to section 364(c)(2) of the Bankruptcy Code, on all DIP Collateral (as defined herein) and assets of the Borrowers and the other Credit Parties of any kind (other than Avoidance Actions (as defined below), but including the proceeds therefrom as set forth herein), whether now existing or hereafter acquired, that was not subject to a valid, perfected, and non-

avoidable lien in existence on the Petition Date (as defined below), subject only to the Carve-Out (as defined below);

(v) a grant of an automatically perfected, valid, enforceable, unavoidable and junior lien, pursuant to section 364(c)(3) of the Bankruptcy Code, on the property of the Borrowers and the other Credit Parties as more fully described herein subject to Permitted Liens (as such term is defined and as set forth in the DIP Agreement) and the Carve-Out;

(vi) a grant of an automatically perfected first priority, valid, enforceable, unavoidable, senior, priming lien, pursuant to section 364(d)(1) of the Bankruptcy Code, on all property of the Borrowers and the other Credit Parties that is subject to a valid and perfected lien securing all obligations owed to the Prepetition Secured Parties (as defined herein);

(vii) a grant, with respect to the obligations of the Borrowers and the other Credit Parties hereunder and under the other DIP Documents (and subject only to the Carve-Out described in paragraph 31 hereof), of an allowed superpriority administrative expense claim in each of the Debtors' bankruptcy cases (and against each of the Debtors' estates created pursuant to section 541 of the Bankruptcy Code) pursuant to section 364(c)(1) of the Bankruptcy Code having priority over all administrative expenses of the kind specified in or arising under any section of the Bankruptcy Code (including, sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546(c) or 726 thereof);

(viii) authority for the Debtors to pay the principal, interest, fees, expenses, and other amounts payable under the DIP Documents as such become due, including, the reasonable and documented fees and disbursements of the DIP Agent's and the DIP

Lenders' attorneys, advisers, accountants, and other consultants, all to the extent provided in and in accordance with the terms of the DIP Agreement and DIP Documents;

(ix) authority to use cash collateral (as such term is defined in section 363(a) of the Bankruptcy Code and/or under the DIP Documents, as applicable), subject to the restrictions set forth in the DIP Documents, and providing adequate protection to the Term Loan Parties for any Diminution in Value of their interests in the Prepetition Collateral (each as defined herein);

(x) a modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Final Order, as set forth herein; and

(xi) approval of the Chapter 11 Case Milestones (Section 7.1(m) of the DIP Agreement, the "Milestones") in respect of the Bankruptcy Sale ~~and the Lane Sale~~ (each as defined in the DIP Agreement), in accordance with the DIP Agreement through the implementation of the process and procedures set forth in the Bidding Procedures Order (as defined in the DIP Agreement) through an auction whereby the DIP Agent, the DIP Lenders, the Term Loan Agent (as defined below), the Term Loan Lenders (as defined below), and their respective affiliates, shall have the right to credit bid up to the full amount of the DIP Obligations (as defined below) and the Term Loan Obligations (as defined below), as applicable, and upon execution of the Asset Purchase Agreement (as defined in the DIP Agreement), such credit bid, together with any cash required under the Asset Purchase Agreement, shall be the "stalking horse" bid (with an associated breakup fee and expense reimbursement), with an auction (if necessary) and sale hearing scheduled in accordance with the Milestones;

and the Court having considered the Motion, the Declaration of Vance Johnston in Support of Debtors' Chapter 11 Petitions and First Day Motions [*Docket No. 16*], the Declaration of Morgan Suckow in Support of the Motion attached as Exhibit D to the Motion, the Declaration of Shawn Hassel in Support of the Motion attached as Exhibit E to the Motion, the DIP Documents, ~~the evidence submitted or proffered at the interim hearing to consider the relief requested in the Motion held on September 11, 2013 (the "Interim Hearing")~~, the evidence submitted or proffered at the final hearing to consider the relief requested in the Motion held on October 2, 2013 (the "Final Hearing"); and the Court having entered the Interim Order (as defined below) effective as of September 11, 2013 (the "Interim Order Entry Date"); and pursuant to the Interim Order, the Court having authorized and approved during the period commencing on the Interim Order Entry Date but prior to the date upon which this Final Order is entered (the "Final Order Entry Date"), ~~the Debtors'~~ entry into the ~~DIP Facility, the DIP Documents, and the~~ Existing DIP Loan Agreement (as defined below), and borrowings by the Borrowers to access and use the postpetition term loan made available under the ~~DIP Facility Existing DIP Loan Agreement (as defined below)~~ in the amount of \$90,000,000 (~~the "Take-Out Term Loan"~~) to (a) permanently repay in full all Revolver Obligations (as defined below) pursuant to that certain payoff letter by the Revolver Agent (as defined below) (collectively with all related or ancillary documents and agreements, including cash collateral agreements, the "Revolver Payoff Letter") attached to the Motion as Exhibit C and, concurrently therewith, terminate the Revolver (as defined below) and fund the indemnification account provided for in the Revolver Payoff Letter (the "Revolver Indemnification Account"), and (b) cash collateralize all outstanding letters of credit and purchase charge cards under the Revolver (as defined below), subject to compliance with the terms, conditions, and covenants described in the ~~DIP~~

~~Documents~~ Existing DIP Loan Agreement (as defined below); and notice of the Final Hearing having been given in accordance with Bankruptcy Rules 4001(b), (c) and (d), and 9014; and the Final Hearing to consider entry of this Final Order granting the relief requested in the Motion on a final basis and authorizing the ~~balance-of~~ borrowings under the DIP Documents on a final basis and the repayment of all amounts due, including all fees, costs, and expenses having been held and concluded; and all objections to the interim and final relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and based on all pleadings filed with this Court, and all proceedings held before the Court; and it appearing to the Court that granting the relief requested in the Motion is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors and equity holders, and is essential for the continued operation of the Debtors' businesses; and it further appearing that the Debtors are unable to obtain unsecured credit for money borrowed allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code; and adequate protection being provided on account of the interests of certain holders of liens on the property of the estates on which liens are to be granted; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

BASED UPON THE RECORD ESTABLISHED AT ~~THE INTERIM HEARING AND~~ THE FINAL HEARING BY THE DEBTORS, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. Petition Date. On September 9, 2013 (the "Petition Date"), each of the Debtors filed a separate voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court") commencing these chapter 11 cases.



B. Debtors-in-Possession. The Debtors continue to operate their businesses and properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases.

C. Jurisdiction and Venue. This Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over these proceedings, and over the persons and property affected hereby. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for these cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Joint Administration. By order dated September 11, 2013, the Court directed the joint administration of these chapter 11 cases and the consolidation thereof for administrative purposes only [*Docket No. 69*].

E. Committee Formation. On September 18, 2013, the United States Trustee (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”) in these chapter 11 cases pursuant to section 1102 of the Bankruptcy Code.

F. The Interim Order Existing DIP Loan. On September 11, 2013, the Court ~~approved the Motion on an interim basis and entered that certain an~~ Interim Order (I) ~~Authorizing the Debtors to (a) Obtain (A) Post-Petition Financing on a Super-~~ Priority Superpriority, Senior Secured Basis, (Bb) Use Cash Collateral, (Cc) Repay the Prepetition Revolver in Full, (Hii) Granting Adequate Protection to Certain Prepetition Lenders, (Hiii) Modifying the Automatic Stay, and (Iv) Scheduling a Final Hearing [*Docket No. 78*] (the “Interim Order”). Thereafter, the Debtors, the other persons party thereto that were designated as “Credit Parties,” the financial institutions party thereto, as lenders, and NexBank, SSB, as agent, entered into the “Existing DIP Loan Agreement” and, thereunder, incurred the

“Existing DIP Loan Obligations.” Pursuant to the Interim Order, the Debtors were authorized, among other things, to incur certain senior secured superpriority borrowings from the DIP ~~Lenders~~ lenders under the Existing DIP Loan Agreement, pursuant to the terms of the Existing DIP Loan Agreement, on an interim basis pending a final hearing on the Motion, to (i) permanently repay in full all Revolver Obligations (as defined below) pursuant to the Revolver Payoff Letter and, concurrently therewith, terminate the Revolver (as defined below) and fund the Revolver Indemnification Account, and (ii) cash collateralize all outstanding letters of credit and purchase charge cards under the Revolver. ~~The Interim Order, including, without limitation, the findings made therein, is incorporated herein by reference~~ (as defined below). Pursuant to the Interim Order, (i) the Final Hearing was scheduled for October 2, 2013 and (ii) any party ~~in~~ in interest objecting to the entry of the Final Order must have filed a written objection with the Clerk of the Court no later than September 25, 2013, at 4:00 p.m. (prevailing Eastern time), in accordance with the Interim Order.<sup>3</sup>

G. Debtors’ Stipulations. Subject only to the rights of parties in interest as set forth in paragraph 34 hereof, after consultation with their attorneys and financial advisors, the Debtors (on behalf of, and for themselves) admit, stipulate, acknowledge, and agree to the following:

(i) Revolver. Prior to the Interim Order Entry Date, Furniture Brands International, Inc., as Borrower Representative, the other Borrowers, certain other parties designated as “Credit Parties” thereto, the financial institutions from time to time party thereto (collectively, the “Revolver Lenders”), General Electric Capital Corporation, as agent for the Revolver Lenders (the “Revolver Agent”), General Electric Capital

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<sup>3</sup> Subsequent to the entry of the Interim Order, the Debtors agreed to extend until September 30, 2013 the Committee’s deadline to object to the entry of the Final Order.

Corporation, Bank of America, N.A., and Wells Fargo Bank, National Association, as co-collateral agents, General Electric Capital Corporation and Bank of America, N.A., as syndication agent, and Wells Fargo Bank, National Association, GE Capital Markets, Inc., and Bank of America, N.A., as lead arrangers and bookrunners were parties to that certain Credit Agreement, dated as of September 25, 2012 (as may be amended, restated, modified, supplemented, or replaced from time to time the “Revolver Credit Agreement”). The Revolver Credit Agreement provided the Debtors with an asset-based credit facility (the “Revolver”) with \$200 million maximum availability, subject to a borrowing base (and as reduced by reserves), all set forth in the Revolver Credit Agreement. As of the Petition Date, approximately \$91 million was outstanding under the Revolver (together with any other amounts outstanding under the Revolver as provided in the Revolver Credit Agreement, including obligations in respect of letters of credit, cash collateral for letters of credit, purchase charge cards, purchase card services, fees, expenses and indemnity, the “Revolver Obligations”). The Revolver was secured by a first priority lien on all of the Debtors’ accounts receivables, inventory, cash deposit and securities accounts and such other assets related to or arising out of, evidencing or governing any of the foregoing, including, without limitation, all cash, money and cash equivalents and proceeds thereof (subject only to certain liens granted to the Term Loan Agent as described below), and a second priority lien on the Prepetition Term Loan Collateral (as defined herein) (collectively, the “Prepetition Revolver Collateral”) pursuant to the “Collateral Documents” (as such term is defined and as set forth in the Revolver Credit Agreement) (the “Revolver Collateral Documents,” and, together with the Revolver Credit Agreement, the “Revolver Documents”). ~~As~~ [The Debtors assert that](#)

as of the Final Order Entry Date, ~~and pursuant to the Interim Order~~, (A) all Revolver Obligations have been paid in full, (B) the Revolver has been terminated, (C) the Revolver Indemnification Account has been funded, and (D) all outstanding letters of credit and purchase charge cards under the Revolver have been cash collateralized.

(ii) *Term Loan.* Furniture Brands International, Inc., as Borrower Representative, the other Borrowers, certain other parties designated as “Credit Parties” thereto, the financial institutions party thereto (collectively, the “Term Loan Lenders”), Nexbank SSB as successor agent to Pathlight Capital LLC, as administrative agent and collateral agent (the “Term Loan Agent” and, together with the Term Loan Lenders, the “Term Loan Parties”), and Wells Fargo Bank, National Association, as documentation agent, are parties to that certain Term Loan Agreement, dated as of September 25, 2012 (the “Term Loan Agreement”). The Term Loan Agreement provides for a \$50 million term loan (the “Term Loan”), of which approximately \$49.7 million remains outstanding as of the Petition Date (together with (x) any and all obligations outstanding under the Term Loan, including the Prepayment Premium (as such term is defined in the Term Loan Agreement) and (y) any obligations created pursuant to this Final Order, including the adequate protection provided in paragraph 12 hereof, the “Term Loan Obligations”). The Term Loan is secured by a first priority lien on substantially all of the Debtors’ property other than the Prepetition Revolver Collateral, including without limitation intellectual property, real estate, fixtures, furniture and equipment, and capital stock of the Debtors’ subsidiaries, subject to certain exceptions set forth in the Term Loan Agreement, and a second priority lien on the Prepetition Revolver Collateral (collectively, the “Prepetition Term Loan Collateral,” and, together with the Prepetition

Revolver Collateral, the “Prepetition Collateral”), pursuant to “Collateral Documents” (as such term is defined and as set forth in the Term Loan Agreement) (the “Term Loan Collateral Documents,” and together with the Term Loan Agreement, the “Term Loan Documents” and the Term Loan Documents, together with the Revolver Documents and the Intercreditor Agreement, the “Prepetition Loan Documents”). As of the Petition Date, the value of the Prepetition Collateral securing the Revolver Obligations and Term Loan Obligations exceeded the amount of the Revolver Obligations and Term Loan Obligations.

(iii) *Intercreditor Agreement.* On September 25, 2012, the Revolver Agent and the Term Loan Agent entered into that certain Intercreditor Agreement that, among other things, assigned relative priorities to certain claims and liens arising under the Revolver and the Term Loan (the “Intercreditor Agreement”).

(iv) *Validity and Priority of Pre-Petition Indebtedness and Liens.* After consultation with their attorneys and financial advisors, the Debtors, the Revolver Agent, and the Term Loan Agent acknowledge and agree that (a) the liens on the Prepetition Collateral granted pursuant to the Prepetition Loan Documents, respectively, are valid, binding, enforceable, non-avoidable, and perfected liens, and are not subject to any challenge or defense, including avoidance, reduction, offset, attachment, disallowance, disgorgement, counterclaim, surcharge, recharacterization, or subordination, pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (b) as of the Petition Date, the liens granted pursuant to the Revolver Collateral Documents were senior to all security interests and liens in the Prepetition Collateral, subject only to the senior liens of the Term Loan Agent in certain Prepetition Collateral in accordance with the Intercreditor

Agreement, and to certain other liens otherwise permitted by the Revolver Credit Agreement (to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable, and senior in priority to the liens of the Revolver Agent in the Prepetition Revolver Collateral); (c) the liens granted pursuant to the Term Loan Collateral Documents are senior to all security interests and liens in the Prepetition Collateral, and as of the Petition Date, subject only to the senior liens of the Revolver Agent in certain Prepetition Collateral in accordance with the Intercreditor Agreement, and to certain other liens otherwise permitted by the Term Loan Agreement (to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable, and senior in priority to the liens of the Term Loan Agent in the Prepetition Term Loan Collateral); (d) as of the Petition Date, the Revolver Documents were valid and enforceable by the Revolver Agent and Revolver Lenders against each of the Debtors; (e) the Term Loan Documents are valid and enforceable by the Term Loan Agent and the Term Loan Lenders against each of the Debtors; (f) the obligations under the Revolver constituted as of the Petition Date, and the obligations under the Term Loan constitute, legal, valid, binding, and unavoidable obligations of the Debtors, enforceable in accordance with the terms and conditions of the Revolver Documents and the Term Loan Documents; (g) no offsets, challenges, defenses, claims, or counterclaims of any kind or any nature to any of the obligations under the Revolver or to any of the obligations under the Term Loan exist, and no portion of such obligations (including, as applicable, the Revolver Obligations and the Term Loan Obligations) is subject to avoidance, recharacterization, disallowance, or subordination pursuant to the Bankruptcy Code or other applicable law, except as expressly set forth in the Prepetition Loan

Documents; (h) the Debtors and their estates have no offsets, defenses, claims, objections, challenges, causes of action, and/or choses in action, including, without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code, against the Revolver Agent, the Term Loan Agent, the Revolver Lenders, the Term Loan Lenders (collectively, the “Prepetition Secured Parties”), and/or any of the Prepetition Secured Parties’ respective affiliates, parents, subsidiaries, controlling persons, agents, attorneys, advisors, professionals, officers, directors, or employees whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to Sections 105, 510, or 542 through 553 of the Bankruptcy Code) or arising under or in connection with any of the Revolver Documents or the Term Loan Documents (or the transactions contemplated thereunder), the obligations under the Revolver and the Term Loan, or the security interests and liens in the Prepetition Collateral; (i) as of the Petition Date, the value of the Prepetition Collateral securing the Revolver Obligations and the Term Loan Obligations exceeded the amount of those obligations, and accordingly, the Revolver Obligations constituted, and the Term Loan Obligations constitute, allowed, secured claims within the meaning of Sections 506(c) and 502 of the Bankruptcy Code, together with accrued and unpaid interest, fees, including, attorneys’ fees and related expenses, costs, expenses, and other charges of whatever nature owing in respect thereof; (j) the Debtors have waived, discharged, and released any right to challenge any of the obligations under the Revolver and the Term Loan, the priority of the Debtors’ obligations thereunder, and the security for (and the priority of the liens securing) such obligations, and to assert any offsets, defenses, claims, objections, challenges, causes of action, and/or choses in action against

the Prepetition Secured Parties, and/or any of their respective officers, directors, or employees; and (k) any payments made on account of the obligations under the Revolver and the obligations under the Term Loan (including, as applicable, the Revolver Obligations and the Term Loan Obligations) to or for the benefit of the Prepetition Secured Parties prior to the Petition Date were on account of amounts in respect of which the Prepetition Secured Parties were oversecured, were payments out of the Prepetition Collateral in accordance with the Intercreditor Agreement, and such payments did not diminish any property otherwise available for distribution to unsecured creditors.

(v) *Cash Collateral.* The Debtors acknowledge and stipulate that substantially all of the Debtors' cash, including the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes "cash collateral" (as such term is defined in section 363(a) of the Bankruptcy Code) of the Prepetition Secured Parties.

(vi) *Default by the Debtors.* The Debtors acknowledge and stipulate that the Debtors are in default of their debts and obligations under the Term Loan Documents and, as of the Petition Date, the Revolver Documents. Furthermore, the Debtors acknowledge and stipulate that by filing petitions for relief under chapter 11 of the Bankruptcy Code and commencing these chapter 11 cases, all of their debts and obligations under the Revolver Documents and the Term Loan Documents (including, without limitation, the "Prepayment Premium," as such term is defined in the Term Loan Agreement), were immediately due and payable.

H. *Consent to Adequate Protection.* The Term Loan Agent has provided its consent to the adequate protection provided in paragraph 12 of this Final Order.



I. Findings Regarding the Postpetition Financing.

(i) *Request for Postpetition Financing.* The Debtors seek authority on a final basis to: (a) use cash collateral on the terms described herein, and (b) access and use the liquidity provided under the DIP Financing to: (1) access and use the Take-Out Term Loan (and, to the extent necessary, the DIP Revolver) to (x) permanently repay in full all Existing DIP Loan Obligations (and cash collateralize all outstanding letters of credit and purchase charge cards), (y) fund the indemnity account provided for under the Revolver Payoff Letter, and (z) pay fees and expenses; and (2) access and use the DIP Revolver to: ~~(1) pay fees and expenses (including original issue discount in respect of the total amount of committed financing under the DIP Facility); and (2) fund their chapter 11 cases on the terms set forth herein and the DIP Documents (including, for the avoidance of doubt, the Budget, as defined below);~~

(ii) *Priming of Certain Prepetition Liens.* The priming of the liens of the Term Loan Agent and the Term Loan Lenders on the Prepetition Collateral, as contemplated by the DIP Facility and as further described below, will enable the Debtors to obtain the DIP Facility and to continue to operate their businesses for the benefit of their estates and creditors. However, the Term Loan Agent and the Term Loan Lenders are entitled to receive adequate protection as set forth in this Final Order pursuant to sections 361, 363, and 364 of the Bankruptcy Code, for and to the extent of any postpetition diminution in the value of each of their respective interests in the Prepetition Collateral (including cash collateral) resulting from the Debtors' use, sale, or lease of such collateral, the imposition of the automatic stay, the priming of the prepetition liens granted on the Prepetition Collateral, and the subordination to the Carve-Out described in

paragraph 31 hereof and the DIP Liens (as defined herein) (collectively, the “Diminution in Value”). The Revolver Agent, for the benefit of itself and the Revolver Lenders, was entitled, as of the Petition Date, to receive adequate protection. Pursuant to sections 361, 363, and 507(b), as adequate protection, the Debtors, pursuant to the Interim Order, (1) paid the amounts required under the Revolver Obligations, (2) funded the Revolver Indemnification Account in the amount of \$250,000 upon closing of the Existing DIP Facility Loan facility, and (3) granted the liens in the Revolver Indemnification Account.

(iii) *Need for Postpetition Financing and Use of Cash Collateral.* The Debtors’ need to use cash collateral and to obtain credit pursuant to the DIP Facility as provided for herein is necessary to enable the Debtors to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, and otherwise to finance their operations requires the availability of working capital from the DIP Facility and the use of cash collateral. Without the ability to access the DIP Facility or cash collateral, the Debtors, their estates, their creditors, and the possibility for a successful reorganization would suffer immediate and irreparable harm. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business without the DIP Facility and authorized use of cash collateral.

(iv) *No Credit Available on More Favorable Terms.* Given their current financial condition, financing arrangements, and capital structure, the Debtors are unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facility. The Debtors have been unable to obtain unsecured credit

allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain credit (a) having priority over that of administrative expenses of the kind specified in Sections 503(b), 507(a), and 507(b) of the Bankruptcy Code, (b) secured by a lien on property of the Debtors and their estates that is not otherwise subject to a lien, or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis is not otherwise available without granting the DIP Agent, for the benefit of itself and the DIP Lenders, (a) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth herein, (b) superpriority claims and liens, and (c) the other protections set forth in this Final Order. The DIP Lenders ~~would~~ have been unwilling to provide financing under the DIP Facility absent the requirement that immediately upon ~~the Interim~~ [entry of this Final Order](#) ~~Entry Date~~, proceeds of the Take-Out Term Loan (and, to the extent necessary, the DIP Revolver) ~~would~~ be used to permanently repay the amounts outstanding under the ~~Revolver~~ [Existing DIP Loan](#).

(v) *Adequacy of the Budget.* As set forth in the DIP Documents, the Debtors have prepared and delivered a budget, a copy of which is annexed to the DIP Agreement attached ~~hereto~~ as **Exhibit 1** [hereto](#) (as may be modified, amended, restated or supplemented [by the debtors in consultation with the Committee and](#) with the consent of ~~Oaktree~~ [KPS](#), in its sole discretion on the terms set forth in the DIP Documents and paragraph 15 hereof, the “Budget”), to the DIP Agent and DIP Lenders.<sup>34</sup> The Budget has been thoroughly reviewed by the Debtors, their management, and their advisors. The

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<sup>34</sup> For the avoidance of doubt, the [Agreed](#) Budget is one of the DIP Documents.

Debtors, their management, and their advisors believe the budget and the estimate of administrative expenses due or accruing during the period covered by the DIP Facility were developed using reasonable assumptions. ~~Assuming the midpoint of the administrative expense estimate and making reasonable assumptions with respect to the proceeds which the sale of the Lane Assets would generate, there should be sufficient available assets to pay all administrative expenses due or accruing during the period covered by the DIP Facility.~~

J. Sections 506(c) and 552(b). In exchange for (i) the DIP Agent's and the DIP Lenders' agreement to subordinate their liens and superpriority claims to the Carve-Out and (ii) the Term Loan Agent's, and the Term Loan Lenders' agreement to subordinate their liens and claims to the Carve-Out and the DIP Liens, the DIP Agent, the DIP Lenders, the Term Loan Agent, and the Term Loan Lenders shall each receive (i) a waiver of any "equities of the case" claims under Section 552(b) of the Bankruptcy Code and (ii) a waiver of the provisions of Section 506(c) of the Bankruptcy Code.

K. Good Faith of the DIP Agent and the DIP Lenders.

(i) Willingness to Provide Financing. The DIP Lenders have indicated a willingness to provide financing to the Debtors subject to: (a) the entry by this Court of ~~the Interim Order and~~ this Final Order; (b) approval by this Court of the terms and conditions of the DIP Facility and the DIP Documents; and (c) entry of findings by this Court that such financing is essential to the Debtors' estates, that the DIP Agent and DIP Lenders are extending credit to the Debtors pursuant to the DIP Documents in good faith, and that the DIP Agent's and DIP Lenders' claims, superpriority claims, security interests, and liens and other protections granted pursuant to ~~the Interim Order,~~ this Final Order, and the DIP Documents will have the protections provided in section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification,

vacatur, amendment, reargument, or reconsideration of ~~the Interim Order~~, this Final Order, or any other order.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e)*. The terms and conditions of ~~the Interim Order~~, this Final Order, the DIP Facility, and the DIP Documents, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent and sound business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The DIP Facility and the use of cash collateral were negotiated in good faith and at arms' length among the Debtors, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties. The use of cash collateral and credit to be extended under the DIP Facility shall be deemed to have been so allowed, advanced, made, used, and extended in good faith, and for valid business purposes and uses, within the meaning of section 364(e) of the Bankruptcy Code, and the DIP Agent and the DIP Lenders are therefore entitled to the protection and benefits of section 364(e) of the Bankruptcy Code, ~~the Interim Order~~, and this Final Order.

L. *Notice*. Notice of ~~the Interim Hearing~~, the Final Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, email, overnight courier, or hand delivery, to certain parties-in-interest, including, (i) the U.S. Trustee; (ii) the Internal Revenue Service; (iii) the parties included on the Debtors' consolidated list of their thirty (30) largest unsecured creditors; (iv) counsel to the Revolver Agent for itself and for the Revolver Lenders; (v) the Term Loan Agent for itself and for the Term Loan Lenders; (vi) counsel to the DIP Agent for itself and for the DIP Lenders; and (vii) all parties holding security interests in any of the Debtors' assets. The parties have made reasonable efforts to afford the best notice

possible under the circumstances and such notice is good and sufficient to permit the relief set forth in this Final Order.

Based upon the foregoing findings and conclusions, the Motion, and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. ~~Motion~~ DIP Financing Approved. The DIP Financing is authorized and approved, and the use of cash collateral ~~on a final basis~~ is authorized, subject to the terms and conditions set forth in this Final Order and the DIP Documents (including the Budget).

2. Objections Overruled. All objections to the ~~Motion~~ DIP Financing and/or entry of this Final Order, ~~including, without limitation, the Omnibus Objection to (I) Debtors Motion for a Final Order Authorizing the Debtors to Obtain Post-petition Financing and (II) Debtors Motion for an Order Approving Bidding Procedures and Related Relief [Docket No. 230],~~ to the extent not withdrawn or resolved are hereby overruled.

### DIP Facility Authorization

~~3. — Ratification of the Interim Order and Authorization to Borrow During the Interim Period. The terms of the Interim Order are hereby ratified, confirmed, and approved and all borrowings and payments made thereunder shall be deemed made in accordance with and pursuant to this Final Order and shall be subject to this Final Order. During the period that the Interim Order was effective, and subject to the terms and conditions set forth in the DIP Documents, the DIP Facility, and the Interim Order, and to prevent immediate and irreparable harm to the Debtors' estates, the Debtors were authorized to request immediate extensions of credit pursuant to the terms herein, the Interim Order, and the terms of the DIP Documents, and such authorization is hereby ratified, confirmed, and approved on a final basis, subject to this Final Order and in accordance with the terms and conditions of the DIP Documents.~~

3. ~~4. Authorization of the DIP Financing and Entry Into the DIP Documents.~~

~~The DIP Facility,~~ Authorization of the DIP Financing and Entry Into the DIP Documents. The DIP Facility and the DIP Documents, and the Revolver Payoff Letter are hereby approved on a final basis, ~~and the Debtors are hereby authorized to access the full amount available under the DIP Facility pursuant to the terms herein and the terms of the DIP Documents. The Debtors were, by the Interim Order, and hereby.~~ The Debtors are expressly and immediately authorized and empowered to incur and to perform the DIP Obligations (as defined herein) in accordance with, and subject to, the terms of this Final Order and the DIP Documents, and to deliver all instruments and documents that may be necessary or required for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens (as defined below) provided for by this Final Order and the DIP Documents. The DIP Documents evidence valid and binding obligations of the Debtors, which shall be enforceable against the Debtors, their estates, and their creditors in accordance with the terms and conditions of the DIP Documents and this Final Order. The Debtors ~~were, by the Interim Order, and are~~ hereby ~~are~~ authorized to pay, in accordance with this Final Order, the principal, interest, fees ~~(including original issue discount)~~, expenses, and other amounts described in the DIP Documents and all other documents comprising the DIP Facility as such become due and without need to obtain further Court approval, all to the extent provided in the DIP Documents. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations, or otherwise, will be deposited and applied as required by this Final Order and the DIP Documents. All of the obligations described in the DIP Documents shall represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with the terms of the DIP Documents.

4. Authorization to Access the DIP Financing and Apply the Proceeds of the Take-Out Term Loan to Repay the Existing DIP Obligations. Subject to the terms and conditions set forth in the DIP Documents, the DIP Facility, and this Final Order, the Debtors are hereby authorized to access the DIP Financing pursuant to the terms herein and the terms of the DIP Documents. Additionally, the Debtors are expressly and immediately authorized, and empowered to incur the debt made available under the Take-Out Term Loan and use the proceeds of the Take-Out Term Loan (and, to the extent necessary, the DIP Revolver) to permanently repay in full all outstanding obligations (and cash collateralize all outstanding letters of credit and purchase charge cards) under the Existing DIP Agreement and, concurrently therewith, terminate the Existing DIP Facility.

5. DIP Obligations. Upon entry of this Final Order, the DIP Documents and this Final Order shall constitute and evidence the validity and binding effect of the Debtors' obligations under the DIP Facility, the other DIP Documents, ~~the Interim Order~~, and this Final Order (the "DIP Obligations"), which DIP Obligations shall be enforceable against the Debtors, their estates, and any successors thereto, including, any trustee appointed in these cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of these cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). Upon entry of this Final Order, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Agent or to any of the DIP Lenders, under the DIP Documents, or this Final Order, including all principal, accrued interest, costs, fees, expenses, and other amounts under the DIP Documents. The DIP Obligations shall be due and payable as provided for herein and in the DIP Documents.



6. DIP Liens. To secure the DIP Obligations, effective immediately upon entry of this Final Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Agent, for the benefit of itself and the DIP Lenders, ~~was, by the Interim Order, and~~ is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition priming, first-priority security interests in and liens upon (collectively, the “DIP Liens”) each of Borrowers’ and the Credit Parties’ right, title, and interest in, to, and under all personal property and other assets (provided, that with respect to any leased real property of the Debtors, the DIP Liens will be limited to and shall attach solely to any proceeds of the disposition of such lease), whether now owned by or owing to, or hereafter acquired by or arising in favor of the Borrowers and the Credit Parties (including under any trade names, styles, or derivations thereof), and whether owned or consigned by or to, or leased from or to, such Borrowers or Credit Parties, and regardless of where located, including the Prepetition Collateral (collectively, the “DIP Collateral”), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration, or otherwise) of the DIP Obligations. The DIP Collateral shall include (as each such term is defined in the DIP Documents) all: (a) all accounts (including health-care insurance receivables), all monies, all cash and cash equivalents, chattel paper (including electronic chattel paper), collateral security, deposit accounts, securities accounts, futures accounts (and all amounts and assets contained in such deposit accounts, securities accounts and futures accounts or created thereon), documents (as defined in the UCC and, including, if applicable, electronic documents), equipment, general intangibles (including all payment intangibles and Intellectual Property), guarantees, instruments (including promissory notes), inventory, investment property, securities, insurance claims and proceeds, tort claims, letter of credit rights (whether or not the

letter of credit is evidenced by a writing), any other contract rights or rights to the payment of money and any supporting obligations related to any of the foregoing; (b) the Commercial Tort Claims described on Schedule 1 to the Guaranty and Security Agreement and on any supplement thereto received by the DIP Agent pursuant to Section 5.8 of the Guaranty and Security Agreement; (c) all books and records pertaining to the collateral; (d) all equipment, goods and fixtures; (e) all securities accounts, deposit accounts, Cash Collateral Accounts and the Collection Account; (f) all Intellectual Property; (g) all property of such Credit Party held by any Secured Party, including all property of every description, in the custody of or in transit to such Secured Party for any purpose, including safekeeping, collection or pledge, for the account of such Grantor or as to which such Grantor may have any right or power, including but not limited to cash; (h) all Inventory; (i) all Pledged Collateral and Pledged Investment Property; (j) all Letter-of-Credit Rights; (k) the proceeds of any avoidance actions under chapter 5 of the Bankruptcy Code (“Avoidance Actions”), subject to the limitations set forth herein; (l) all other personal property of such Grantor, whether tangible or intangible and wherever located; and (m) to the extent not otherwise included, all products and proceeds and all accessions to, substitutions and replacements for, and rents, profits, and products of, each of the foregoing, and any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such Grantor from time to time with respect to any of the foregoing (in whatever form and including business interruption insurance) including, without limitation, any equity interests or assets constituting indebtedness received or acquired by any Grantor in exchange for, or proceeds from the sale of, assets which constituted DIP Collateral prior to such exchange or sale; provided, however, that “DIP Collateral” shall not include (x) Avoidance Actions (but will include the proceeds thereof, subject to the limitations set forth herein), (y) any Excluded Property (as defined in the DIP

Agreement), and (z) prior to the occurrence of the Revolver Adequate Protection Termination Date (as defined in paragraph 12(c) hereof), the Revolver Indemnification Account and any cash collateral accounts required pursuant to the Revolver Payoff Letter (it being understood that any residual amounts in such accounts shall constitute DIP Collateral following the Revolver Adequate Protection Termination Date without further action by any party or court order); provided, further, that the DIP Collateral shall include the proceeds of Avoidance Actions but the DIP Lenders agree to only seek utilization of the proceeds of Avoidance Actions once the proceeds of all other DIP Collateral has been applied to satisfy the DIP Obligations; provided, further, that if and when any property shall cease to be Excluded Property, immediately at and from such time (and without any action by any the Debtors or any other person), the DIP Collateral shall include, and the security interest granted by the Borrowers and each Credit Party shall attach to, such property.

7. DIP Lien Priority. Subject only to the Carve-Out described in paragraph 31 hereof, the DIP Liens securing the DIP Obligations shall be senior in priority to all other security interests in, liens on, or claims against the DIP Collateral. The DIP Liens shall not otherwise be made subject to or *pari passu* with any lien or security interest and shall be valid and enforceable against any trustee appointed in these chapter 11 cases or any Successor Cases, and/or upon the dismissal of any of these chapter 11 cases or any Successor Cases. The DIP Liens shall not be subject to sections 506(c), 510, 549, 550, or 551 of the Bankruptcy Code.

8. DIP Superpriority Claim. Subject only to the Carve-Out described in paragraph 31 hereof, upon entry of ~~the Interim Order, and continuing upon entry of~~ this Final Order, the DIP Agent and the DIP Lenders ~~were, by the Interim Order, and~~ are hereby granted pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative

expense claim in each of these chapter 11 cases and any Successor Cases for all of the DIP Obligations with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of these chapter 11 cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b) (except as set forth herein), 546(c), 546(d), 726 (to the extent permitted by law), 1113, and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative (the “DIP Superpriority Claim”).

9. Extension of Credit. The DIP Agent and the DIP Lenders shall have no obligation to make any loan or advance unless all of the conditions precedent to the making of such extension of credit under the DIP Documents and this Final Order have been satisfied in full or waived by the Required Lenders in their sole discretion.

10. Use of DIP Facility Proceeds; Repayment of the Existing DIP Loan Obligations. From and after the Petition Date, the Debtors shall use advances of credit under the DIP Facility only pursuant to the terms herein and the terms of the DIP Documents. The Debtors ~~were, by the Interim Order, and hereby~~ are authorized to use the proceeds of the DIP Facility to make the adequate protection payments provided for in paragraph 12 of this Final Order. Immediately upon entry of this Final Order, the Debtors shall use proceeds of the Take-Out Term Loan (and, to the extent necessary, the DIP Revolver) to (a) pay fees and expenses and (b) permanently repay in full all outstanding obligations (and cash collateralize all outstanding letters of credit and purchase charge cards) under the Existing DIP Agreement and, concurrently therewith, terminate the Existing DIP Agreement.

**Authorization to Use Cash Collateral and Adequate Protection**

11. Authorization to Use Cash Collateral. Subject to the terms and conditions set forth in, and in accordance with, this Final Order, the DIP Facility, and the DIP Documents, the Debtors ~~were, by the Interim Order, and hereby~~ are authorized to use cash collateral. Except as expressly permitted in ~~the Interim~~ this Final Order (including paragraph ~~4 thereof~~) ~~and this Final Order~~ 3 hereof), the DIP Facility, and the DIP Documents, nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any of the Debtors' use of any cash collateral or other proceeds resulting therefrom. Upon the occurrence of an Event of Default (as defined herein and in the DIP Documents), the Debtors' consensual use of cash collateral shall terminate.

12. Adequate Protection.

(a) Subject only to the Carve-Out described in paragraph 31 hereof, as adequate protection for the use of the DIP Collateral securing the Term Loan before entry of this Final Order, the Term Loan Agent and the Term Loan Lenders shall receive (i) payment in cash on a monthly basis of all interest accruing on the Term Loan at ~~an~~ the interest ~~rate at the~~ rate set forth in the ~~existing~~ Term Loan (~~non-default~~) per annum with any fees, and commissions (including, for the avoidance of doubt, any accrued pre- and post-petition interest and letter of credit fees and commissions due under the Term Loan Agreement); all paid as paid-in-kind (PIK) interest at the non-default rate set forth in the Term Loan Agreement; provided, however, that to the extent a final, non-appealable order of a court of competent jurisdiction determines that the Term Loan Lenders were undersecured on the Petition Date, the payments of current interest provided for in this paragraph shall be reallocated to payment of principal outstanding under the Term Loan; provided, further, that notwithstanding anything to the contrary contained herein, the

Term Loan Agent and the Term Loan Lenders shall be entitled to retain any such adequate protection payments to the extent necessary to compensate them for any Diminution in Value of the Prepetition Collateral; (ii) payment in cash on a current basis of all reasonable and documented out-of-pocket fees and expenses of the Term Loan Agent and the Term Loan Lenders solely in connection with the Term Loan (including any accrued pre- and postpetition interest and letter of credit fees and commissions and the reasonable and documented out-of-pocket fees and expenses of their respective professional advisors); (iii) replacement liens to the extent of Diminution in Value of the Prepetition Collateral, including replacement liens on all unencumbered assets of the Debtors (except any Avoidance Actions, but including the proceeds thereof), which liens will be junior to the liens of the DIP Lenders under the DIP Facility; and (iv) superpriority administrative expense claims with respect to each of the foregoing and to the extent of Diminution in Value of the Prepetition Collateral, which claims will be junior to the DIP Obligations and be payable from and have recourse to all assets and property of the Debtors (except any Avoidance Actions, but including the proceeds thereof). As additional adequate protection for the Term Loan Agent and the Term Loan Lenders, the DIP Agent and the DIP Lenders shall establish a segregated account (the "Term Loan Adequate Protection Account") into which the DIP Lenders shall deposit an amount equal to the sum of any and all obligations outstanding under the Term Loan, including the Prepayment Premium (as such term is defined in the Term Loan Agreement). If the Stalking Horse Purchaser is the successful bidder at the auction for the Debtors' assets, then the proceeds of the Term Loan Adequate Protection Account shall be paid to the Term Loan Agent and the Term Loan Lenders. If the Stalking Horse

Purchaser is not the successful bidder at the auction for the Debtors' assets, then the proceeds of the Term Loan Adequate Protection Account shall be returned to the DIP Lenders, and the Term Loan Agent and the Term Loan Lenders shall be entitled to payment in full, upon the closing of the sale to the successful bidder.

(b) Subject to the terms and conditions set forth in the DIP Documents, the DIP Agent, the DIP Lenders, the Term Loan Agent, and the Term Loan Lenders shall each have the right to credit bid, as applicable, the full amount of each of the DIP Obligations and the Term Loan Obligations, in connection with any sale of the Debtors' assets and property, including, any sale occurring pursuant to section 363 of the Bankruptcy Code or included as part of any plan of reorganization subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code.

(c) As adequate protection, effective immediately upon ~~the Interim Order Entry Date and continuing from the~~ entry of this Final Order ~~Entry Date~~, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the Revolver Agent, for the benefit of itself and the Revolver Lenders, is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition priming, first-priority security interests in and liens upon (i) the Revolver Indemnification Account and all funds therein and (ii) all cash collateral accounts created pursuant to or related to the Revolver Payoff Letter. The Revolver Indemnification Account and the liens granted therein shall terminate and all remaining amounts held in the Revolver Indemnification Account shall be released to the Debtors, if all Revolver Obligations have been indefeasibly and irrevocably paid in full in cash, upon the earliest to occur of (such earliest date, the "Revolver Adequate Protection Termination Date"): (i)

ten (10) days following the expiration of the Challenge Period (as defined herein) if, as of such date, no party has filed a contested matter, an adversary proceeding, cause of action, objection, claim, defense, or other claim or Challenge as contemplated in paragraph 34 hereof in respect of any claim, security interest, or any other rights of the Revolver Agent or the Revolver Lenders; (ii) if, as of the end of the Challenge Period, any party has filed or commenced any adversary proceeding, cause of action, objection, claim, defense, or other challenge, as appropriate, as set forth herein, in respect of any claim, security interest, or any other rights of the Revolver Agent or the Revolver Lenders, then ten (10) days following entry of a final order (that is not subject to a stay, or vacatur, appeal or reconsideration) effecting the termination or final settlement of all such contested matters, adversary proceedings, causes of action, objections, claims, defenses, and/or other claims or Challenges; and (iii) the effective date of a chapter 11 plan. Following the occurrence of the Revolver Adequate Protection Termination Date, (x) the liens granted to the Revolver Agent and the Revolver Lenders in the Revolver Indemnification Account and any cash collateral accounts required pursuant to the Revolver Payoff Letter shall automatically terminate without any further action by any party or court order and (y) the Revolver Agent's and the Revolver Lenders' right to adequate protection from the Debtors or any other party shall forever terminate without any further action by any party or court order. Notwithstanding anything to the contrary in ~~the Interim Order or this~~ Final Order to the contrary, the Debtors' residual interest in the Revolver Indemnification Account shall be subject to the DIP Liens, and the Replacement Liens (as defined below), ~~and the Carve-Out~~ in accordance with the priorities set forth in ~~the Interim Order,~~ this Final Order, and the DIP Documents.



13. Section 507(b) Reservation. Subject only to the Carve-Out described in paragraph 31 hereof, nothing contained herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided in this Final Order is insufficient to compensate for any Diminution in Value of the respective interests of the Term Loan Agent and the Term Loan Lenders in the Prepetition Collateral during these chapter 11 cases or any Successor Cases.

**Provisions Common to DIP Financing and Use of Cash Collateral Authorizations**

14. Amendment of the DIP Documents. The DIP Documents may, from time to time, be amended, amended and restated, modified, or supplemented by the parties thereto, [in consultation with the Committee](#), without notice or a hearing if the amendment, amendment and restatement, modification, or supplement is (a) in accordance with the DIP Documents and (b) not prejudicial in any material respect to the rights of third parties; provided, however, that notwithstanding the foregoing, except for actions expressly permitted to be taken by the DIP Agent or the DIP Lenders, no amendment, modification, supplement, termination, or waiver of any provision of the DIP Documents, or any consent to any departure by any of the Borrowers or the Credit Parties therefrom, shall in any event be effective without the express written consent of the Required Lenders (it being understood that any necessary signatures may be on a document consenting to such amendment, modification, termination, or waiver) to the extent required by the DIP Documents. To the extent reasonably practicable, the Debtors shall provide three days' written notice to the Committee and the U.S. Trustee prior to entry of any amendment, modification, supplement, or waiver of any provision of the DIP Documents.

15. Budget Compliance. The Borrowers and the Credit Parties shall not, and shall not permit any subsidiary to directly or indirectly, use any cash or the proceeds of the DIP Facility in a manner or for a purpose other than those consistent with the DIP Documents and

this Final Order. The Budget annexed to the DIP Agreement is hereby approved, and any modification to, or amendment or update of, the Budget shall be in form and substance acceptable to and approved by ~~Oaktree~~-KPS as provided in the DIP Documents. The Budget may be amended or modified in writing only with the written consent of ~~Oaktree~~KPS, in its sole discretion.

16. Modification of Automatic Stay. The automatic stay imposed by section 362(a) of the Bankruptcy Code ~~was, by the Interim Order, and~~ is hereby modified to permit (a) the Debtors to grant the DIP Liens and the DIP Superpriority Claim, and to perform such acts as the DIP Agent may request in its sole discretion to assure the perfection and priority of the DIP Liens, (b) the Debtors to take all appropriate action to grant the adequate protection ~~liens~~ set forth in paragraph 12-2 above (the “Replacement Liens”), and to take all appropriate action to ensure that the Replacement Liens granted thereunder are perfected and maintain the priority set forth herein, (c) the Debtors to incur all liabilities and obligations to the DIP Agent as contemplated under the DIP Documents, (d) the Debtors to pay all amounts referred to, required under, in accordance with, and subject to this Final Order, and (e) the implementation of the terms of this Final Order.

17. Perfection of DIP Liens and Adequate Protection Liens. This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted herein including the DIP Liens and the Replacement Liens without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, real property mortgage or aircraft security agreement) to validate or perfect (in

accordance with applicable non-bankruptcy law) the DIP Liens, the Replacement Liens, or to entitle the DIP Agent, the DIP Lenders, the Term Loan Agent, and the Term Loan Lenders to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent, and the Term Loan Agent each ~~were, by the Interim Order, and~~ are hereby authorized to file, as ~~each~~ it in its sole discretion deems necessary, such financing statements, mortgages, notices of lien, and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens, and the Replacement Liens, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens and/or the Replacement Liens. The Debtors ~~were, by the Interim Order, and hereby~~ are authorized to execute and promptly deliver to the DIP Agent all such financing statements, mortgages, notices, and other documents as the DIP Agent may reasonably request. The DIP Agent, in its discretion, may file a photocopy of this Final Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien, or similar instruments.

18. After-Acquired Property. Except as otherwise provided in this Final Order, pursuant to section 552(a) of the Bankruptcy Code, all property acquired by the Debtors after the Petition Date, including all DIP Collateral pledged or otherwise granted to the DIP Agent, on behalf of the DIP Lenders, pursuant to the DIP Documents, ~~the Interim Order,~~ and this Final Order is not and shall not be subject to any lien of any person or entity resulting from any security agreement entered into by the Debtors prior to the Petition Date, except to the extent that such property constitutes proceeds of property of the Debtors that is subject to a valid,

enforceable, perfected, and unavoidable lien as of the Petition Date that is not subject to subordination under section 510(c) of the Bankruptcy Code or other provision or principles of applicable law.

19. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed in these chapter 11 cases or any Successor Cases, shall obtain credit or incur debt pursuant to section 364(b), (c), or (d) of the Bankruptcy Code in violation of the DIP Documents at any time prior to the indefeasible payment in full of all DIP Obligations, the cancellation, backing, or cash collateralization of the letters of credit provided for under the DIP Agreement, the satisfaction of the DIP Superpriority Claims, and the termination of the DIP Agent's and DIP Lenders' obligations to extend credit under the DIP Facility, then all of the cash proceeds derived from such credit or debt shall (a) immediately be turned over first to the DIP Agent and (ii) thereafter, after the DIP Obligations have been satisfied in full and fully and indefeasibly paid, to the Term Loan Agent, as applicable, to satisfy outstanding prepetition secured indebtedness in accordance with the Prepetition Loan Documents (as defined below).

20. Maintenance of DIP Collateral. Until the indefeasible payment in full of all DIP Obligations, all indebtedness outstanding in accordance with the Prepetition Loan Documents, and the termination of the DIP Agent's and the DIP Lenders' obligation to extend credit under the DIP Facility, the Debtors shall (a) insure the DIP Collateral as required under the DIP Facility and the Prepetition Loan Documents, as applicable and (b) maintain the cash management system in effect as of the Petition Date, as modified by any order that may be entered by the Court in accordance with the DIP Documents.

21. Insurance Policies. Upon entry of ~~the Interim~~ this Final Order, the DIP Agent and the DIP Lenders ~~were~~are, and ~~were~~ are deemed to be, without any further action or notice (including endorsements), named as additional insureds and loss payees on each insurance policy maintained by the Debtors which in any way relates to the DIP Collateral, ~~and, upon entry of this Final Order, the DIP Agent and the DIP Lenders shall remain insureds and loss payees on each insurance policy maintained by the Debtors pursuant to this Final Order until such time as all DIP Obligations have been satisfied in full.~~

22. Disposition of DIP Collateral. Except as expressly provided for in the DIP Documents, the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral other than in the ordinary course of business without the prior written consent of the DIP Lenders, except to the extent such disposition of DIP Collateral shall result in the DIP Obligations being paid in full.

23. Events of Default. The term “Event of Default” shall have the same meaning under this Final Order as such term has under the DIP Documents and shall include, for the avoidance of doubt, the Milestones.

24. Rights and Remedies Upon Event of Default. Unless otherwise ordered by the Court in accordance with the terms hereof, as of 12:00 a.m. prevailing Eastern Time on the sixth business day after the date the DIP Agent files a notice of an Event of Default on the docket of the Debtors’ chapter 11 cases (such period, the “Default Notice Period”), the automatic stay under section 362 of the Bankruptcy Code will be automatically lifted without further order of this Court to allow the DIP Agent to take any and all actions permitted by law, as if no case were pending under the Bankruptcy Code. Unless otherwise ordered by the Court, the sole basis on which the Debtors can contest the automatic lifting of the automatic stay pursuant to this

paragraph is on the grounds that an Event of Default has not occurred, and the Debtors and other parties-in-interest may request an expedited hearing on any motion seeking such a finding, and the DIP Lenders and the Term Loan Parties shall consent to such expedited hearing. In the event the automatic stay is lifted in accordance with this paragraph, any further order of this Court authorizing (a) the use of cash collateral, including accounts receivable, inventory, and the proceeds thereof, of the Debtors in which the DIP Agent or any of the DIP Lenders has an interest, or (b) under section 364 of the Bankruptcy Code, the obtaining of credit or the incurring of indebtedness secured by a lien or security interest that is equal or senior to a lien or security interest held by the DIP Agent or which is entitled to priority administrative status which is equal or superior to that granted to the DIP Agent for the benefit of the DIP Lenders or the Term Loan Lenders, as the case may be, shall be prohibited. Upon the DIP Agent having delivered a notice of an Event of Default in accordance with the DIP Documents and this Final Order, at any hearing with respect to whether an Event of Default has occurred, there shall be a presumption in favor the DIP Lenders and the DIP Agent that an Event of Default has occurred, which presumption may be rebutted by the Debtors and/or the Committee. In accordance with Section 7.2(a) of the DIP Agreement, and subject to any applicable grace periods (including, without limitation, under Section 7.1(l)(ii), (iii) and (iv) and Section 7.1(o)), upon the occurrence of any Event of Default, the DIP Agent may, without notice or demand, immediately suspend or terminate all or any portion of the DIP Lenders' obligations to make additional loans under the DIP Facility. Upon the occurrence of an Event of Default, all loans under the DIP Facility shall become due and payable in accordance with Section 7.2(b) of the DIP Agreement. Nothing herein shall be construed to limit or otherwise restrict the availability of the rights and remedies provided for in Section 7.2 of the DIP Agreement.

25. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Order. Each of the DIP Agent, the DIP Lenders, the Term Loan Agent, and the Term Loan Lenders have acted in good faith in connection with ~~the Interim Order and~~ this Final Order, and their reliance on ~~the Interim Order and~~ this Final Order is in good faith. Based on the findings set forth in ~~the Interim Order and~~ this Final Order and the record made during ~~the Interim Hearing and~~ the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court, the DIP Agent, the DIP Lenders, the Term Loan Agent, and the Term Loan Lenders are entitled to fullest extent to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment, or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder, or lien, claim or priority authorized or created hereby. Any liens or claims granted to the DIP Agent, the DIP Lenders, the Term Loan Agent, and/or the Term Loan Lenders arising prior to the effective date of any such modification, amendment, or vacatur of this Final Order shall be governed in all respects by the original provisions of this Final Order, including entitlement to all rights, remedies, privileges, and benefits granted herein.

26. DIP and Other Expenses. The Debtors ~~were, by the Interim Order, and hereby~~ are authorized to pay all reasonable out-of-pocket expenses of the DIP Agent, the DIP Lenders, and ~~Oaktree-KPS~~ (as defined in the DIP Agreement), solely in connection with the financing transactions under the DIP Facility, to the extent provided in the DIP Documents (including, without limitation, Section 9.5 of the DIP Agreement) (including, without limitation, whether the DIP Documents are terminated by the DIP Agent or the DIP Lenders in accordance with the terms of the applicable DIP Documents), including, without limitation, legal,

accounting, collateral examination and monitoring fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of fees and expenses. For the avoidance of doubt, the fees and expenses described in the foregoing sentence shall include, to the extent set forth in Section 9.5 of the DIP Agreement, all reasonable and documented out-of-pocket costs, fees, and expenses incurred in connection with the preparation, negotiation, execution, interpretation or administration of, any modification of any term of or termination of, any of the DIP Documents, any commitment or proposal letter therefor, any other document prepared in connection therewith ~~(including, without limitation, the Asset Purchase Agreement (as defined in the DIP Agreement)) or the consummation and administration of any transaction contemplated therein, (including, without limitation, the sale contemplated by the Asset Purchase Agreement (as defined in the DIP Agreement))~~. Payment of all such fees and expenses shall not be subject to allowance by this Court, and parties entitled under the DIP Documents to receive such payment of fees and expenses shall not be required to comply with the U.S. Trustee fee guidelines; provided, however, that any time that such professionals seek payment of fees and expenses that are incurred from and after the Petition Date from the Debtors, each professional shall provide copies of its fee and expense statements (redacted to remove confidential or attorney-client privileged information) to the U.S. Trustee and counsel for the Committee (if appointed) contemporaneously with the delivery of such fee and expense statements to the Debtors. To the extent that the U.S. Trustee or the Committee (if appointed) has an objection to the fees and expenses of any such professional, they shall be afforded 10 days after receipt of such fee and expense statement to raise a specific written objection, including quantification of the disputed amount, with the applicable professional (it being understood that the Debtors shall be authorized to pay all amounts that are not disputed in a timely received written objection), and



such professional shall only be required to disgorge any amounts paid to such professional pursuant to such fee and expense statement upon being “so ordered” to do so pursuant to a final order of this Court.

27. Indemnification. The Debtors shall indemnify and hold harmless the DIP Agent, the DIP Lenders, and each of their respective shareholders, controlling persons, directors, agents, officers, subsidiaries, affiliates, successors, assigns, directors, managers, principals, officers, employees, agents, investor funds, advisors, attorneys, professionals, representatives, investment bankers, and consultants, each in their respective capacities as such, from and against any and all damages, losses, settlement payments, obligations, liabilities, claims, actions, or causes of action, whether groundless or otherwise, and reasonable costs and expenses incurred, suffered, sustained, or required to be paid by an indemnified party of every nature and character arising ~~out of or related~~ solely in connection with the financing transactions pursuant to the DIP Documents ~~or the transactions contemplated thereby~~ and by this Final Order, whether such indemnified party is party thereto, as provided in and pursuant to the terms of the DIP Documents and as further described therein and herein, except to the extent resulting from such indemnified party’s gross negligence or willful misconduct as finally determined by a final non-appealable order of a court of competent jurisdiction. The indemnity includes indemnification for the DIP Agent’s and any of the DIP Lenders’ exercise of discretionary rights granted under the DIP Facility. In all such litigation, or the preparation therefor, the DIP Agent and the DIP Lenders shall be entitled to select their own counsel and, in addition to the foregoing indemnity, the Debtors agree to promptly pay the reasonable fees and expenses of such counsel.

28. Released Parties. Without limiting the rights of the parties in interest as set forth in paragraph 34 hereof, the Debtors hereby waive any and all actions related to, and hereby

release, each of (a) the DIP Lenders, (b) the Prepetition Secured Parties, and (c) each of their respective shareholders, controlling persons, directors, agents, officers, subsidiaries, affiliates, successors, assigns, directors, managers, principals, officers, employees, agents, investors, funds, advisors, attorneys, professionals, representatives, accountants, investment bankers, and consultants, each in their respective capacity as such (each such person or entity identified in sub-clauses (a) through (c) of this paragraph 28, a “Released Party” and, collectively, the “Released Parties”) from any and all damages, losses, settlement payments, obligations, liabilities, claims, actions, causes of action, or any Challenge (as defined herein), whether groundless or otherwise, and reasonable costs and expenses incurred, suffered, sustained, or required to be paid by an indemnified party of every nature and character arising prior to the Petition Date and to the extent related to the Prepetition Loan Documents, the DIP Agreement, ~~the Interim Order~~, or this Final Order, any documents related to the Prepetition Loan Documents, the DIP Agreement, ~~the Interim Order~~, or this Final Order, any aspect of the prepetition relationship with the Released Parties, any Debtor, or any other acts or omissions by the Released Parties in connection with the Prepetition Loan Documents, the DIP Agreement, ~~the Interim Order~~, or this Final Order, any documents related to the Prepetition Loan Documents, the DIP Agreement, ~~the Interim Order~~, or this Final Order, or any aspect of their prepetition relationship with any Debtor.

29. Proofs of Claim. The DIP Agent, the DIP Lenders, and the Term Loan Parties shall not be required to file proofs of claim in any of these chapter 11 cases or Successor Cases for any claim allowed herein. Any proof of claim filed by the DIP Agent and the Term Loan Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the Term Loan Parties. Any order entered by this Court in relation to the

establishment of a bar date in any of these cases or Successor Cases shall not apply to the DIP Agent, the DIP Lenders, and the Term Loan Parties.

~~30. [Reserved.]~~

30. Access to Collateral/No Landlord's Liens. Subject to applicable state law, notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Agent, for the benefit of the DIP Lenders, contained in this Final Order or the DIP Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Documents and this Final Order, upon written notice to the landlord of any leased premises that an Event of Default has occurred and is continuing under the DIP Documents, the DIP Agent may, subject to any separate agreement by and between such landlord and the DIP Agent (a "Separate Agreement"), enter upon any leased premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon and, subject to any Separate Agreement, shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from such landlord; provided, however, that, subject to any such Separate Agreement, the DIP Agent shall only pay rent of the Debtors that first accrues after the written notice referenced above and that is payable during the period of such occupancy by the DIP Agent, calculated on a per diem basis. Nothing herein shall require the DIP Agent to assume any lease as a condition to the rights afforded to the DIP Agent in this paragraph.

31. Carve-Out.

(a) For the purposes of this Final Order, the term "Carve-Out" means, collectively: (i) all unpaid fees required to be paid by the debtors to the Clerk of the Bankruptcy Court and to the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717; (ii) all reasonable and documented fees and expenses

incurred by a trustee under section 726(b) of the Bankruptcy Code in an amount not to exceed \$50,000; (iii) to the extent allowed at any time, all accrued and unpaid reasonable and documented fees, disbursements, costs, and expenses incurred at any time before or on the first business day following delivery by the DIP Agent or the Required Lenders of a Carve Out Trigger Notice (as defined below) by any professionals or professional firms retained by the Borrowers or the Committee, whether allowed by the Bankruptcy Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) after the first business day following delivery by the DIP Agent or the Required Lenders of the Carve Out Trigger Notice, to the extent allowed at any time, all reasonable and documented unpaid fees, disbursements, costs, and expenses incurred by professionals or professional firms retained by the Borrowers or any Committee in an aggregate amount not to exceed \$1,000,000 (the amount set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by the DIP Agent or the Required Lenders (which delivery may be made via electronic mail) to the Borrowers and their counsel, the U.S. Trustee, and lead counsel to any Committee, which notice may be delivered following the occurrence and continuance of an Event of Default, and stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) The Carve-Out shall be senior to all liens and claims (including administrative and superpriority claims and any such claims held by the Stalking Horse Purchaser) securing the DIP Obligations, the Debtors’ prepetition obligations, the Replacement Liens, and all other liens or claims (including administrative and superpriority claims), including all other forms of adequate protection, liens or claims

(including administrative and superpriority claims) securing the DIP Obligations and prepetition obligations granted or recognized as valid, including the liens, security interests, and claims (including administrative and superpriority claims) granted herein or pursuant to the DIP Documents to the DIP Lenders.

32. Limitation on Investigation.

(a) No DIP Collateral, cash collateral, proceeds of the DIP Facility, portion of the Carve-Out, the Revolver Indemnification Account, or any other amounts may be used directly or indirectly by any of the Borrowers or any other Credit Party, the Committee, if any, or any trustee or other estate representative appointed in these chapter 11 cases or any Successor Cases or any other person (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith) for any of the following actions or activities (the "Proscribed Actions"):

(i) to seek authorization to obtain liens or security interests that are senior to, or on a parity with, the liens granted under the DIP Documents, ~~the Interim Order,~~ or this Final Order (including, the DIP Superpriority Claims); or

(ii) to investigate (including by way of examinations or discovery proceedings), prepare, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, against the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties, and each of their respective shareholders, controlling persons, directors, agents, officers, subsidiaries, affiliates, successors, assigns, directors, managers, principals,

officers, employees, agents, investors, funds, advisors, attorneys, professionals, representatives, accountants, investment bankers, and consultants with respect to any transaction, occurrence, omission, action, or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (A) any Avoidance Actions, (B) any so-called “lender liability” claims and causes of action, (C) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the DIP Obligations, the DIP Superpriority Claims, the DIP Liens granted under the DIP Documents, or the claims liens granted under the Prepetition Loan Documents, (D) any action seeking to invalidate, modify, reduce, expunge, disallow, set aside, avoid or subordinate, in whole or in part, the DIP Obligations, the Revolver Obligations, or the Term Loan Obligations (including, for the avoidance of doubt, the “Prepayment Premium” as defined in the Term Loan Agreement); (E) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to either (1) the DIP Agent or the DIP Lenders under ~~the Interim Order,~~ this Final Order, or under any of the DIP Documents or (2) the Prepetition Secured Parties (in each case, as applicable, including, claims, proceedings or actions that might prevent, hinder or delay any of their respective assertions, enforcements, realizations or remedies on or against the DIP Collateral in accordance with the DIP Documents, ~~the Interim Order,~~ and this Final Order); or (F) objecting to, contesting, or interfering with, in any way, DIP Agent’s and the DIP Lenders’ enforcement or realization upon any of the DIP Collateral once an Event of Default has occurred (as set forth in the DIP Documents).

(b) Notwithstanding anything to the contrary herein, the Committee may use up to \$50,000.00 in the aggregate amount of the Carve-Out, any cash-collateral, or proceeds of the DIP Facility to investigate the Prepetition Secured Parties (the “Committee Investigation Budget”). Any and all claims incurred by the Committee related to or in connection with any Proscribed Activities other than up to the Committee Investigation Budget shall not constitute an allowed administrative expense claims (including, without limitation, Section 1129(a)(9)(A) of the Bankruptcy Code) and shall not be satisfied by the Carve-Out, any cash collateral or proceeds of the DIP Facility, and shall be satisfied solely from the unencumbered assets of the Credit Parties (if any) (the “Unencumbered Assets”), thereby reducing recoveries to the holders of unsecured claims (other than any deficiency ~~claims~~ claim held by the Prepetition Secured Parties); provided, however, that to the extent there are no Unencumbered Assets available to satisfy such claims, then such claims shall be automatically disallowed without further action by any party or Court order and shall not receive a recovery in the chapter 11 cases and any Successor Cases.

33. Payment of Compensation. So long as an unwaived Event of Default has not occurred, and to the extent permitted under the DIP Documents (including, for the avoidance of doubt, the Budget), the Debtors shall be permitted to pay fees and expenses allowed and payable, as applicable, by any interim, procedural, or final order of this Court (that has not been vacated or stayed, unless the stay has been vacated) under sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable.

34. Challenge Period.

(a) Subject only to the terms of this paragraph 34, the grant of adequate protection to the Term Loan Agent, the Term Loan Lenders, the Revolver Agent, and Revolver Lenders, and the repayment of the Revolver pursuant to ~~the Interim~~ this Final Order and the various stipulations and waivers contained in paragraph G of this Final Order shall be without prejudice to the rights of the Committee to seek to disallow the Prepetition Secured Parties' claims in respect of the Prepetition Loan Documents (including, for the avoidance of doubt, the "Prepayment Premium" as defined in the Term Loan Agreement), pursue any claims or seek appropriate remedies against Prepetition Secured Parties in connection with the Prepetition Loan Documents or avoid all or substantially all of the security interests or liens in the Prepetition Collateral or in any other asset or property of Debtors in which Prepetition Secured Parties claim an interest, including any claim, action, or proceeding brought against the Prepetition Secured Parties in accordance with this paragraph 34 that requires Prepetition Secured Parties to give up adequate protection liens and superpriority claims, to disgorge adequate protection interest payments received or accruals credited, or to disgorge as repaid pursuant to ~~the Interim Order or~~ this Final Order any amounts repaid on account of the Revolver as a result of any of the Prepetition Secured Parties' claims against Debtors or liens upon and security interests in the assets and properties of Debtors (including the Prepetition Collateral) being invalidated, avoided, subordinated, impaired or compromised in any way, either by an order of this Court (or other court of competent jurisdiction) or by settlement. Any party (other than the Debtors, which have waived all such rights), including the Committee, must commence, as appropriate, a contested matter or



adversary proceeding raising any objection, claim, defense, suit or other challenge (a “Challenge”) with respect to any claim, security interest, or any other rights of the Prepetition Secured Parties under the Revolver Documents or the Term Loan Documents, as applicable, including in the nature of a setoff, counterclaim, or defense on or before ~~November 17, 2013~~ the earlier of the first to occur of (i) sixty (60) calendar days from the date the U.S. Trustee appoints the Committee and (ii) seventy-five (75) calendar days following the date of entry of this Final Order (the “Challenge Period”). The Challenge Period may only be extended (x) as to the Revolver Agent and/or the Revolver Lenders, with the prior written consent of both of the Revolver Agent and the Term Loan Lenders, (y) as to the Term Loan Agent and the Term Loan Lenders, with the prior written consent of the Term Loan Lenders, or (z) by consent of the Court for good cause shown. In the event of a timely and successful Challenge to the repayment of the Revolver Obligations ~~pursuant to the Interim Order~~, this Court shall fashion the appropriate remedy with respect to the Revolver Lenders after hearing from all parties in interest.

(b) Upon the expiration of the Challenge Period, to the extent not specifically included in a timely and properly filed pleading asserting a Challenge: (i) any other possible Challenge, whether such Challenge is separately filed or otherwise asserted through an amendment of any timely and properly filed pleading asserting a Challenge, shall be deemed to be forever waived and barred, unless such amendment shall be approved by the Bankruptcy Court or other court of competent jurisdiction and such amendment is deemed to relate back to the time of the originally filed Challenge; (ii) all of the Debtors’ agreements, acknowledgments, stipulations, waivers, releases, and affirmations as to the priority, extent, and validity of the Prepetition Secured Parties’

claims, liens, and interests, of any nature, under the Prepetition Loan Documents, or otherwise incorporated or set forth in ~~the Interim Order and~~ this Final Order, shall be of full force and effect and forever binding upon the Debtors, the Debtors' bankruptcy estates, and all creditors, interest holders, and other parties-in-interest in these chapter 11 cases and any Successor Cases without further action by any party or this Court, and any Committee and any other party in interest, and any and all successors-in-interest as to any of the foregoing, shall thereafter be forever barred from bringing any Challenge with respect thereto; (iii) the liens granted pursuant to the Prepetition Loan Documents shall (to the extent not otherwise satisfied in full) be deemed to constitute valid, binding, enforceable, and perfected liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy Code or applicable bankruptcy law; and (iv) without further order of the Court, the obligations under the Prepetition Loan Documents shall (to the extent not otherwise satisfied in full) be allowed as fully secured claims within the meaning of section 506 of the Bankruptcy Code for all purposes in connection with these cases and any Successor Cases and shall not be subject to challenge by any party in interest as to validity, priority, or otherwise.

(c) ~~Nothing in the Interim Order or this This Final Order vests or confers on any person, including shall vest the Committee or any other statutory committee that may be appointed in these chapter 11 cases, with standing or authority to pursue any cause of action, claim, defense, or other right belonging to the Debtors or their estates. For the avoidance of doubt, neither entry of the Interim Order nor entry of this Final Order shall grant standing or authority to the Committee to pursue any cause of action, claim,~~

~~defense, or other right on behalf of the Debtors or their estates~~ as required to institute a Challenge as set forth in Paragraph 34 hereof.

35. No Third Party Rights. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

36. Section 506(c) Claims. No costs or expenses of administration which have been or may be incurred in these cases at any time shall be charged against the DIP Agent, the DIP Lenders, the Prepetition Secured Parties or any of their respective claims, the DIP Collateral, the Revolver Indemnification Account, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent, as applicable, of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders; provided, however, that the foregoing shall automatically terminate as to the Revolver Agent and the Revolver Lenders upon the occurrence of the Revolver Adequate Protection Termination Date.

37. Section 552(b). The Revolver Agent and the Term Loan Agent shall be entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under Section 552(b) shall not apply to the Revolver Agent (on behalf of itself and the Revolver Lenders) or to the Term Loan Agent (on behalf of itself and the Term Loan Lenders), with respect to proceeds, products, offspring, or profits of any of the Prepetition Collateral; provided, however, that the foregoing shall automatically terminate as to the Revolver Agent and the Revolver Lenders upon the occurrence of the Revolver Adequate Protection Termination Date.

38. No Marshaling/Application of Proceeds. The DIP Agent, the DIP Lenders, and the Term Loan Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as the case may be, and all proceeds shall be received and applied in accordance with the DIP Documents, provided, however, the DIP Agent and DIP Lender agree to only seek utilization of the proceeds of Avoidance Actions, proceeds of any potential causes of action against third-parties including proceeds from director and officer liability insurance policies and proceeds of the Tort Claims once the proceeds of all other DIP Collateral has been applied to satisfy the DIP Obligations.

39. Joint and Several Liability. Nothing in ~~the Interim Order or~~ this Final Order shall be construed to constitute a substantive consolidation of any of the Debtors’ estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and in accordance with the terms of the DIP Facility and the DIP Documents.

40. Discharge Waiver. The DIP Obligations and the Term Loan Obligations shall not be discharged by the entry of an order confirming any plan of reorganization in these cases, notwithstanding the provisions of Section 1141(d) of the Bankruptcy Code, unless the DIP Obligations have been indefeasibly paid in full in cash ~~(or, with respect to any letters of credit, if any, such letters of credit have been treated in a manner satisfactory to the DIP Agent)~~ on or before the effective date of such confirmed plan of reorganization. None of the Debtors shall propose or support any plan of reorganization or sale of all or substantially all of the Debtors’ assets or entry of any confirmation order or sale order that is not conditioned upon the indefeasible payment in full in cash (or, with respect to any letters of credit, such letters of credit

have been treated in a manner satisfactory to the DIP Agent) on or prior to the earlier to occur of the effective date of such plan of reorganization or sale.

41. Rights Preserved. Except as expressly set forth in paragraph 12(c) of this Final Order, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the DIP Agent's, the DIP Lenders', and/or the Prepetition Secured Parties' right to seek any other or supplemental relief in respect of the Debtors, including, without limitation, the right of the Revolver Agent and the Revolver Lenders to seek ~~an~~ court authorization to increase ~~in~~ the funds in the Revolver Indemnification Account; (b) any of the rights of any of the DIP Agent, the DIP Lenders, and/or the Prepetition Secured Parties under the Bankruptcy Code or under applicable non-bankruptcy law, including the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code or (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans of reorganization; or (d) any other rights, claims, or privileges (whether legal, equitable or otherwise) of any of the DIP Agent, DIP Lenders, and/or the Prepetition Secured Parties.

42. No Waiver by Failure to Seek Relief. The failure of the DIP Agent, the DIP Lenders, and/or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under ~~the Interim Order,~~ this Final Order, ~~the~~ the DIP Documents, the Prepetition Loan Documents, ~~or~~ or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Agent, the DIP Lenders, and/or the Prepetition Secured Parties.

43. Binding Effect of Final Order. Immediately upon execution by this Court, the terms and provisions of this Final Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, all other

creditors of the Debtors, the Committee, any other statutory committee that may be appointed in these chapter 11 cases, and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of these cases, any Successor Cases, or upon dismissal of any of these cases or Successor Cases.

44. Effect on Certain Pre-Petition Agreements. Except as expressly set forth in this Final Order the terms and conditions, validity, and enforceability of the Prepetition Loan Documents shall not be affected by ~~the Interim Order or~~ this Final Order.

45. Leases. Notwithstanding anything to the contrary in ~~the Interim Order or~~ this Final Order or the DIP Documents, upon an Event of Default, the rights of the Prepetition Secured Parties, the DIP Agent, or the DIP Lenders to enter onto the Debtors' leased premises shall be limited to (a) any such rights agreed to in writing by the applicable landlord prior to entry onto the leased premises, (b) any rights that the Prepetition Secured Parties, the DIP Agent, or the DIP Lenders have under applicable non-bankruptcy law, if any, and (c) such rights as may be granted by the Court on a separate motion with notice to the applicable landlords of the leased premises and an opportunity for such landlords to respond and be heard.

~~46.—The DIP Liens are subordinate to the interests of Duke Energy Carolinas, LLC, Duke Energy Progress, Inc., Duke Energy Florida, Inc. d/b/a Progress Energy Florida, The Connecticut Light and Power Company, Georgia Power Company, Piedmont Natural Gas Company, Virginia Electric and Power Company d/b/a Dominion Virginia Power, and Yankee Gas Services Company (collectively, the “Utilities”), up to the aggregate amount of \$460,758.00, which has been specifically reserved for the Utilities in the Utility Deposit Account (as defined in the Interim Order, Pursuant to Sections 105(a) and 366 of the Bankruptcy Code, (A) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (B)~~

~~Approving Debtors' Proposed Form of Adequate Assurance, (C) Determining Adequate Assurance of Payment for Future Utility Services, and (D) Setting a Final Hearing Related Thereto [Docket No. 83]).~~

46. ~~47.~~ Notwithstanding anything to the contrary contained in ~~the Interim Order~~ or this Final Order, the DIP Agreement, the other DIP Documents, the Revolver Payoff Letter or otherwise, all liens, security interests, superpriority administrative expense claims, rights and remedies of DIP Agent and DIP Lenders authorized under this Final Order shall be expressly subject to the rights, liens, security interests and claims of Wells Fargo Bank, National Association and the Debtors' other depository and disbursement banks as provided for under ~~the~~ this Final Order, Pursuant To Bankruptcy Code Sections 105(A), 345(B), 363(C)(1), 364(A), 364(B), And 503(B)(1), Bankruptcy Rules 6003 And 6004 And Local Rule 2015-2 (A) Authorizing Debtors To Use Existing Cash Management System, (B) Authorizing And Directing Banks And Financial Institutions To Honor And Process Checks And Transfers, (C) Authorizing Continued Use Of Intercompany Transactions, (D) Waiving Requirements Of Section 345(B) Of Bankruptcy Code And (E) Authorizing Debtors To Use Existing Bank Accounts And Existing Business Forms.

47. ~~48.~~ Final Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Documents or the Revolver Payoff Letter and this Final Order, the provisions of this Final Order shall govern and control.

48. ~~49.~~ No Right to Seek Modification. Unless requested by the DIP Agent, the Debtors irrevocably waive any right to seek any modification or extension of this Final Order (in whole or in part) without the prior consent of the Required Lenders, and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Agent or the Required Lenders.

49. ~~50.~~ Survival.

(a) The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any plan of reorganization in any of these chapter 11 cases, (ii) converting any of these chapter 11 cases to a case under chapter 7 of the Bankruptcy Code, (iii) dismissing any of these chapter 11 cases or any Successor Cases, or (iv) pursuant to which this Court abstains from hearing any of these chapter 11 cases or Successor Cases.

(b) The terms and provisions of this Final Order, including the claims, liens, security interests, and other protections (as applicable) granted to the DIP Agent, the DIP Lenders, the Term Loan Agent, and the Term Loan Lenders, pursuant to ~~the Interim Order,~~ this Final Order, ~~and/or~~ the DIP Documents, notwithstanding the entry of any such order, shall continue in these cases, in any Successor Cases, or following dismissal of these cases or any Successor Cases, and shall maintain their priority as provided by this Final Order until, (i) in respect of the DIP Facility, all the DIP Obligations, pursuant to the DIP Documents, ~~the Interim Order,~~ and this Final Order, have been indefeasibly paid in full and all commitments to extend credit under the DIP Facility are terminated, and (ii) in respect of the Term Loan, all of the Term Loan Obligations have been indefeasibly paid in full. The terms and provisions concerning the indemnification of the DIP Agent and the DIP Lenders shall continue in these chapter 11 cases, in any Successor Cases, following dismissal of these chapter 11 cases or any Successor Cases, termination of the DIP Documents, and/or the indefeasible repayment of the DIP Obligations.



50. ~~51.~~ Waiver of Applicable Stay. Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Final Order.

51. ~~52.~~ Nunc Pro Tunc Effect of this Final Order. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof.

52. ~~53.~~ Retention of Jurisdiction. The Court has retained and will retain jurisdiction to implement, interpret, and enforce this Final Order according to its terms.

SO ORDERED by the Court this \_\_\_\_ day of October, 2013.

---

CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

Comparison Details	
Title	<b>pdfDocs compareDocs Comparison Results</b>
Date & Time	9/30/2013 7:29:13 PM
Comparison Time	2.28 seconds
compareDocs version	v3.4.14.14

Sources	
Original Document	[#4361385] [v1] Furniture Brands -- Oaktree Proposed Final DIP Order.docxDMS Information
Modified Document	[#4360899] [v3] KPS Proposed Final DIP Order/9.28.13.docxDMS information

Comparison Statistics	
Insertions	49
Deletions	75
Changes	86
Moves	4
TOTAL CHANGES	214

Word Rendering Set Markup Options	
Name	Standard
<u>Insertions</u>	
<del>Deletions</del>	
<u>Moves</u> / Moves	
Inserted cells	
Deleted cells	
Merged cells	
Formatting	Color only.
Changed lines	Mark left border.
Comments color	ByAuthorcolor options]
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	True
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False

**EXHIBIT G**

**SENIOR SECURED SUPER-PRIORITY DEBTOR IN POSSESSION**

**CREDIT AGREEMENT**

**Dated as of [\_\_\_\_\_], 2013**

**by and among**

**FURNITURE BRANDS INTERNATIONAL, INC.,  
BROYHILL FURNITURE INDUSTRIES, INC.,  
HDM FURNITURE INDUSTRIES, INC.,  
LANE FURNITURE INDUSTRIES, INC.,  
MAITLAND- SMITH FURNITURE INDUSTRIES, INC.  
and  
THOMASVILLE FURNITURE INDUSTRIES, INC.,  
as the Borrowers,**

**THE OTHER PERSONS PARTY HERETO THAT ARE  
DESIGNATED AS CREDIT PARTIES,**

**THE FINANCIAL INSTITUTIONS PARTY HERETO,  
as Lenders,**

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

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## SENIOR SECURED SUPER-PRIORITY DEBTOR IN POSSESSION CREDIT AGREEMENT

This SENIOR SECURED SUPER-PRIORITY DEBTOR IN POSSESSION CREDIT AGREEMENT (including all exhibits hereto, as the same may be amended, modified and/or restated from time to time, this “Agreement”) is entered into as of [\_\_\_\_\_], 2013, by and among Furniture Brands International, Inc., a Delaware corporation (the “Company”), Broyhill Furniture Industries, Inc., a North Carolina corporation (“Broyhill Furniture”), HDM Furniture Industries, Inc., a Delaware corporation (“HDM Furniture”), Lane Furniture Industries, Inc., a Mississippi corporation (“Lane Furniture”), Maitland-Smith Furniture Industries, Inc., a Delaware corporation (“Maitland Furniture”), and Thomasville Furniture Industries, Inc., a Delaware corporation (“Thomasville Furniture”; and the Company, Broyhill Furniture, HDM Furniture, Lane Furniture, Maitland Furniture and Thomasville Furniture are sometimes referred to herein collectively as the “Borrowers” and individually as a “Borrower”), the Company, as Borrower Representative, the other Persons party hereto that are designated as a “Credit Party”, each as a debtor and debtor in possession under Chapter 11 of the Bankruptcy Code, Bank of America, N.A., as Agent for the Persons from time to time party to this Agreement as lenders (collectively, the “Lenders” and individually each a “Lender”) and for itself as a Lender), and such Lenders.

### PRELIMINARY STATEMENTS

On September 9, 2013, (the “Petition Date”), the Company and each of the other Credit Parties filed a voluntary petition for relief (collectively, the “Cases”) under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

On September 11, 2013, the Bankruptcy Court entered an Interim Order (i) Authorizing the Debtors to (a) Obtain Post-Petition Financing on a Super-Priority, Senior Secured Basis, (b) Use Cash Collateral, (c) Repay the Prepetition Revolver in Full, (ii) Granting Adequate Protection to Certain Prepetition Lenders, (iii) Modifying the Automatic Stay, and (iv) Scheduling a Final Hearing [*Docket No. 78*]. Thereafter, the Borrowers, the other persons party thereto that were designated as credit parties, the financial institutions party thereto, as lenders, and NexBank, SSB, as agent, entered into the Existing DIP Loan Agreement.

The Company and the other Credit Parties 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 Sections 1107(a) and 1108 of the Bankruptcy Code. The Borrowers have requested, and the Lenders have agreed to make available to the Borrowers, (a) a revolving credit facility and (b) a term loan facility, in each case, in order to (i) refinance Prior Indebtedness (and cash collateralize letters of credit outstanding per such Prior Indebtedness), (ii) fund the continued operation of the Credit Parties businesses as debtors and debtors in possession under the Bankruptcy Code and (iii) fund certain fees and expenses associated with the funding of the consummation of the transactions contemplated hereby, in each case, upon the terms and subject to the conditions set forth herein.

To provide security for the repayment of all obligations of the Credit Parties hereunder and under the other Loan Documents, each of the Credit Parties will seek to provide to the Agent (for the benefit of the Secured Parties) the following (as more fully described herein):

(a) pursuant to Section 364(c)(1) of the Bankruptcy Code and the Final Order, as applicable, a DIP Superpriority Claim in the Cases and any Successor Cases (without the need to file a proof of claim) for all of the Obligations with priority over any and all administrative expense claims and unsecured claims of any entity against the Debtors or their estates, including, without limitation, any claims specified in or ordered pursuant to Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b) (except as set forth in the Final Order), 546(c), 546(d), 726 (to the extent permitted by law), 1113, and 1114 or any other provisions of the Bankruptcy Code, which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative, subject only to Permitted Liens (as defined herein) and the Carve-Out (as defined herein),

(b) pursuant to Section 364(c)(2) of the Bankruptcy Code and the Final Order, as applicable, an automatically perfected, valid, enforceable, unavoidable, and first-priority security interest and Lien on all Collateral and assets of the Borrowers and the other Credit Parties of any kind (including proceeds of Avoidance Actions), whether now existing or hereafter acquire that is not subject to a valid, perfected, and non-avoidable lien in existence on the Petition Date, which first-priority liens and security interests shall be perfected without necessity of the execution or filing of mortgages, security agreements, pledge agreements, financing statements or other agreements or documents, subject only to Permitted Liens and the Carve-Out,

(c) pursuant to Section 364(c)(3) of the Bankruptcy Code and subject to clause (d) below, an automatically valid, enforceable, unavoidable and perfected Lien on the property of the Borrowers and the other Credit Parties as more fully described herein subject to (i) unavoidable valid and perfected Liens in existence at the time of the commencement of the Cases, (ii) unavoidable valid Liens in existence at the time of such commencement that are perfected subsequent to such commencement as permitted by Section 546(b) of the Bankruptcy Code (the Liens described in clause (i) above and this clause (ii), being "Existing Liens"), other than with respect to the Primed Liens (as defined herein), (iii) Liens for taxes not yet due and payable, (iv) easements, rights-of-way, covenants, conditions, zoning variances and similar encumbrances that do not materially interfere with the use or the value of the property subject thereto, (v) mechanic's, materialmen's, warehousemen's or similar Liens that arise by operation of law, (vi) postpetition Capital Leases or purchase money financings permitted to be entered into hereunder (the Liens described in clauses (iii) through this clause (vi), being "Permitted Liens"), and (vii) the Carve-Out, and

(d) pursuant to Section 364(d)(1) of the Bankruptcy Code and the Final Order, be secured by an automatically perfected, first priority, valid, enforceable, unavoidable and, senior, priming Lien on all the property of the Borrowers and the other Credit Parties of any kind that secure obligations under the Existing Term Loan Agreement and any Liens that are junior to such Liens, all of which existing Liens (the "Primed Liens")

shall be primed by and made subject and subordinate to the perfected first priority senior Liens to be granted to the Collateral Agent, which senior priming Liens in favor of the Collateral Agent shall also prime any Liens arising after the commencement of the Cases to provide adequate protection in respect of any Primed Liens, subject only to Permitted Liens and the Carve-Out.

In consideration of the mutual agreements, provisions and covenants contained herein, the parties hereto agree as follows:

## **ARTICLE I THE CREDITS**

### **1.1 Amounts and Terms of Commitments**

(a) The Revolving Credit.

(i) Subject to the terms and conditions of this Agreement and the Final Order, and in reliance upon the representations and warranties of the Credit Parties contained herein, each Revolving Lender severally and not jointly agrees to make revolving loans to the Borrowers (each such revolving loan, a “Revolving Loan”) from time to time on any Business Day during the period from the Closing Date through the Termination Date, in an aggregate amount not to exceed at any time outstanding the amount set forth opposite such Revolving Lender’s name on Schedule 1.1(a) under the heading “Revolving Loan Commitments” (such amount as the same may be reduced or increased from time to time in accordance with this Agreement, being referred to herein as such Revolving Lender’s “Revolving Loan Commitment”); provided, however, that after giving effect to any Borrowing of Revolving Loans, (x) the Aggregate Revolving Exposure shall not exceed the Aggregate Revolving Loan Commitment then in effect and (y) the Revolving Exposure of any Revolving Lender shall not exceed such Lender’s Revolving Loan Commitment; provided further that, notwithstanding anything to the contrary herein or in any other Loan Document, during a Material Contract Default Event Period, only the lesser of (x) an amount equal to the Aggregate Revolving Loan Commitment minus the Aggregate Revolving Exposure and (y) \$10,000,000 (such lesser amount, the “Material Contract Default Event Period Starter Amount”) will be available for borrowing hereunder, with such Material Contract Event Period Starter Amount being reduced by any Revolving Loans made during such Material Contract Default Event Period (the aggregate principal amounts of Revolving Loans outstanding and made during such period, the “Material Contract Revolving Exposure”) and increased by any repayments of Revolving Loans during such Material Contract Default Event Period (such amount after giving effect to any reductions or increases in accordance with the foregoing, the “Material Contract Default Event Period Amount”); provided further that, upon entry of the Final Order and the Bidding Procedures Order, the full amount of each Revolving Lender’s Revolving Loan Commitment shall be

available subject to the limitations set forth above in clauses (A) and (B) above. Subject to the other terms and conditions hereof, amounts borrowed under this Section 1.1(a) may be repaid and reborrowed from time to time.

(b) Term Loans. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of the Credit Parties contained herein, each Term Lender severally and not jointly agrees to make a term loan to the Borrowers (such loans, collectively, the "Term Loan") on the Closing Date in an aggregate amount not to exceed the amount set forth opposite such Term Lender's name on Schedule 1.1(a) under the heading "Term Loan Commitments" (such amount being referred to herein as such Term Lender's "Term Loan Commitment"). Upon each Term Lender's making of its portion of Term Loan, the Term Loan Commitment of such Term Lender shall be terminated.

## **1.2 Evidence of Loans; Notes**

(a) The Revolving Loans made by each Lender are evidenced by this Agreement and, if requested by such Lender, a Revolving Note payable to such Lender in an amount equal to such Lender's Revolving Loan Commitment.

(b) The portion of the Term Loan made by each Term Lender is evidenced by this Agreement and, if requested by such Term Lender, a Term Note payable to such Term Lender in an amount equal to such Term Lender's Term Loan Commitment.

## **1.3 Interest**

(a) Subject to Sections 1.3(c) and 1.3(d), each Loan shall bear interest on the outstanding principal amount thereof from the date when made at a rate per annum equal to the Applicable Rate. Each determination of an interest rate by KPS shall be conclusive and binding on each Borrower in the absence of manifest error. All computations of fees and interest payable under this Agreement shall be made on the basis of a 360-day year and actual days elapsed. Interest and fees shall accrue during each period during which interest or such fees are computed from the first day thereof to the last day thereof.

(b) Interest on each Loan shall be payable in kind by capitalizing and adding such interest to the unpaid principal amount of the Loans (such capitalized interest "PIK Interest") at the Applicable Rate. All PIK Interest will be payable monthly in arrears on the last Business Day of each fiscal month by increasing the principal amount of the Loans and will be compounded monthly. All PIK Interest so added shall be treated as principal amount of the Loans for all purposes of this Agreement. Following any such increase in the principal amount of the Loans, interest will accrue on such increased amount. All PIK Interest shall be paid in cash on the Termination Date.

(c) At any time any Event of Default exists, the Borrowers shall pay interest (after as well as before entry of judgment thereon to the extent permitted by law) on the Loans under the Loan Documents from and after the date of occurrence of such Event of Default, at a rate per annum which is determined by adding two percent (2.00%) per annum to the Applicable Rate then in effect for such Loans. All such interest shall be payable on demand of Required Lenders.

(d) Anything herein to the contrary notwithstanding, the obligations of the Borrowers hereunder shall be subject to the limitation that payments of interest shall not be required, for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by the respective Lender would be contrary to the provisions of any law applicable to such Lender limiting the highest rate of interest which may be lawfully contracted for, charged or received by such Lender, and in such event the Borrowers shall pay such Lender interest at the highest rate permitted by applicable law (“Maximum Lawful Rate”); provided, however, that if at any time thereafter the rate of interest payable hereunder is less than the Maximum Lawful Rate, the Borrowers shall continue to pay interest hereunder at the Maximum Lawful Rate until such time as the total interest received by Agent, on behalf of Lenders, is equal to the total interest that would have been received had the interest payable hereunder been (but for the operation of this paragraph) the interest rate payable since the Closing Date as otherwise provided in this Agreement.

#### **1.4 Loan Accounts**

(a) Agent, on behalf of the Lenders, shall record on its books and records the amount of each Loan made, the interest rate applicable, all payments of principal and interest thereon and the principal balance thereof from time to time outstanding. Agent shall deliver to the Borrower Representative on a monthly basis a loan statement setting forth such record for the immediately preceding calendar month. Such record shall, absent manifest error, be conclusive evidence of the amount of the Loans made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so, or any failure to deliver such loan statement shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder (and under any Note) to pay any amount owing with respect to the Loans or provide the basis for any claim against Agent.

(b) Agent, acting as a non-fiduciary agent of the Borrowers solely for tax purposes and solely with respect to the actions described in this Section 1.4(b), shall establish and maintain at its address referred to in Section 9.2 (or at such other address as Agent may notify the Borrower Representative) (A) a record of ownership (the “Register”) in which Agent agrees to register by book entry the interests (including any rights to receive payment hereunder) of Agent and each Lender in the Revolving Loan Commitments, Revolving Loans and Term Loans and each of their obligations under this Agreement to participate in each Loan, and any assignment of any such interest, obligation or right and (B) accounts in the Register in accordance with its usual practice

in which it shall record (1) the names and addresses of the Lenders (and each change thereto pursuant to Sections 9.9 and 9.22), (2) the Revolving Loan Commitments of each Lender, (3) the outstanding amount of the Term Loan, (4) the amount of each Loan and each funding of any participation described in clause (A) above, (5) the amount of any principal or interest due and payable or paid, and (6) any other payment received by Agent from a Borrower and its application to the Obligations.

(c) This Section 1.4 and Section 9.9 shall be construed so that the Loans are at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any successor provisions).

(d) The Credit Parties, Agent and the Lenders shall treat each Person whose name is recorded in the Register as a Lender for all purposes of this Agreement. Information contained in the Register with respect to any Lender shall be available for access by the Borrowers, the Borrower Representative, Agent or such Lender during normal business hours and from time to time upon at least one (1) Business Day’s prior notice. No Lender shall, in such capacity, have access to or be otherwise permitted to review any information in the Register other than information with respect to such Lender unless otherwise agreed by Required Lenders.

## **1.5 Procedure for Revolving Credit Borrowing**

(a) Each Borrowing of a Revolving Loan shall be made upon the Borrower Representative’s irrevocable (subject to Section 10.5) written notice (or telephonic notice, followed by written notice not later than 1:00 p.m. (New York time) on the same Business Day on which such telephonic notice is provided) delivered to Agent and Lenders (to the extent such Lender’s e-mail address is identified on the applicable signature page hereto or otherwise available to the Borrowers) substantially in the form of a Notice of Borrowing or in a writing in any other form reasonably acceptable to Agent and Lenders, which notice must be received by Agent and the Lenders prior to 11:00 a.m. (New York time) on the date which is one (1) Business Day prior to the requested Borrowing date of each Revolving Loan. Such Notice of Borrowing shall specify:

(i) the amount of the requested Borrowing (which shall be in an aggregate minimum principal amount of \$1,000,000); and

(ii) the requested Borrowing date, which shall be a Business Day.

(b) Upon receipt of a Notice of Borrowing, Agent will promptly notify each Revolving Lender of such Notice of Borrowing and of the amount of such Revolving Lender’s Commitment Percentage of the Borrowing of a Revolving Loan.

(c) Unless Agent is otherwise directed in writing by the Borrower Representative, the proceeds of each requested Borrowing of a Revolving Loan after the

Closing Date will be made available to the Borrowers by Agent by wire transfer of such amount to the Borrowers pursuant to the wire transfer instructions specified on the signature page hereto.

**1.6 [Reserved]**

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**1.7 Prepayments of Loans**

.

(a) [Reserved].

(b) Optional Prepayments. The Borrowers may, upon prior notice by Borrower Representative to Agent, at any time or from time to time voluntarily prepay the Loans in whole or in part without premium or penalty or any reduction in the Aggregate Revolving Loan Commitment; provided that (i) such notice must be received by Agent not later than 11:00 a.m., New York time, one (1) Business Day prior to any date of prepayment of Loans; and (ii) any such prepayment shall be in a minimum amount equal to \$1,000,000 and in increments of \$1,000,000 in excess thereof, or if less, the entire principal amount thereof then outstanding (it being understood that no notice or minimum amount set forth herein shall be applicable with respect to any payments effected pursuant to Section 4.11(c)).

(c) Notice. Once provided, prepayment of Loans shall not thereafter be revocable by the Borrowers or Borrower Representative and Agent will promptly notify each Lender thereof and of such Lender's Pro Rata Percentage of such reduction or prepayment, as the case may be. In the case of any notice of prepayment, the payment amount specified in such notice shall be due and payable on the date specified therein. Together with each prepayment under this Section 1.7, the Borrowers shall pay any amounts required pursuant to Section 10.4.

**1.8 Mandatory Prepayments of Loans and Commitment Reductions**

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(a) Advances in Excess of Aggregate Revolving Loan Commitment then in Effect. If at any time the then Aggregate Revolving Exposure exceeds the Aggregate Revolving Loan Commitment then in effect (or, during a Material Contract Default Event Period, the Material Contract Revolving Exposure exceeds the Material Contract Default Event Period Amount), then the Borrowers shall immediately prepay outstanding Revolving Loans in an amount sufficient to eliminate such excess.

(b) Loans. The Borrowers shall repay to the Lenders in full on the Termination Date the aggregate principal amount of the Loans outstanding on the Termination Date.



(c) Asset Dispositions; Events of Loss. If a Credit Party or any Subsidiary of a Credit Party shall at any time or from time to time:

(i) make a Disposition; or

(ii) suffer an Event of Loss; then (A) the Borrower Representative shall promptly notify Agent of such Disposition or Event of Loss (including the amount of the estimated Net Proceeds to be received by a Credit Party and/or such Subsidiary in respect thereof) and (B) promptly (and in any event, within 2 Business Days, but subject to an order of the Bankruptcy Court reasonably satisfactory to KPS with respect to any Disposition requiring Bankruptcy Court approval) upon receipt by a Credit Party and/or such Subsidiary of any Net Proceeds of such Disposition or Event of Loss (including, for the avoidance of doubt, the receipt by a Credit Party and/or such Subsidiary of any principal payment, including, without limitation, any payments in the ordinary course or prepayments made on any of the Investment Promissory Notes (as defined below in this Section 1.8(c)), but excluding (i) any Disposition of any Identified Assets (other than, to the extent set forth in the next succeeding proviso, with respect to the Identified Assets Trust Proceeds) and (ii) any Disposition permitted by Section 5.2(i) of this Agreement, the Borrowers shall deliver, or cause to be delivered, an amount equal to such Net Proceeds to Agent for distribution to the Term Lenders as a prepayment of the Term Loans; provided, that, to the extent the Asset Purchase Agreement is terminated, amounts constituting Identified Assets Trust Proceeds shall be applied as a prepayment of the Term Loans. For the purposes of this Section 1.8(c), the term “Investment Promissory Notes” means any of the promissory notes listed on Schedule 5.4 and any future promissory notes executed after the Closing Date in favor of any Credit Party, but excluding, in each case, (i) any intercompany promissory note executed between Credit Parties and/or any Subsidiary thereof or (ii) any promissory note that evidences the proceeds of any disposition that is specifically excluded from the definition of “Disposition”. Each of the Term Lenders entitled to payment under this Section 1.8(c) shall receive an amount equal to its Pro Rata Percentage of amounts available to be applied.

(d) Issuance of Securities. Immediately upon the receipt by any Credit Party or any Subsidiary of any Credit Party of the Net Issuance Proceeds of the issuance of Stock or Stock Equivalents (including any capital contribution) or debt securities (other than Net Issuance Proceeds from the issuance of Excluded Equity Issuances), the Borrowers shall deliver, or cause to be delivered, to Agent an amount equal to such Net Issuance Proceeds, for application to the Term Loans. Each of the Term Lenders entitled to payment under this Section 1.8(d) shall receive an amount equal to its Pro Rata Percentage of amounts available to be applied.

(e) Cash. If, as of the end day that a weekly “flash” cash report is required to have been delivered pursuant to Section 4.2(e), the Credit Parties and their Subsidiaries have cash and Cash Equivalents on-hand in excess of \$3,000,000 (excluding (v) Identified Assets Trust Proceeds, (w) for the avoidance of doubt, cash which has been

pre-funded to make payroll for such week, (x) any system cash that has not been transferred to the Credit Parties' disbursement account(s) in the Ordinary Course of Business, (y) cash used to cash collateralize (1) any letters of credit and bank products (including P-cards), at 105% of the amount thereof, issued under Prior Indebtedness or (2) cash (including any cash resulting from the making of any Revolving Loans) that may be used to cash collateralize any letters of credit that are issued by a Person other than a Revolving Lender after the Petition Date in an aggregate amount not to exceed \$1,000,000 at any one time outstanding and (z) cash of the Credit Parties not maintained in accounts located in the United States), such excess amount shall, no later than the first Business Day following the day that a weekly "flash" cash report is required to have been delivered pursuant to Section 4.2(e), be applied to (i) repay Revolving Loans until the Revolving Exposure of all Revolving Lenders is zero dollars (\$0) (without any reduction to the Revolving Loan Commitment of any Revolving Lender) and (ii) once the Revolving Exposure of all Revolving Lenders is zero, any additional excess shall not be required to be applied to prepay the Term Loans. Each of the Lenders entitled to payment under this Section 1.8(e) shall receive an amount equal to its Pro Rata Percentage of amounts available to be applied. Notwithstanding the foregoing, no payments under this Section 1.8(e) will be required during a Material Contract Default Event Period.

(f) No Implied Consent. Provisions contained in this Section 1.8 for the application of proceeds of certain transactions shall not be deemed to constitute consent of the Lenders to transactions that are not otherwise permitted by the terms hereof or the other Loan Documents.

(g) No Reduction in the Aggregate Revolving Loan Commitment. No prepayment made pursuant to this Section 1.8 (other than Section 1.8(h)) shall reduce the Aggregate Revolving Loan Commitment.

(h) Termination Prepayment. Immediately prior to and in connection with the consummation of the Bankruptcy Sale, all cash-on hand (other than cash in an amount equal to the sum of the Carve-Out Estimate shall be applied to repay outstanding Revolving Loans until the Revolving Exposure of all Revolving Lenders is zero dollars (\$0) (without such repayments effecting a permanent reduction in the Revolving Loan Commitments on a ratable basis); provided, that to the extent the Carve-Out Estimate exceeds the actual amounts applied to pay Committee expenses and professional fees incurred by the Debtors and the Committee within 60 days after the Bankruptcy Sale, such amount shall be returned to the Borrower.

## **1.9 Fees**

(a) Agent Fees. The Borrowers shall pay to Agent, fees in the amounts and at the times specified in the Agent Fee Letter.

(b) Termination Fee. The Borrower shall pay to the Agent on the Termination Date, for distribution to the Lenders, a fee equal to \$2,000,000, except such fee shall not be payable if the Bankruptcy Sale has been consummated or will be consummated substantially concurrently with the Termination Date.

#### **1.10 Payments by the Borrowers**

(a) All payments (including prepayments) to be made by each Credit Party on account of principal, interest, fees and other amounts required hereunder shall be made without setoff, recoupment, counterclaim or deduction of any kind, shall, except as otherwise expressly provided herein, be made to Agent (for the ratable account of the Persons entitled thereto) at the address for payment specified in the signature page hereof in relation to Agent (or such other address as Agent may from time to time specify in accordance with Section 9.2), including payments utilizing the ACH system, and shall be made in Dollars and by wire transfer or ACH transfer in immediately available funds (which shall be the exclusive means of payment hereunder), no later than 2:00 p.m. (New York time) on the date due. Any payment which is received by Agent later than 2:00 p.m. (New York time) may in KPS's discretion be deemed to have been received on the immediately succeeding Business Day and any applicable interest or fee shall continue to accrue. Each Borrower hereby authorizes each Revolving Lender to make a Revolving Loan to pay (i) interest, principal, Agent fees and expenses, in each instance, on the date due, or (ii) after five (5) Business Days' prior notice to the Borrower Representative (unless Agent has received written notice from the Borrower Representative that such other fees, costs and expenses are being disputed in good faith by the Borrowers (it being understood and agreed that any such dispute shall not limit the effect of any Default or Event of Default which shall result from the failure to make any such payment)), other fees, costs or expenses payable by a Borrower or any of its Subsidiaries hereunder or under the other Loan Documents.

(b) If any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

(c) So long as no Event of Default has occurred and is continuing and except as otherwise set forth herein or in the Final Order, all payments received by Agent in respect of any Obligation and all funds transferred and credited to the Collection Account shall be applied to the Obligations as follows: first, to payment of interest, fees, costs and expenses and any other amounts then due and payable by the Credit Parties under this Agreement and the other Loan Documents until paid in full; second, to payment of principal of all Revolving Loans until paid in full; third, to payment of principal of all Term Loans until paid in full; and fourth to the Borrower Representative's operating account or for the account of and paid to whoever may be lawfully entitled thereto.

In carrying out the foregoing, (A) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category and (B) each of the Lenders or other Persons entitled to payment shall receive an amount equal to its Pro Rata Percentage of amounts available to be applied pursuant to clauses second and third above.

(i) Upon the occurrence and during the continuance of an Event of Default, Agent may, and shall upon the direction of Required Lenders, apply any and all payments received by Agent in respect of any Obligation in accordance with clauses first through eighth below (except to the extent such payments are to be applied in another manner as otherwise set forth herein). Notwithstanding any provision herein to the contrary, all amounts collected or received by Agent after any or all of the Obligations have been accelerated (so long as such acceleration has not been rescinded), including proceeds of Collateral, shall be applied as follows: first, to the payment of any fees, costs and expenses, including Attorney Costs, of Agent payable or reimbursable by the Credit Parties under the Loan Documents; second, to payment of Attorney Costs of Lenders payable or reimbursable by the Borrowers under this Agreement (subject to any limitations set forth herein (including Section 9.5)); third, to payment of all accrued unpaid interest on the Obligations and fees owed to Agent and the Lenders; fourth, to payment of principal of the Obligations then due and payable; fifth, to payment of any other amounts owing constituting Obligations; and sixth, any remainder shall be for the account of and paid to whoever may be lawfully entitled thereto.

In carrying out the foregoing, (A) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category and (B) each of the Lenders or other Persons entitled to payment shall receive an amount equal to its Pro Rata Commitment of amounts available to be applied pursuant to clauses third, fourth and fifth above.

(d) The Agent (at the direction of KPS) is hereby authorized by the Borrowers to, and at its sole election may, charge to the Revolving Loan balance on behalf of each Borrower and cause to be paid all fees, expenses, charges, costs and interest and principal, other than principal of the Revolving Loans, owing by the Borrowers and the Credit Parties under this Agreement or any of the other Loan Documents if and to the extent the Credit Parties fail to pay promptly any such amounts as and when due, even if the amount of such charges would exceed the Aggregate Revolving Loan Commitments at such time. At KPS's option and to the extent permitted by law, any charges so made shall constitute part of the Revolving Loans hereunder.

#### **1.11 Payments by the Lenders to Agent; Settlement**

(a) Agent may, on behalf of the Revolving Lenders, disburse funds to the Borrowers for Revolving Loans requested. Each Revolving Lender shall reimburse Agent on demand for all funds disbursed on its behalf by Agent, or if Agent so requests, each

Revolving Lender will remit to Agent its Commitment Percentage of any Revolving Loan before Agent disburses same to the Borrowers. If Agent elects to require that each Revolving Lender make funds available to Agent prior to disbursement by Agent to the Borrowers, Agent shall advise each Lender by telephone or fax of the amount of such Revolving Lender's Commitment Percentage of the Revolving Loan requested by the Borrower Representative no later than the Business Day prior to the scheduled Borrowing date applicable thereto, and each such Revolving Lender shall pay Agent such Lender's Commitment Percentage of such requested Revolving Loan, in same day funds, by wire transfer to Agent's account, as set forth on Agent's signature page hereto, no later than 2:00 p.m. (New York time) on such scheduled Borrowing date. Nothing in this Section 1.11(a) or elsewhere in this Agreement or the other Loan Documents, including the remaining provisions of Section 1.11, shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that Agent, any Lender or the Borrowers may have against any Lender as a result of any default by such Lender hereunder.

(b) At least once each calendar week or more frequently at Agent's election (each, a "Settlement Date"), Agent shall advise each Revolving Lender by telephone or fax of the amount of such Lender's Commitment Percentage of principal, interest and fees paid for the benefit of Revolving Lenders with respect to each applicable Revolving Loan. Agent shall pay to each Revolving Lender such Lender's Commitment Percentage (except as set forth herein with respect Non-Funding Lenders (including, without limitation, adjustments to reflect any reallocation contemplated under Section 1.11(e)(ii)) of principal, interest and fees paid by the Borrowers since the previous Settlement Date for the benefit of such Revolving Lender on the Revolving Loans held by it. Such payments shall be made by wire transfer to such Revolving Lender not later than 2:00 p.m. (New York time) on the next Business Day following each Settlement Date.

(c) Availability of Revolving Lender's Commitment Percentage. Agent may assume that each Revolving Lender will make its Commitment Percentage of each Revolving Loan available to Agent on each Borrowing date. If such Commitment Percentage is not, in fact, paid to Agent by such Revolving Lender when due, Agent will be entitled to recover such amount on demand from such Lender without setoff, counterclaim or deduction of any kind. If any Revolving Lender fails to pay the amount of its Commitment Percentage forthwith upon Agent's demand, Agent shall promptly notify the Borrower Representative and the Borrowers shall immediately repay such amount to Agent. Nothing in this Section 1.11(c) shall be deemed to require Agent to advance funds on behalf of any Revolving Lender or to relieve any Revolving Lender from its obligation to fulfill its Revolving Loan Commitments hereunder or to prejudice any rights that the Borrowers may have against any Revolving Lender as a result of any default by such Revolving Lender hereunder. Without limiting the provisions of Section 1.11(b), to the extent that Agent advances funds to the Borrowers on behalf of any Revolving Lender and is not reimbursed therefor on the same Business Day as such advance is made, Agent shall be entitled to retain for its account all interest accrued on

such advance from the date such advance was made until reimbursed by the applicable Revolving Lender.

(d) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from the Borrowers and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind.

(ii) If Agent reasonably determines at any time that any amount received by Agent under this Agreement or any other Loan Document must be returned to any Credit Party or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Loan Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind, and Agent will be entitled to set-off against future distributions to such Lender any such amounts (with interest) that are not repaid on demand.

(e) Non-Funding Lenders; Procedures.

(i) Responsibility. The failure of any Non-Funding Lender to make any Revolving Loan or any payment required by it, or to make any payment required by it under any Loan Document, or to fund any purchase of any participation to be made or funded by it on the date specified therefor shall not relieve any other Lender (each such other Lender, an “Other Lender”) of its obligations to make such loan, fund the purchase of any such participation, or make any other such required payment on such date, and neither Agent nor, other than as expressly set forth herein, any other Lender shall be responsible for the failure of any Non-Funding Lender to make a Loan, fund the purchase of a participation or make any other required payment under any Loan Document.

(ii) [Reserved].

(iii) Voting Rights. Notwithstanding anything set forth herein to the contrary, including Section 9.1, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Loan Document or constitute a “Lender” (or be, or have its Loans and Revolving Loan Commitments, included in the determination of “Required Lenders”, “Required Revolving Lenders” or “Lenders directly affected” pursuant to Section 9.1) for any voting or consent rights under or with respect to any Loan Document, provided that (A) the Revolving Loan Commitment of a Non-Funding Lender may not be increased, (B) the principal of a Non-Funding Lender’s Loans may not be reduced or



forgiven, and (C) the interest rate applicable to Obligations owing to a Non-Funding Lender may not be reduced in such a manner that by its terms affects such Non-Funding Lender more adversely than other Lenders, in each case without the consent of such Non-Funding Lender. Moreover, for the purposes of determining Required Lenders and Required Revolving Lenders, the Loans and Revolving Loan Commitments held by Non-Funding Lenders shall be excluded from the total Loans and Aggregate Revolving Loan Commitments outstanding.

(iv) Borrower Payments to a Non-Funding Lender. Agent shall be authorized to use all payments received by Agent for the benefit of any Non-Funding Lender pursuant to this Agreement to pay in full the Aggregate Excess Funding Amount to the appropriate Secured Parties. Following such payment in full of the Aggregate Excess Funding Amount, Agent shall be entitled to hold such funds as cash collateral in a non-interest bearing account up to an amount equal to such Non-Funding Lender's unfunded Revolving Loan Commitment and to use such amount to pay such Non-Funding Lender's funding obligations hereunder until the Obligations are paid in full in cash and the Aggregate Revolving Loan Commitments have been terminated. Upon any such unfunded obligations owing by a Non-Funding Lender becoming due and payable, Agent shall be authorized to use such cash collateral to make such payment on behalf of such Non-Funding Lender. With respect to such Non-Funding Lender's failure to fund Revolving Loans, any amounts applied by Agent to satisfy such funding shortfalls shall be deemed to constitute a Revolving Loan and, if necessary to effectuate the foregoing, the other Revolving Lenders shall be deemed to have sold, and such Non-Funding Lender shall be deemed to have purchased, Revolving Loans from the other Revolving Lenders until such time as the aggregate amount of the Revolving Loans is held by the Revolving Lenders in accordance with their Commitment Percentages of the Aggregate Revolving Loan Commitment. Any amounts owing by a Non-Funding Lender to Agent which are not paid when due shall accrue interest at the Applicable Rate. In the event that Agent is holding cash collateral of a Non-Funding Lender that cures pursuant to clause (v) below or ceases to be a Non-Funding Lender pursuant to the definition of Non-Funding Lender, Agent shall return the unused portion of such cash collateral to such Revolving Lender. The "Aggregate Excess Funding Amount" of a Non-Funding Lender shall be the aggregate amount of all unpaid obligations owing by such Revolving Lender to Agent and the other Revolving Lenders under the Loan Documents, including such Revolving Lender's pro rata share of all Revolving Loans.

(v) Cure. A Revolving Lender may cure its status as a Non-Funding Lender under clause (a) of the definition of Non-Funding Lender if such Revolving Lender (A) fully pays to Agent, on behalf of the applicable Secured Parties, the Aggregate Excess Funding Amount, plus all interest due thereon and (B) timely funds the next Revolving Loan required to be funded by such Revolving Lender. Any such cure shall not relieve any Lender from liability for breaching its contractual obligations hereunder.

(f) Procedures. Agent is hereby authorized by each Credit Party and each other Secured Party to establish reasonable procedures (and to amend such procedures in a reasonable manner from time to time) to facilitate administration and servicing of the Loans and other matters incidental thereto. Without limiting the generality of the foregoing, Agent is hereby authorized to establish reasonable procedures to make available or deliver, or to accept, notices, documents and similar items on, by posting to or submitting and/or completion on, E-Systems.

### **1.12 Borrower Representative**

. The Company hereby (i) is irrevocably designated and appointed by each Credit Party as its representative and agent on its behalf (the "Borrower Representative") and (ii) accepts such appointment as Borrower Representative, in each case, for the purposes of issuing Notices of Borrowings, delivering certificates, giving instructions with respect to the disbursement of the proceeds of the Loans, selecting interest rate options, giving and receiving all other notices and consents hereunder or under any of the other Loan Documents and taking all other actions (including in respect of compliance with covenants) on behalf of any Credit Party or the Credit Parties under the Loan Documents. Such appointment shall remain in full force and effect unless and until the Required Lenders shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed as Borrower Representative. Agent and each Lender may regard any notice or other communication pursuant to any Loan Document from Borrower Representative as a notice or communication from all the Credit Parties. Each warranty, covenant, agreement and undertaking made on behalf of a Credit Party by Borrower Representative shall be deemed for all purposes to have been made by such Credit Party and shall be binding upon and enforceable against such Credit Party to the same extent as if the same had been made directly by such Credit Party. It is understood that the handling of the loan account of the Borrowers and the Collateral in a combined fashion, as more fully set forth herein, is done solely as an accommodation to the Borrowers in order to facilitate in the most efficient and economical manner and at the Borrowers' request, and that Secured Parties shall not incur liability to any Borrower or any other Credit Party as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of their loan account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group.

### **1.13 Certain Bankruptcy Matters**

(a) Except to the extent expressly provided otherwise in an Order, the Credit Parties hereby agree that, subject only to Permitted Liens and the Carve-Out, the Obligations shall (i) constitute DIP Superpriority Claims over all administrative expense claims and claims against the Borrowers and the other Credit Parties now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(c), 546(d), 726, 1113, 1114 or any other provisions of the Bankruptcy Code and all super-



priority administrative expense claims granted to any other Person the establishment of which super-priority shall have been approved and authorized by the Bankruptcy Court and (ii) be secured pursuant to Sections 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code and, to the extent provided in the Final Order.

(b) In the event of a conflict between, or inconsistency among, the Final Order, on the one hand, and any other Loan Document, on the other hand, the Final Order, as the case may be, shall control.

(c) Notwithstanding anything to the contrary contained herein or elsewhere:

(i) Agent and the Lenders shall not be required to prepare, file, register or publish any financing statements, mortgages, hypothecs, account control agreements, notices of Lien or similar instruments in any jurisdiction or filing or registration office, or to take possession of any Collateral or to take any other action in order to validate, render enforceable or perfect the Liens on the Collateral granted by or pursuant to this Agreement, the Final Order or any other Loan Document. If Agent (at KPS's direction, which shall be in its sole discretion), from time to time elects to prepare, file, register or publish any such financing statements, mortgages, hypothecs, account control agreements, notices of Lien or similar instruments, take possession of any Collateral, or take any other action to validate, render enforceable or perfect all or any portion of the Agent's Liens on the Collateral, (A) all such documents and actions shall be deemed to have been filed, registered, published or recorded or taken at the time and on the date that the Final Order is entered, and (B) shall not negate or impair the validity or effectiveness of this Section 1.13(c) or of the perfection of any other Liens in favor of Agent, for the benefit of the Lenders and the other Secured Parties, on the Collateral. Notwithstanding anything to the contrary herein, neither Agent nor any Secured Party shall require the filing of a Mortgage with respect to any Real Property of the Credit Parties unless an Event of Default resulting from a breach of Section 7.1(a) has occurred and is continuing.

(ii) Except as otherwise agreed to by the Lenders, the Liens, Lien priorities, DIP Superpriority Claims and other rights and remedies granted to Agent, the Lenders and the other Secured Parties pursuant to this Agreement, the Final Order or the other Loan Documents (specifically including, but not limited to, the existence, perfection, enforceability and priority of the Liens provided for herein and therein, and the DIP Superpriority Claims provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of indebtedness by any Borrower or any other Credit Party (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by dismissal or conversion of any of the Cases, or by any other act or omission whatsoever.

(d) Without limiting the generality of the foregoing, notwithstanding any such financing, extension, incurrence, dismissal, conversion, act or omission:

(i) subject only to Permitted Liens and the Carve-Out and to the extent provided in the Final Order and subject to the Final Order, no costs or expenses of administration which have been or may be incurred in the Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on a parity with any claim of any Secured Party or Agent against the Borrower or any other Credit Parties in respect of any Obligations;

(ii) other than as provided in the Final Order or the Loan Documents, the Agent's Liens on the Collateral shall constitute valid, enforceable and perfected first priority Liens, and shall be prior to all other Liens (except Permitted Liens), now existing or hereafter arising, in favor of any other creditor or other Person; and

(iii) the Agent's Liens on the Collateral shall continue to be valid, enforceable and perfected without the need for the Agent or any Secured Party to prepare, file, register or publish any financing statements, mortgages, hypothecs, account control agreements, notices of Lien or similar instruments or to otherwise perfect the Agent's Liens under applicable non-bankruptcy law.

In connection with any Sale or Disposition of all or any portion of the Collateral, including in each case pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code or as part of restructuring plan subject to confirmation under Section 1129(b)(2)(A)(iii) of the Bankruptcy Code, or at any sale or foreclosure conducted by Agent, in accordance with applicable law and, with respect to any credit bid, Section 363(k) of the Bankruptcy Code, each Borrower and each other Credit Party hereby gives Agent (at the direction of the Required Lenders) the power and right, without assent by such Credit Party, to "credit bid" the full amount of all Obligations in order to purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral.

## **ARTICLE II CONDITIONS PRECEDENT**

### **2.1 Conditions of Initial Loans**

. The obligation of each Lender to make its initial Loans hereunder is subject to KPS's satisfaction (or waiver by KPS) of the following conditions in a manner reasonably satisfactory to KPS:

(a) Loan Documents. Agent shall have received on or before the Closing Date duly executed copies of: (i) this Agreement; (ii) the Notes (if any); (iii) the Collateral Documents; and (iv) all other Loan Documents, each in form and substance reasonably satisfactory to KPS;

(b) Legal Matters. All legal matters incident to this Agreement and the borrowings hereunder shall be satisfactory to Agent and KPS;

(c) Organizational Documents. Agent shall have received: (i) a copy of the certificate or articles of incorporation or other organizational documents, as applicable, including all amendments thereto, of each Credit Party, certified as of a recent date by the Secretary of State or other applicable authority of its respective jurisdiction of organization; (ii) a certificate as to the good standing of each Credit Party, as of a recent date, from the Secretary of State or other applicable authority of its respective jurisdiction of organization together, to the extent generally available, with a certificate or other evidence of good standing as to payment of any applicable franchise or similar taxes from the appropriate taxing authority of each such jurisdiction; (iii) resolutions of each Credit Party's board of directors (or other comparable managing body, in the case of an entity other than a corporation) then in full force and effect authorizing the execution, delivery and performance of each Loan Document (subject to the Final Order) to be executed by such Person and the transactions contemplated hereby and thereby; (iv) the incumbency and signatures of those of its officers, managing member or general partner, as applicable, authorized to act with respect to each Loan Document to be executed by each Credit Party, (v) a certificate, dated the Closing Date duly executed and delivered by each Credit Party's secretary or assistant secretary (or if there is no secretary or assistant secretary, a Responsible Officer of such Credit Party) certifying to the accuracy, truthfulness and completeness of the items and documents set forth in clauses (i) - (v) above; and (vi) a certificate of another Responsible Officer of such Credit Party as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate pursuant to clause (iv) above;

(d) Officer's Certificates. Agent shall have received a certificate, dated the Closing Date, and signed by a Responsible Officer of each Credit Party, confirming compliance (subject to entry of the Final Order) with the conditions precedent set forth in Section 2.2;

(e) Opinions of Counsel. Agent and the Lenders shall have received satisfactory and customary opinions of independent counsel to the Credit Parties, addressing such matters as Agent or the Lenders shall reasonably request; provided that no local counsel opinion shall be required for Mississippi, North Carolina or Virginia;

(f) Evidence of Insurance. KPS shall be reasonably satisfied with the amount, types and terms and conditions of all insurance maintained by the Credit Parties and their Subsidiaries;

(g) Consents; Absence of Conflicts. Subject to the entry of the Final Order, (i) all governmental and third party consents and approvals necessary in connection with the transactions contemplated by the Loan Documents shall have been obtained (without the imposition of any conditions that are not reasonably acceptable to KPS) and shall remain in effect, and (ii) there shall not exist any law, regulation, ruling, judgment, order, injunction or other restraint that, in the judgment of KPS, restrains, prevents, prohibits, restricts or imposes materially adverse conditions upon the Credit Parties or the transactions contemplated hereby or the other Loan Documents ;

(h) Repayment of Prior Lender Obligations; Satisfaction of Outstanding Letters of Credit. (i) KPS shall have received fully executed pay-off letters reasonably satisfactory to KPS confirming that all Prior Indebtedness will be repaid in full from the proceeds of the Term Loan and all Liens upon any of the Property of the Credit Parties or any of their Subsidiaries in favor of the Prior Lenders shall be terminated by the Prior Lenders immediately upon such payment; and (ii) all letters of credit issued or guaranteed by the Prior Lenders or any other Person shall have been cash collateralized at an amount equal to 105% of the amount thereof;

(i) Funds Flow Memorandum. Agent shall have received a funds-flow memorandum from the Company setting forth the sources and uses of the proceeds of the Term Loan and any Revolving Loans to be borrowed, which funds-flow memorandum shall be in form and substance reasonably satisfactory to KPS (the "Funds Flow Memorandum") and shall contain a description of the Credit Parties' sources and uses of funds on the Closing Date, the details of how funds from each source are to be transferred to particular uses and the wire transfer instructions for the particular uses of such funds and the Borrowers shall have identified each Person (other than any Credit Party) that will directly receive proceeds of any Loans to be made on the Closing Date and Agent and KPS shall have received such information required by Agent and KPS, respectively, under its "know your customer" compliance procedures with respect to each such Person;

(j) No Litigation. Other than the Cases, no action, suit, investigation, litigation or proceeding shall be pending or threatened in any court or before any arbitrator or governmental instrumentality that could reasonably be expected to (i) materially and adversely affect the Collateral, the transactions contemplated hereby or the other Loan Documents or (ii) result in a Material Adverse Effect;

(k) [Reserved].

(l) Payment of Fees. The Borrowers shall have paid on before the Closing Date, in cash, all reasonable and documented costs, fees, disbursements and expenses of (i) Agent (including fees, costs, disbursements and expenses of their outside counsel, Winston & Strawn, LLP, and their local (including, for the avoidance of doubt, foreign) counsel) and (ii) the Lenders on the Closing Date (including fees, costs, disbursements and expenses of (A) their outside counsel, Proskauer Rose LLP, and their local counsel (including, for the avoidance of doubt, foreign) and (B) any professional advisors retained by KPS (or any Affiliate thereof) or their counsel.

(m) First Day Motions. All first day motions filed by the Credit Parties and related orders entered by the Bankruptcy Court in the Cases shall be in form and substance reasonably satisfactory to KPS.

(n) Motions and Documents. All material motions and other material documents to be filed with and submitted to the Bankruptcy Court related to the commencement of the Cases or transactions contemplated hereby and the other Loan Documents and the approval thereof shall be in form and substance reasonably satisfactory to KPS.

(o) First Day Orders. All orders entered by the Bankruptcy Court relating to the relief sought in the motions described in Section 2.1(m) hereof shall be in form and substance reasonably satisfactory to KPS and shall not, without KPS's prior written consent, (i) authorize any Credit Party to (A) use any of the material properties or assets of the Credit Parties outside of the Ordinary Course of Business (except as contemplated by the Final Order or in connection with the transactions contemplated by the Asset Purchase Agreement), (B) satisfy prepetition claims of the Credit Parties or (C) incur material administrative costs, in each case, to the extent such relief is inconsistent with this Agreement (including the Budget), (ii) reject or assume any contract, agreement, lease or other agreement to which any Credit Party is a party, or (iii) otherwise be inconsistent with this Agreement, the Final Order, the Budget or the Asset Purchase Agreement.

(p) Final Order. The Final Order shall provide that the Agent, for the benefit of the Secured Parties, shall have a valid and perfected Lien on and security interest in the Collateral on the basis and with the priority set forth herein.

(q) Liens. Each Order shall provide that the Agent, for the benefit of the Secured Parties, shall have a valid and perfected Lien on and security interest in the Collateral on the basis and with the priority set forth herein.

(r) Budget. KPS shall have received the Budget (attached as Exhibit A), which shall be in form and substance satisfactory to KPS.

(s) Petition Date. The Petition Date shall have occurred on or before September 16, 2013.

## **2.2 Conditions to All Borrowings**

. Except as otherwise expressly provided herein, no Lender shall be obligated to fund any Loan, if:

(a) any representation or warranty by any Credit Party contained herein or in any other Loan Document is untrue or incorrect in any material respect (without duplication of any materiality qualifier contained therein) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties were untrue or incorrect in any material respect (without duplication of any materiality qualifier contained therein) as of such earlier date);

(b) any Default or Event of Default has occurred and is continuing or would result after giving effect to any Loan (other than, solely with respect to a Revolving Loan made during a Material Contract Default Event Period, a Default resulting from the existence of a Material Contract Default Event);

(c) after giving effect to any Loan, the Aggregate Revolving Exposure would exceed the Aggregate Revolving Loan Commitment then in effect;

(d) Agent shall not have received an appropriate Notice of Borrowing, duly executed and completed by the Borrower Representative in accordance with the requirements set forth in Section 1.5(a);

(e) the Final Order is not in full force and effect or, without the prior written consent of KPS, such order has been amended or modified; and

(f) the making of such Loan does not comply with, or is not for a purpose permitted under, the Budget, subject to Permitted Variances;

(g) during any Material Contract Default Event Period, after the making of such Loan, the Material Contract Default Event Period Amount is not less than \$0; and

(h) failure to engage A&M as financial advisor to the Debtors, working under the direction of the Board of Directors of the Company, to assist the Board of Directors, the Debtors' management team, other professionals engaged by the Debtors, and the DIP Lender, with respect to tasks, duties and responsibilities satisfactory to KPS.

The request by Borrower Representative and acceptance by the Borrowers of the proceeds of any Loan shall be deemed to constitute, as of the date thereof, (i) a representation and warranty by the Borrowers that the conditions in this Section 2.2 have been satisfied and (ii) a reaffirmation by each Credit Party of the granting and continuance of Agent's Liens, on behalf of itself and the other Secured Parties, pursuant to the Collateral Documents.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES**

The Credit Parties, jointly and severally, represent and warrant to Agent and each Lender that the following are true, correct and complete:

#### **3.1 Corporate Existence and Power**

. Each Credit Party and each of their respective Subsidiaries:

(a) is a corporation, limited liability company or limited partnership, as applicable, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation, as applicable;

(b) has all requisite power and authority and all governmental licenses, authorizations, Permits, consents and approvals to (i) own its assets, (ii) carry on its business and (iii) subject to the entry of the Final Order, execute, deliver, and perform its obligations under, the Loan Documents to which it is a party;

(c) is duly qualified as a foreign corporation, limited liability company or limited partnership, as applicable, and licensed and in good standing, under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification or license; and



(d) subject to the entry of the Final Order, is in compliance with all Requirements of Law; except, in each case referred to in clauses (b)(i) and (ii), clause (c) or clause (d), to the extent that the failure to do so would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

### **3.2 Corporate Authorization; No Contravention**

. The execution, delivery and performance by each of the Credit Parties of this Agreement, and by each Credit Party and each of their respective Subsidiaries of any other Loan Document to which such Person is party, have been duly authorized by all necessary organizational action, and do not and will not:

(i) contravene the terms of any of that Person's Organization Documents;

(ii) conflict with or result in the creation of any Lien (except Liens created pursuant to the Loan Documents) under, any document evidencing any Contractual Obligation to which such Person is a party or any order, injunction, writ or decree of any Governmental Authority to which such Person or its Property is subject, except in each case, where enforcement is stayed upon the commencement of the Cases;

(iii) conflict with or result in any breach or contravention of any document evidencing any Contractual Obligation to which such Person is a party or any order, injunction, writ or decree of any Governmental Authority to which such Person or its Property is subject, except in each case, where enforcement is stayed upon the commencement of the Cases; or

(iv) subject to the entry of the Final Order, violate any Requirement of Law.

### **3.3 Governmental Authorization**

. Subject to the entry of the Final Order, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Credit Party or any Subsidiary of any Credit Party of this Agreement or any other Loan Document except for the Final Order.

### **3.4 Binding Effect**

. Subject to the entry of the Final Order, this Agreement and each other Loan Document to which any Credit Party is a party constitute the legal, valid and binding obligations of each such Credit Party, enforceable against such Credit Party in accordance with their respective terms.

### **3.5 Litigation**

. Except for the Cases, as stayed upon the commencement of the Cases or as specifically disclosed on Schedule 3.5, there are no actions, suits or proceedings pending, or to the knowledge of each Credit Party, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, against any Credit Party, any Subsidiary of any Credit Party or any of their respective properties which:

(a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby or thereby; or

(b) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, would reasonably be expected to result in a Material Adverse Effect.

Subject to the entry of the Final Order, no injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement, any other Loan Document or any Term Loan Document, or directing that the transactions provided for herein or therein not be consummated as herein or therein provided. As of the Closing Date, except as specifically disclosed on Schedule 3.5, no Credit Party or any Subsidiary of any Credit Party is the subject of an audit or, to each Credit Party's knowledge, any review or investigation by any Governmental Authority (excluding the IRS and other taxing authorities) concerning the violation or possible violation of any Requirement of Law.

### **3.6 No Default**

. No Default or Event of Default exists or would result from the incurring of any Obligations by any Credit Party or the grant or perfection of Agent's Liens on the Collateral or the consummation of the transactions contemplated under the Credit Agreement and the other Loan Documents. Except as disclosed on Schedule 3.6 or where enforcement is stayed upon the commencement of the Cases, no Credit Party and no Subsidiary of any Credit Party is in default under or with respect to any Contractual Obligation in any respect which, individually or together with all such defaults, would reasonably be expected to have a Material Adverse Effect.

### **3.7 ERISA Compliance**

. As of the Closing Date, the Credit Parties have made available to the Lenders for their review copies of all (a) Title IV Plans, (b) Multiemployer Plans and (c) Benefit Plans intended to qualify for tax exempt status under Section 401 or 501 of the Code or any employee benefit plan, program or arrangement that provides for post-retirement medical, life insurance or other welfare-type benefits other than as required under applicable law. Each Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code has either received a favorable determination letter from the Internal Revenue Service, is within the remedial amendment period for obtaining such determination letter or may rely on a favorable opinion letter issued by the Internal Revenue Service and each such Benefit Plan is in substantial compliance with its terms and with all Requirements of Law. Except for those that would not reasonably be expected to result in Liabilities in excess of \$5,000,000 in the aggregate, (x) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code



and other Requirements of Law, (y) there are no existing or pending (or to the knowledge of any Credit Party, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan or Multiemployer Plan to which any Credit Party incurs or otherwise has or could have an obligation or any Liability and (z) no ERISA Event has or is reasonably expected to occur. There has been no failure to make any minimum required contribution to any Title IV Plan or Multiemployer Plan when due which could result in the imposition of a Lien with respect to any Benefit Plan or would reasonably be expected to result in Liabilities in excess of \$5,000,000 in the aggregate.

### **3.8 Use of Proceeds: Margin Regulations**

. No Credit Party and no Subsidiary of any Credit Party is engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock. Schedule 3.8 contains a description of the Credit Parties' sources and uses of funds on the Closing Date, including Loans made on the Closing Date and a funds flow memorandum detailing how funds from each source are to be transferred to particular uses.

### **3.9 Ownership of Property: Liens**

. As of the Closing Date, the Real Estate listed on Schedule 3.9 constitutes all of the Real Estate of each Credit Party and each of their respective Subsidiaries. Each of the Credit Parties and each of their respective Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all Real Estate, and good and valid title to all owned personal property and valid leasehold interests in all leased personal property, in each instance, necessary or used in the ordinary conduct of their respective businesses, except for such defects in title or where failure to own such personal property or have such leasehold interest would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. As of the Closing Date, all material permits required to have been issued or appropriate to enable the Real Estate to be lawfully occupied and used for all of the purposes for which it is currently occupied and used have been lawfully issued and are in full force and effect, in each case, to the extent failure to maintain such permits would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

### **3.10 Taxes**

. All federal and material state, local and foreign income and franchise and other material tax returns, reports and statements (collectively, the "Tax Returns") required to be filed by any Tax Affiliate have been filed with the appropriate Governmental Authorities, all such Tax Returns are true and correct in all material respects, and, except to the extent failure to do so is permitted by the Bankruptcy Code or pursuant to the Final Order, all taxes, assessments and other governmental charges and impositions reflected therein or otherwise due and payable have been paid prior to the date on which any Liability may be added thereto for non-payment thereof except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Tax Affiliate in accordance with GAAP. As of the Closing Date, except as set forth on Schedule 3.10, no written notice of any audit or examination or any assertion of any claim for Taxes has been given or

made by any Governmental Authority to any Credit Party or any Subsidiary of any Credit Party and, to the knowledge of the Credit Parties, no Tax Return is under audit or examination by any Governmental Authority. Proper and accurate amounts have been withheld by each Tax Affiliate from their respective employees for all periods in compliance in all material respects with the tax, social security and unemployment withholding provisions of applicable Requirements of Law and such withholdings have been timely paid to the respective Governmental Authorities.

### **3.11 Financial Condition**

(a) Each of (i) the audited consolidated balance sheet of the Company and its Subsidiaries dated December 31, 2012, and the related audited consolidated statements of income or operations, shareholders' equity and cash flows for the Fiscal Year ended on that date and (ii) the unaudited interim consolidated balance sheet of the Company and its Subsidiaries dated June 29, 2013 and the related unaudited consolidated statements of income, shareholders' equity and cash flows for the six (6) fiscal months then ended, in each case, delivered to the Agent and the Lenders prior to the Closing Date:

(i) were prepared in accordance with GAAP consistently applied throughout the respective periods covered thereby, except as otherwise expressly noted therein, subject to, in the case of the unaudited interim financial statements, normal year-end adjustments and the lack of footnote disclosures; and

(b) present fairly in all material respects the consolidated financial condition of the Company and its Subsidiaries as of the dates thereof and results of operations for the periods covered thereby.

### **3.12 Environmental Matters**

Except as set forth on Schedule 3.12, and except where any failures to comply would not reasonably be expected to result in, either individually or in the aggregate, Material Environmental Liabilities to the Credit Parties and their Subsidiaries, (a) the operations of each Credit Party and each Subsidiary of each Credit Party are and have been in compliance with all applicable Environmental Laws, including obtaining, maintaining and complying with all Permits required by any applicable Environmental Law, (b) no Credit Party and no Subsidiary of any Credit Party is party to, and no Credit Party and no Subsidiary of any Credit Party and no Real Estate currently (or to the knowledge of any Credit Party previously) owned, leased, subleased, operated or otherwise occupied by or for any such Person is subject to or the subject of, any Contractual Obligation or any pending (or, to the knowledge of any Credit Party, threatened) order, action, investigation, suit, proceeding, audit, claim, demand, dispute or notice of violation or of potential liability or similar notice relating in any manner to any Environmental Laws, (c) no Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities has attached to any Property of any Credit Party or any Subsidiary of any Credit Party and, to the knowledge of any Credit Party, no facts, circumstances or conditions exist that could reasonably be expected to result in any such Lien attaching to any such Property, (d) no Credit Party and no Subsidiary of any Credit Party has caused or suffered to occur a

Release of Hazardous Materials at, to or from any Real Estate, (e) all Real Estate currently (or to the knowledge of any Credit Party previously) owned, leased, subleased, operated or otherwise occupied by or for any such Credit Party and each Subsidiary of each Credit Party is free of contamination by any Hazardous Materials, and (f) no Credit Party and no Subsidiary of any Credit Party (i) is or has been engaged in, or, to the knowledge of any Credit Party, has permitted any current or former tenant to engage in, operations in violation of any Environmental Law or (ii) knows of any facts, circumstances or conditions reasonably constituting notice of a violation of any Environmental Law, including receipt of any information request or notice of potential responsibility under the Comprehensive Environmental Response, Compensation and Liability Act or similar Environmental Laws. Each Credit Party has made available to the Lenders copies of all material existing environmental reports, reviews and audits and all documents pertaining to actual or potential Environmental Liabilities, in each case to the extent such reports, reviews, audits and documents are in their possession, custody, control or otherwise available to the Credit Parties.

### **3.13 Regulated Entities**

. None of any Credit Party, any Person controlling any Credit Party, or any Subsidiary of any Credit Party, is (a) an “investment company” within the meaning of the Investment Company Act of 1940 or (b) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any state public utilities code, or any other federal or state statute, rule or regulation limiting its ability to incur Indebtedness, pledge its assets or perform its Obligations under the Loan Documents.

### **3.14 [Reserved]**

### **3.15 Labor Relations**

. There are no strikes, work stoppages, slowdowns or lockouts existing, pending (or, to the knowledge of any Credit Party, threatened) against or involving any Credit Party or any Subsidiary of any Credit Party, except for those that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.15, as of the Closing Date, (a) there is no collective bargaining or similar agreement with any union, labor organization, works council or similar representative covering any employee of any Credit Party or any Subsidiary of any Credit Party, (b) no petition for certification or election of any such representative is existing or pending with respect to any employee of any Credit Party or any Subsidiary of any Credit Party and (c) no such representative has sought certification or recognition with respect to any employee of any Credit Party or any Subsidiary of any Credit Party.

### **3.16 Intellectual Property**

. Each Credit Party and each Subsidiary of each Credit Party owns, or is licensed to use, all Intellectual Property necessary to conduct its business as currently conducted except for such Intellectual Property the failure of which to own or license would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. To the knowledge of

each Credit Party, (a) the conduct and operations of the businesses of each Credit Party and each Subsidiary of each Credit Party do not infringe, misappropriate or dilute any Intellectual Property owned by any other Person and (b) no other Person has provided written notice to any Credit Party contesting any right, title or interest of any Credit Party or any Subsidiary of any Credit Party in, or relating to, any Intellectual Property, other than, in each case, as cannot reasonably be expected to affect the Loan Documents and the transactions contemplated therein and would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

### **3.17 Brokers' Fees: Transaction Fees**

. Except for fees payable to Agent and the Lenders, and other than fees payable to Miller Buckfire & Co., none of the Credit Parties or any of their respective Subsidiaries has any obligation to any Person in respect of any finder's, broker's or investment banker's fee in connection with the transactions contemplated hereby.

### **3.18 Insurance**

. The Credit Parties have made available to KPS (or its representatives) for its review all insurance policies of any nature maintained, as of the Closing Date, for current occurrences by each Credit Party, including issuers, coverages and deductibles. Each of the Credit Parties and each of their respective Subsidiaries and their respective properties are insured with insurance companies or associations which are not Affiliates of the Borrowers that the Borrowers believe (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage are placed or renewed, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses of the same size and character as the business of the Credit Parties and, to the extent relevant, owning similar properties in localities where such Person operates.

### **3.19 Ventures, Subsidiaries and Affiliates: Outstanding Stock**

. Except as set forth on Schedule 3.19, no Credit Party and no Subsidiary of any Credit Party (a) has any Subsidiaries, or (b) is engaged in any joint venture or partnership with any other Person. All issued and outstanding Stock and Stock Equivalents of each of the Credit Parties and each of their respective Subsidiaries are duly authorized and validly issued, fully paid, non-assessable, and free and clear of all Liens other than (x) with respect to the Stock and Stock Equivalents of the Subsidiaries of the Borrower Representative pledged pursuant to the Collateral Documents, those in favor of Agent, for the benefit of the Secured Parties and (y) with respect to the Stock and Stock Equivalents of any other Subsidiary of the Borrower Representative not pledged pursuant to the Collateral Documents, Permitted Liens. All such securities were issued in compliance with all applicable state and federal laws concerning the issuance of securities. All of the issued and outstanding Stock of each Credit Party (other than the Company), each Subsidiary of each Credit Party is owned by each of the Persons and in the amounts set forth on Schedule 3.19. Except as set forth on Schedule 3.19, there are no preemptive or other outstanding rights to purchase, options, warrants or similar rights or agreements pursuant to which any Credit Party may be required to issue, sell, repurchase or redeem any of its Stock or Stock Equivalents or any Stock or Stock Equivalents of its Subsidiaries. Set forth on

Schedule 3.19 is a true and complete organizational chart of the Company and all of its Subsidiaries.

**3.20 Jurisdiction of Organization; Chief Executive Office**

. Schedule 3.20 lists each Credit Party's jurisdiction of organization, legal name and organizational identification number, if any, and the location of such Credit Party's chief executive office or sole place of business, in each case as of the date hereof.

**3.21 Locations of Inventory, Equipment and Books and Records**

. Each Credit Party's inventory and equipment (other than inventory or equipment in transit or out for repair) and books and records concerning the Collateral are kept at the locations listed on Schedule 3.21 (which Schedule 3.21 shall be promptly updated by the Credit Parties upon notice to Agent as permanent Collateral locations change).

**3.22 Deposit Accounts and Other Accounts**

. Schedule 3.22 lists all banks and other financial institutions at which any Credit Party maintains deposit or other accounts as of the Closing Date, and such Schedule correctly identifies the name and address of each depository, the name in which the account is held, a brief description of the purpose of the account, and the complete account number therefor.

**3.23 Government Contracts**

. Except as set forth on Schedule 3.23, as of the Closing Date, no Credit Party is a party to any material contract or agreement with any Governmental Authority and no Credit Party's Accounts are subject to the Federal Assignment of Claims Act (31 U.S.C. Section 3727) or any similar state or local law.

**3.24 Customer and Trade Relations**

. As of the Petition Date and except as set forth on Schedule 3.24, there exists no actual or, to the knowledge of any Credit Party, threatened termination or cancellation of, or any material adverse modification or change in (a) the business relationship of any Credit Party (other than with respect to the "Lane" division of the Credit Parties) with any customer or group of customers whose purchases during the preceding 12 calendar months caused them to be ranked among the ten largest customers of such Credit Party or (b) the business relationship of any Credit Party with any supplier essential to its operations which is not otherwise readily replaceable.

**3.25 Bonding**

. Except as set forth on Schedule 3.25, as of the Closing Date, no Credit Party is a party to or bound by any surety bond agreement, indemnification agreement in respect of any surety bond agreement or bonding requirement with respect to products or services sold by it (exclusive of product warranties in the Ordinary Course of Business).

### **3.26 Full Disclosure**

. None of the representations or warranties made by any Credit Party or any of their Subsidiaries in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in each exhibit, report, statement or certificate furnished by or on behalf of any Credit Party or any of their Subsidiaries in connection with the Loan Documents, taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading as of the time when made or delivered; provided, that, with respect to projected financial information (including the Budget), the Company represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered, and if such projected financial information was delivered prior to the Closing Date, as of the Closing Date.

### **3.27 Foreign Assets Control Regulations and Anti- Money Laundering**

. Each Credit Party and each Subsidiary of each Credit Party is in compliance in all material respects with all U.S. economic sanctions laws, executive orders and implementing regulations as promulgated by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), and all applicable anti-money laundering and counter- terrorism financing provisions of the Bank Secrecy Act and all regulations issued pursuant to it. No Credit Party and no Subsidiary or Affiliate of a Credit Party (i) is a Person designated by the U.S. government on the list of the Specially Designated Nationals and Blocked Persons (the "SDN List") with which a U.S. Person cannot deal with or otherwise engage in business transactions, (ii) is a Person who is otherwise the target of U.S. economic sanctions laws such that a U.S. Person cannot deal or otherwise engage in business transactions with such Person or (iii) is controlled by (including without limitation by virtue of such person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any person or entity on the SDN List or a foreign government that is the target of U.S. economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under U.S. law.

### **3.28 Patriot Act**

. The Credit Parties, each of their Subsidiaries and each of their Affiliates are in compliance with (a) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department and any other enabling legislation or executive order relating thereto, (b) the Patriot Act and (c) other federal or state laws relating to "know your customer" and anti- money laundering rules and regulations. No part of the proceeds of any Loan will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

### **3.29 Leasehold Payments; Sales Taxes; Bailee Payments**



. Each Credit Party has timely paid all material sales taxes, all obligations under all leases of Real Estate (other than with respect to leases of Real Estate not required to be assumed under the Asset Purchase Agreement (such leases, the “Designated Leases”)) on which is located Inventory that is Collateral and all amounts payable to Inventory bailees (including all freight carriers, freight forwarders, customs brokers, non-vessel owning common carriers, shipping companies and warehousemen), except (x) to the extent failure to do so is permitted by the Bankruptcy Code or pursuant to the Final Order or (y) for those amounts contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the Credit Parties in accordance with GAAP.

### **3.30 Security Interests**

. This Agreement, taken together with the Final Order is effective to create in favor of Agent for the benefit of the Lenders and the other Secured Parties, legal, valid, and continuing first priority Liens on, and automatically perfected security interests in, the Collateral pledged hereunder or thereunder, in each case, subject to no Liens other than to Permitted Liens and the Carve-Out. Pursuant to the terms of the Final Order, no filing or other action will be necessary to perfect or protect such Liens and security interests. Pursuant to and to the extent provided in the Final Order, the Obligations of the Credit Parties under this Agreement will constitute allowed super-priority administrative expense claims in the Cases under Section 364(c) of the Bankruptcy Code, having priority over all administrative expense claims and unsecured claims against such Credit Parties now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code and all super-priority administrative expense claims granted to any other Person (other than Avoidance Actions, other than the proceeds of Avoidance Actions), subject only to the Carve-Out. Notwithstanding anything to the contrary herein, the Carve-Out shall be senior to all Liens and claims (including administrative and superpriority claims) securing the Obligations, the Credit Parties’ pre-petition obligations, adequate protection Liens, and all other Liens or claims (including administrative claims and DIP Superpriority Claims), including all other forms of adequate protection, Liens, or claims (including administrative claims and DIP Superpriority Claims) securing the Obligations and pre-petition obligations granted or recognized as valid, including the Liens, security interests, and claims (including administrative claims and DIP Superpriority Claims) granted to Agent and the other Secured Parties.

### **3.31 Orders**

. The Credit Parties are in compliance with the terms and conditions of the Final Order. The Final Order (from after the date the Final Order is entered) is in full force and effect and has not been vacated, reversed or rescinded or, without the prior written consent of Agent (but solely with respect to any vacation, reversal or rescission which directly affects the Agent) and KPS, in KPS’s sole discretion, amended or modified and no appeal of such order has been timely filed or, if timely filed, no stay pending such appeal is currently effective.

### **3.32 Budget**

. A true and complete copy of the Budget, as agreed to with KPS as of the Closing Date, is attached as Exhibit A hereto.

### **3.33 Immaterial Subsidiaries**

. None of Broyhill Transport, HDM Transport or Laneventure currently (i) engages in any business or other commercial activities, (ii) owns any assets or property (except in the case of Laneventure, which owns assets of *de minimis* value that are neither used nor useful in the business of the Company and its Subsidiaries), (iii) is obligated under any Indebtedness or Contractual Obligations, or (iv) has granted any Liens over any of its assets or property.

## **ARTICLE IV AFFIRMATIVE COVENANTS**

Each Credit Party covenants and agrees that, so long as any Lender shall have any Revolving Loan Commitment hereunder, or any Loan or other Obligation (other than contingent indemnification Obligations to the extent no claim giving rise thereto has been asserted) shall remain unpaid or unsatisfied:

### **4.1 Financial Statements**

. Each Credit Party shall maintain, and shall cause each of its Subsidiaries to maintain, a system of accounting established and administered in accordance with sound business practices to permit the preparation of financial statements in conformity with GAAP (provided that monthly financial statements shall not be required to have footnote disclosures and are subject to normal year-end adjustments). The Borrowers shall deliver to Agent (for distribution to each Lender) by Electronic Transmission:

(a) as soon as available, but not later than ninety (90) days after the end of each Fiscal Year, a copy of the audited consolidated balance sheet of the Company as at the end of such year and the related consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, and accompanied by the report of any "Big Four" or other nationally-recognized independent certified public accounting firm reasonably acceptable to Agent which report shall state that such consolidated financial statements present fairly in all material respects the financial position for the periods indicated in conformity with GAAP applied on a basis consistent with prior years; provided, that the Borrowers shall be deemed to have made such delivery if they have timely made such 10-K available on "EDGAR" and on the Company's home page on the worldwide web (as of the Closing Date located on [www.furniturebrands.com](http://www.furniturebrands.com)) and shall have given Agent prior notice of such availability on EDGAR and the Company's home page ("Electronic Delivery").

(b) as soon as available, but not later than forty-five (45) days after the end of each of the first three Fiscal Quarters of each year, a copy of the unaudited consolidated balance sheet of the Company, and the related consolidated statements of income, shareholders' equity and cash flows as of the end of such Fiscal Quarter and for the portion of the Fiscal Year then ended, all certified on behalf of the Borrowers by an



appropriate Responsible Officer of the Borrower Representative as being complete and correct, in all material respects, and fairly presenting, in all material respects, in accordance with GAAP, the consolidated financial position and the results of operations of the Company, subject to normal year-end adjustments and absence of footnote disclosures; provided that delivery within the time period specified above of copies of the Company's Form 10-Q prepared in compliance with the requirements therefore and filed with the Securities and Exchange Commission shall be deemed to satisfy the requirements of this Section 4.1(b); provided, further, that the Company shall be deemed to have made such delivery of such Form 10-Q if it shall have made timely Electronic Delivery thereof; and

(c) as soon as available, but not later than thirty (30) days after the end of each fiscal month of each year, a copy of the unaudited consolidated balance sheet of the Company, and the related consolidated statement of income, shareholders' equity and cash flows as of the end of such fiscal month and for the portion of the Fiscal Year then ended, all certified on behalf of the Borrowers by an appropriate Responsible Officer of the Borrower Representative as being complete and correct, in all material respects, and fairly presenting, in all material respects, in accordance with GAAP, the consolidated financial position and the results of operations of the Company, subject to normal year-end adjustments and absence of footnote disclosures.

#### **4.2 Certificates; Other Information**

. The Borrowers shall furnish to Agent (for distribution to each Lender) by Electronic Transmission:

(a) together with each delivery of financial statements pursuant to Sections 4.1(a) and 4.1(b), (i) a management discussion and analysis report, in reasonable detail, signed by the chief financial officer of the Borrower Representative, describing the operations and financial condition of the Credit Parties and their Subsidiaries for the Fiscal Quarter and the portion of the Fiscal Year then ended (or for the Fiscal Year then ended in the case of annual financial statements), and (ii) a report setting forth in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the most recent projections for the current Fiscal Year delivered pursuant to Section 4.2(k) and discussing the reasons for any significant variations;

(b) [reserved];

(c) promptly after the same are sent, copies of all financial statements and reports which any Credit Party sends to its shareholders or other equity holders, as applicable, generally and promptly after the same are filed, copies of all financial statements and regular, periodic or special reports which such Person may make to, or file with, the Securities and Exchange Commission or any successor or similar Governmental Authority, provided that, in each case, the Credit Parties shall be deemed to have made such delivery if it shall have made Electronic Delivery thereof;

(d) every Wednesday during the Cases, (i) commencing on the Wednesday following the first full calendar week after the Closing Date, a weekly cash flow forecast for the subsequent 13-week period, and (ii) commencing on the second Wednesday following the first full calendar week after the Closing Date, a variance report (the “Variance Report”) setting forth actual cash receipts and disbursements of the Credit Parties for the prior week and setting forth all the variances (including Variances), on a line-item and aggregate basis, from the amount set forth for such week as compared to (1) the Budget on a weekly and cumulative basis (which shall be subject to the variances set forth in the DIP Loan Documents), and (2) the most recent weekly cash flow forecast delivered by the Credit Parties, in each case, on a weekly and cumulative basis (and each such Variance Report shall include reasonably detailed explanations for all material variances (including material Variances) and shall be certified by the chief financial officer of the Credit Parties;

(e) substantially concurrently with the delivery of the weekly cash flow forecast pursuant to Section 4.2(d), a “flash” cash report detailing all cash and Cash Equivalents on-hand of each of the Credit Parties and their Subsidiaries (broken out by entity) as of the close of business on such date;

(f) [reserved];

(g) [reserved];

(h) [reserved];

(i) [reserved];

(j) at the time of delivery of each of the monthly, quarterly or annual financial statements delivered pursuant to Section 4.1, (i) a listing of all government contracts of each Borrower (or an update to the most recently provided listing of such contracts pursuant to this clause (j)) (i) subject to the Federal Assignment of Claims Act of 1940 or any similar state or municipal law and (ii) a list of any applications for the registration of any Patent, Trademark (and, a list of any “intent to use” Trademark applications for which a registration has issued) or Copyright filed by any Credit Party with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in each case entered into or filed in the prior Fiscal Quarter;

(k) [reserved];

(l) promptly upon receipt thereof, copies of any reports submitted by the Borrowers’ certified public accountants in connection with each annual, interim or special audit or review of any type of the financial statements or internal control systems of any Credit Party made by such accountants, including any comment letters submitted by such accountants to management of any Credit Party in connection with their services;

(m) [reserved];

(n) [reserved]; and

(o) promptly, such additional business, financial, perfection certificates and other information as KPS may from time to time reasonably request in its Permitted Discretion.

#### **4.3 Notices**

. The Borrowers shall notify promptly Agent of each of the following (and in no event later than three (3) Business Days (or, (i) in the case of clauses (c), (d) or (e) below, five (5) Business Days and (ii) in the case of clause (k) below, one (1) Business Day) after a Responsible Officer becomes aware thereof):

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

(b) except with respect to any Contractual Obligation to the extent enforcement is stayed pursuant to the Bankruptcy Code, any breach or nonperformance of, or any default under, any Contractual Obligation of any Credit Party or any Subsidiary of any Credit Party, or any violation of, or non-compliance with, any Requirement of Law, which would reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect, including a description of such breach, non-performance, default, violation or non-compliance and the steps, if any, such Person has taken, is taking or proposes to take in respect thereof;

(c) any dispute, litigation, investigation, proceeding or suspension arising on or after the Petition Date which may exist at any time between any Credit Party or any Subsidiary of any Credit Party and any Governmental Authority which would reasonably be expected to result, either individually or in the aggregate, in Liabilities in excess of \$2,500,000;

(d) the commencement of, or any material development in, any litigation or proceeding affecting any Credit Party or any Subsidiary of any Credit Party (i) in which the amount of damages claimed is \$2,500,000 or more, (ii) in which injunctive or similar relief is sought and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect, or (iii) in which the relief sought is an injunction or other stay of the performance of this Agreement or any other Loan Document;

(e) (i) the receipt by any Credit Party of any notice of any material violation of or potential material liability or similar notice under Environmental Law, (ii)(A) unpermitted Releases, (B) the existence of any condition that could reasonably be expected to result in violations of or Liabilities under, any Environmental Law or (C) the commencement of, or any material change to, any action, investigation, suit, proceeding, audit, claim, demand, dispute alleging a violation of or Liability under any Environmental Law which in the case of clauses (A), (B) and (C) above, in the aggregate for all such clauses, would reasonably be expected to result in Environmental Liabilities on or after the Petition Date in excess of \$2,500,000, (iii) the receipt by any Credit Party of notification that any Property of any Credit Party is subject to any Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities and (iv)

any proposed acquisition or lease of Real Estate, if such acquisition or lease would have a reasonable likelihood of resulting in Material Environmental Liabilities;

(f) (i) promptly, and in any event within ten (10) days, after any officer of any ERISA Affiliate knows or has reason to know that a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Title IV Plan or Multiemployer Plan, a notice describing such waiver request and any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto, or (ii) promptly, and in any event within ten (10) days after any officer of any ERISA Affiliate knows or has reason to know that an ERISA Event will or has occurred, a notice describing such ERISA Event, and any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notices received from or filed with the PBGC, IRS, Multiemployer Plan or other Benefit Plan pertaining thereto;

(g) any Material Adverse Effect subsequent to the date of the most recent audited financial statements delivered to Agent and Lenders pursuant to this Agreement;

(h) any material change in accounting policies or financial reporting practices by any Credit Party or any Subsidiary of any Credit Party;

(i) any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other labor disruption against or involving any Credit Party or any Subsidiary of any Credit Party if the same would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect;

(j) the creation, establishment or acquisition of any Subsidiary or the issuance by or to any Credit Party of any Stock or Stock Equivalent (other than issuances by the Company of Stock or Stock Equivalents not requiring a mandatory prepayment hereunder);

(k) after the Petition Date, (i) the creation, or filing with the IRS or any other Governmental Authority, of any Contractual Obligation or other document extending, or having the effect of extending, the period for assessment or collection of any income or franchise or other material taxes with respect to any Tax Affiliate, (ii) the creation of any Contractual Obligation of any Tax Affiliate or the receipt of any request directed to any Tax Affiliate, to make any material adjustment under Section 481(a) of the Code, by reason of a change in accounting method or otherwise, (iii) any tax assessment for delinquent taxes against any Credit Party or any Subsidiary of any Credit Party (other than to the extent the aggregate amount of such tax assessments for delinquent taxes do not exceed \$100,000 in the aggregate), (iv) the imposition or filing of any Lien in respect of taxes owed by any Credit Party or any Subsidiary of any Credit Party (other than to the extent the aggregate amount secured by such Liens would not exceed \$100,000 in the aggregate), or (v) all tax liabilities, assessments and governmental charges or levies that are being contested by a Credit Party or any Subsidiary of any Credit Party (other than to the extent the aggregate amount of such liabilities, assessments and governmental charges or levies that are being contested do not exceed \$100,000 in the aggregate) together with

a summary of the amount which is being contested and a status of the proceedings under which such contest is being made; and

(l) the occurrence of any Material Contract Notice Event or any Material Contract Default Event.

Each notice pursuant to this Section 4.3 shall be in electronic form accompanied by a statement by a Responsible Officer of the Borrower Representative, on behalf of the Borrowers, setting forth details of the occurrence referred to therein, and stating what action the Borrowers or other Person proposes to take with respect thereto and at what time. Each notice under Section 4.3(a) shall describe with reasonable particularity any and all clauses or provisions of this Agreement or other Loan Document that have been breached or violated.

#### **4.4 Preservation of Corporate Existence, Etc.**

Each Credit Party shall, and shall cause each of its Subsidiaries to (except any Subsidiary that is an Immaterial Subsidiary):

(a) preserve and maintain in full force and effect its organizational existence and good standing under the laws of its jurisdiction of incorporation, organization or formation, as applicable, except as permitted by Section 5.3;

(b) preserve and maintain in full force and effect all material rights, privileges, qualifications, permits, licenses and franchises necessary in the normal conduct of its business except as permitted by Sections 5.2 and 5.3;

(c) preserve its business organization and use its commercially reasonable efforts, in the Ordinary Course of Business, to preserve the goodwill and business of the customers, suppliers and others having material business relations with it;

(d) unless otherwise agreed in writing by KPS, preserve or renew all of its (i) Eligible Trade Names (as defined in the Existing Term Loan Agreement) or (ii) registered trademarks, trade names and service marks, in each case, where the failure to preserve or renew the same would be adverse in any respect to the Company and its Subsidiaries or the Lenders; and

(e) conduct its business and affairs without infringement of or interference with any Intellectual Property of any other Person in any material respect and shall comply in all material respects with the terms of its IP Licenses.

#### **4.5 Maintenance of Property**

. Each Credit Party shall maintain, and shall cause each of its Subsidiaries to maintain, and preserve all its Property which is used or useful in its business in good working order and condition, ordinary wear and tear excepted and shall make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

#### 4.6 Insurance

(a) Each Credit Party shall, and shall cause each of its Subsidiaries to, (i) maintain or cause to be maintained in full force and effect all policies of insurance of any kind with respect to the Property and businesses of the Credit Parties and such Subsidiaries (including policies of fire, theft, product liability, public liability, Federal Flood Insurance or other Flood Insurance (if Federal Flood Insurance is not required by the last sentence of this Section 4.6(a)), property damage, other casualty, employee fidelity, workers' compensation, business interruption and employee health and welfare insurance) with insurance companies or associations (in each case, other than with respect to employee health and welfare insurance, that are not Affiliates of the Borrowers) that the Borrowers believe (in the good faith judgment of its management) are financially sound and reputable of a nature and providing such coverage as is sufficient and as is customarily carried by businesses of the size and character of the business of the Credit Parties (or with respect to Federal Flood Insurance or other Flood Insurance, in such amounts as required by the Lenders to comply with applicable Requirements of Law) and (ii) not later than 90-days after the Closing Date (or such later date as may be agreed by KPS), cause all such insurance relating to any Property or business of any Credit Party to name Agent as additional insured or lenders loss payee as agent for the Lenders, as appropriate. All policies of insurance on real and personal Property of the Credit Parties will contain an endorsement, in form and substance acceptable to KPS, showing loss payable to Agent and business interruption endorsements. Such endorsement, or an independent instrument furnished to Agent, will provide that the insurance companies will give Agent at least 30 days' prior written notice (or such shorter period as may be agreed to by KPS) before any such policy or policies of insurance shall be altered or canceled and that no act or default of the Credit Parties or any other Person shall affect the right of Agent to recover under such policy or policies of insurance in case of loss or damage. Each Credit Party shall direct all present and future insurers under its "All Risk" policies of property insurance to pay all proceeds payable thereunder directly to Agent. If any insurance proceeds are paid by check, draft or other instrument payable to any Credit Party and Agent jointly, Agent may, upon the instruction of KPS, endorse such Credit Party's name thereon and do such other things as KPS may deem advisable to reduce the same to cash.

(b) Unless the Credit Parties provide Agent with evidence of the insurance coverage required by this Agreement (including, without limitation, Flood Insurance), Agent may, upon the instruction of KPS, purchase insurance (including, without limitation, Flood Insurance) at the Credit Parties' expense to protect Agent's and Lenders' interests in the Credit Parties' and their Subsidiaries' properties, provided that the Agent shall endeavor to provide the Borrower Representative prior notice of any such action (it being understood and agreed that the failure to provide any such notice shall not result in any liability to Agent or invalidate any such action taken by Agent). This insurance may, but need not, protect the Credit Parties' and their Subsidiaries' interests. The coverage that Agent purchases may not pay any claim that any Credit Party or any Subsidiary of any Credit Party makes or any claim that is made against such Credit Party



or any Subsidiary in connection with said Property. The Borrowers may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that there has been obtained insurance as required by this Agreement. If Agent purchases insurance, the Credit Parties will be responsible for the costs of that insurance, including interest and any other reasonable charges Agent may impose in connection with the placement of insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance shall be added to the Obligations and shall bear interest at the Applicable Rate and the default rate under Section 1.3(c), and shall be due and payable upon demand of Agent. The costs of the insurance may be more than the cost of insurance the Credit Parties may be able to obtain on their own.

(c) The Credit Parties appoint Agent as their attorney-in-fact to settle or adjust all property damage claims under its property insurance policies; provided that such power of attorney shall only be exercised so long as an Event of Default has occurred and is continuing or if the property claim exceeds \$2,500,000. Agent shall have no duty to exercise such power of attorney, but may do so at its discretion.

#### **4.7 Payment of Obligations**

. In accordance with the Bankruptcy Code and subject to any required approval by an applicable order of the Bankruptcy Court each Credit Party shall timely pay, discharge or otherwise satisfy as the same shall become due and payable (i) all of its material post-petition taxes and other obligations of whatever nature that constitute administrative expenses under Section 503(b) of the Bankruptcy Code in the Cases and (ii) all material obligations arising from Contractual Obligations entered into after the Petition Date or from Contractual Obligations entered into prior to the Petition Date and assumed.

#### **4.8 Compliance with Laws**

. Each Credit Party shall, and shall cause each of its Subsidiaries to, comply with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business, except where the failure to comply would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

#### **4.9 Inspection of Property and Books and Records; Field Exams and Appraisals**

(a) Each Credit Party shall maintain and shall cause each of its Subsidiaries to maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Person. Each Credit Party shall, and shall cause each of its Subsidiaries to, provide access to its properties, books and records to Agent, the Lenders and their respective Related Persons and shall reasonably cooperate with Agent, the Lenders and any of their respective Related Persons in connection with any review or analysis of any such Person's business, financial condition, assets, prospects and results of operations.

(b) Each Credit Party shall, and shall cause each of its Subsidiaries to, with respect to each owned, leased, or controlled property, during normal business hours and upon reasonable advance notice (unless an Event of Default shall have occurred and be continuing, in which event no notice shall be required and Agent, the Lenders shall have access at any and all times during the continuance thereof) (a) provide access to such property to Agent and the Lenders and any of their Related Persons, as frequently as Agent and the Lenders determine to be appropriate; and (b) permit Agent, the Lenders and any of its Related Persons to conduct field examinations, audit, inspect and make extracts and copies (or take originals if reasonably necessary) from all of such Credit Party's books and records, and evaluate and make physical verifications of the Inventory and other Collateral in any manner and through any medium that Agent considers advisable, in each instance, at the Credit Parties' expense.

(c) Upon Agent's or any Lender's request from time to time, the Credit Parties shall permit and enable Agent and the Lenders to obtain appraisals in form and substance and from appraisers reasonably satisfactory to Agent and the Lenders stating (i) a value as determined by Agent or the Required Lenders, of all or any portion of the Inventory of any Credit Party or any Subsidiary of any Credit Party, provided, that notwithstanding any provision herein to the contrary, the Borrowers shall only be obligated to reimburse Agent and the Lenders for the expenses of such appraisals occurring up to two (2) times in any twelve (12) consecutive month period, in the event that no Default or Event of Default has occurred and is continuing (it being understood and agreed that there shall be no limit on the number of appraisals during the occurrence and continuance of a Default or Event of Default and all such appraisals shall be at the sole cost and expense of the Credit Parties and (y) the foregoing limitations shall not apply to any appraisal conducted by Agent and the Lenders (at the cost and expense of Agent or the Lenders)), and (ii) the fair market value, or such other value of any Real Estate of any Credit Party or any Subsidiary of any Credit Party, solely to the extent required to comply with FIRREA.

#### **4.10 Use of Proceeds**

. The Borrowers shall use the proceeds of the Loans solely as follows: (a) with respect to proceeds from the Term Loan, to refinance on the Closing Date, Prior Indebtedness, including any costs and expenses associated therewith (including, for the avoidance of doubt, to cash collateralize any letters of credit, at 105% of the amount thereof, issued under such Prior Indebtedness), (b) to pay fees, costs and expenses required to be paid pursuant to Section 2.1, (c) for ongoing debtor-in-possession working capital purposes as approved in the Budget, and (d) in accordance with the terms of the Final Order, for general corporate purposes not in contravention of any Requirement of Law and not in violation of this Agreement (including, without limitation, Bankruptcy Court approved professional fees and other administrative fees arising in the Cases).

#### **4.11 Cash Management**

. The Credit Parties and their Subsidiaries shall comply at all times with the terms of the Cash Management Order.



**4.12 [Reserved]**

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**4.13 Further Assurances**

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(a) Each Credit Party shall ensure that all written information, exhibits and reports furnished to Agent or the Lenders do not and will not contain any untrue statement of a material fact and do not and will not omit to state any material fact or any fact necessary to make the statements contained therein not materially misleading in light of the circumstances in which made, and will promptly disclose to Agent and the Lenders and correct any defect or error that may be discovered therein or in any Loan Document or in the execution, acknowledgement or recordation thereof.

(b) Promptly upon request by Agent or any Lender, the Credit Parties shall (and, subject to the limitations hereinafter set forth, shall cause each of their Subsidiaries to) take such additional actions and execute such documents as Agent or any Lender may reasonably require from time to time in order (i) to carry out more effectively the purposes of this Agreement or any other Loan Document, (ii) to subject to the Liens created by any of the Collateral Documents any of the Properties, rights or interests covered by any of the Collateral Documents, (iii) to perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and the Liens intended to be created thereby, and (iv) to better assure, convey, grant, assign, transfer, preserve, protect and confirm to the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document.

**4.14 Environmental Matters**

. Each Credit Party shall, and shall cause each of its Subsidiaries to, comply with, and maintain its Real Estate, whether owned, leased, subleased or otherwise operated or occupied, in compliance with, all applicable Environmental Laws (including by implementing any Remedial Action necessary to achieve such compliance) or that is required by orders and directives of any Governmental Authority except where the failure to comply would not reasonably be expected to, individually or in the aggregate, result in a Material Environmental Liability. Without limiting the foregoing, if an Event of Default is continuing or if Agent or any Lender at any time has a reasonable basis to believe that there exist violations of Environmental Laws by any Credit Party or any Subsidiary of any Credit Party or that there exist any Environmental Liabilities, then each Credit Party shall, promptly upon receipt of written request from Agent or any Lender, cause the performance of, and allow Agent, the Lenders and their Related Persons access to such Real Estate for the purpose of conducting, such environmental audits and assessments, solely to the extent necessary to determine the extent of such Event of Default, violations or Environmental Liabilities, including subsurface sampling of soil and groundwater, and cause the preparation of such reports, in each case as Agent or any Lender may from time to time reasonably request. Such audits, assessments and reports, to the extent not conducted by Agent, any Lender or any of their Related Persons, shall be conducted and prepared by reputable environmental consulting

firms reasonably acceptable to the Required Lenders and shall be in form and substance reasonably acceptable to the Required Lenders.

#### **4.15 Leases**

. Except to the extent failure to do so is permitted by the Bankruptcy Code or pursuant to the Final Order, each Credit Party shall, and shall cause each Subsidiary to, make all payments and otherwise perform all obligations in respect of all leases of Real Estate (other than the Designated Leases) and warehouse facilities where any material Collateral is located, keep such leases in full force and effect and not allow such leases to lapse or be terminated, notify Agent of any default by any party with respect to such leases and cooperate with Agent and the Lenders in all respects to cure any such default, and cause each of its Subsidiaries to do so, except, in any case, (i) for those amounts contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the Credit Parties in accordance with GAAP or (ii) for any lease that is terminated at its stated termination date or is terminated prior to its stated termination date by mutual agreement between the lessor and the applicable Credit Party, in each case, so long as any Inventory or other material Collateral has been removed from such location.

#### **4.16 Post-Closing Covenant**

. Each Credit Party, as applicable, shall execute and deliver the documents and complete the tasks set forth on Schedule 4.16, in each case within the time limits specified on such Schedule (or such later times as approved by KPS).

#### **4.17 Additional Information Obligations**

(a) Case Documents and Motions. As soon as practicable in advance of filing with the Bankruptcy Court of all documents and pleadings, including with respect to the Final Order and the Asset Purchase Agreement, the Borrowers shall deliver to Agent and KPS all such documents to be filed and provide KPS with a reasonable opportunity to review and comment on all such documents.

(b) Progress Calls. The Borrowers shall hold weekly progress conference calls for the Lenders, starting on the Thursday after the first day of the second week following the Closing Date and continuing on each Thursday thereafter, until the Termination Date. During such conference calls a Responsible Officer of the Company shall provide the participating Lenders with a reasonably comprehensive update on the Cases, variances with respect to the Budget and any other material information relating to the business, condition (financial or otherwise), operation, performance, properties or prospects of any of the Credit Parties and any other information that may be reasonably requested by Agent or any Lender.

(c) [Reserved].

(d) Access to Advisors. The Credit Parties shall allow Agent and the Lenders access to, upon reasonable notice during normal business hours, all financial professionals engaged by the Credit Parties (which engagement, with respect to any financial professionals engaged after the Closing Date, shall be on terms and conditions reasonably satisfactory to the Required Lenders, it being understood and agreed that the engagement of Alvarez & Marsal and Miller Buckfire & Co. (without amendment or modification of the terms in place as of the Closing Date) are satisfactory).

**4.18 Use of Property; Rejection and Assumption of Contracts; Post-Filing Pleadings**

On or after the Petition Date, each Credit Party agrees that it shall not, without KPS's prior written consent, file any motions or pleadings with the Bankruptcy Court (a) seeking authority for any Credit Party to (i) use any of the material properties or assets of the Credit Parties outside the ordinary course of business, except to the extent such use results in the payment in full of the Obligations, (ii) satisfy prepetition claims of the Credit Parties or (iii) incur material administrative costs, in each case, to the extent such relief is inconsistent with this Agreement (including the Budget), (b) seeking to reject or assume any contract, agreement, lease or other agreement to which any Credit Party is a party, or (c) seeking relief that is otherwise inconsistent with this Agreement, the Final Order, or the Asset Purchase Agreement (unless, in the case of the Asset Purchase Agreement, such agreement shall have been terminated).

**ARTICLE V  
NEGATIVE COVENANTS**

Each Credit Party covenants and agrees that, so long as any Lender shall have any Revolving Loan Commitment hereunder, or any Loan or other Obligation (other than contingent indemnification Obligations to the extent no claim giving rise thereto has been asserted) shall remain unpaid or unsatisfied:

**5.1 Limitation on Liens**

No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, directly or indirectly, make, create, incur, assume or suffer to exist any Lien upon or with respect to any part of its Property, whether now owned or hereafter acquired, other than the following ("Permitted Liens"):

(a) any Lien existing on the Property of a Credit Party or a Subsidiary of a Credit Party on the Closing Date and set forth on Schedule 5.1;

(b) any Lien created under any Loan Document;

(c) Customary Permitted Encumbrances;

(d) Liens on fixed or capital assets acquired, constructed or improved by the Borrowers or any Subsidiary; provided that (i) such security interests and the

Indebtedness secured thereby are incurred prior to or within ninety (90) days after such acquisition or the completion of such construction or improvement, (ii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such fixed or capital assets and (iii) such security interests shall not apply to any other property or assets of such Borrower or Subsidiary or any other Borrower or Subsidiary;

(e) Liens on cash collateral securing letters of credit issued under the Prior Indebtedness and Liens on cash collateral used to cash collateralize any letters of credit that are issued by a Person other than a lender under the Prior Indebtedness in an aggregate amount not to exceed \$1,000,000 at any one time outstanding;

(f) any interest or title of a lessor or sublessor under any lease not prohibited by this Agreement;

(g) Liens arising from the filing of precautionary Uniform Commercial Code financing statements with respect to any lease not prohibited by this Agreement;

(h) non-exclusive licenses and non-exclusive sublicenses granted by a Credit Party and leases or subleases (by a Credit Party as lessor or sublessor) to third parties in the Ordinary Course of Business not interfering with the business of the Credit Parties or any of their Subsidiaries, and with respect to any licenses or sublicenses entered into after the Closing Date, the Borrowers shall seek to include language that expressly provides that Intellectual Property that is the subject of such license or sublicense is subject to the Agent's Lien;

(i) Liens in favor of collecting banks arising by operation of law under Section 4-210 of the Uniform Commercial Code or, with respect to collecting banks located in the State of New York, under 4-208 of the Uniform Commercial Code;

(j) Liens (including the right of set-off) in favor of a bank or other depository institution arising as a matter of law encumbering deposits;

(k) Liens in favor of customs and revenue authorities arising as a matter of law which secure payment of customs duties in connection with the importation of goods in the Ordinary Course of Business;

(l) Liens securing the Carve-Out;

(m) Liens granted by a Subsidiary that is not a Credit Party in favor of the Borrower or another Credit Party in respect of Indebtedness owed by such Subsidiary; and

(n) Existing Term Loan Liens; provided that such Existing Term Loan Liens are subordinate in priority to the Liens granted under the Loan Documents in all respects.

## 5.2 Disposition of Assets

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, directly or indirectly, sell, assign, lease, convey, transfer or otherwise dispose of (whether in one or a series of transactions) any Property (including the Stock of any Subsidiary of any Credit Party, whether in a public or a private offering or otherwise, and accounts and notes receivable, with or without recourse), except:

(a) dispositions of inventory, or worn-out, obsolete or surplus equipment or property, all in the Ordinary Course of Business;

(b) sales, transfers, leases and other dispositions (x) by a Credit Party to another Credit Party and (y) by a Subsidiary of any Credit Party to any Borrower or any Subsidiary that is a Credit Party;

(c) sales, transfers and dispositions of accounts receivable in connection with the compromise, settlement or collection thereof, all in the Ordinary Course of Business;

(d) sale of the Identified Assets; provided, that, concurrently with the sale of such Identified Assets, the proceeds thereof constituting "Restricted Cash" (as such term is defined in the Asset Purchase Agreement) shall be held in trust for the benefit of the Purchasers (as defined in the Asset Purchase Agreement), in a manner acceptable to KPS (such amount, the "Identified Assets Trust Proceeds");

(e) dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Borrower or any Subsidiary;

(f) (i) dispositions of Cash Equivalents in the Ordinary Course of Business made to a Person that is not an Affiliate of any Credit Party, to the extent not in contravention of the Budget or the Final Order and (ii) conversions of Cash Equivalents into cash or other Cash Equivalents;

(g) transactions permitted under Section 5.1(h); and

(h) (x) Disposition of the Aircraft and (y) Dispositions constituting a sale or other disposition of Inventory, furniture, fixtures and equipment in accordance with the going-out-of-business liquidation of stores in respect of leases set forth on Schedule 2.6(f) of the Asset Purchase Agreement.

provided that all sales, transfers, leases and other dispositions permitted hereby (other than those permitted by clauses (c), (f) and (g) above) shall be made for fair value and for at least 75% cash consideration.

### **5.3 Consolidations and Mergers**

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to merge, consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person.

#### **5.4 Acquisitions; Loans and Investments**

. No Credit Party shall and no Credit Party shall suffer or permit any of its Subsidiaries to (i) purchase or acquire, or make any commitment to purchase or acquire any Stock or Stock Equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, or (ii) make or commit to make any Acquisitions, or any other acquisition of all or substantially all of the assets of another Person, or of any business or division of any Person, including without limitation, by way of merger, consolidation or other combination or (iii) make or purchase, or commit to make or purchase, any advance, loan, extension of credit or capital contribution to or any other investment in, any Person including a Borrower, any Affiliate of a Borrower or any Subsidiary of a Borrower (the items described in clauses (i), (ii) and (iii) are referred to as “Investments”), except for:

- (a) Investments in cash and Cash Equivalents;
- (b) Investments acquired in connection with the settlement of delinquent Accounts in the Ordinary Course of Business or in connection with the bankruptcy or reorganization of suppliers or customers;
- (c) Investments existing on the Closing Date and set forth on Schedule 5.4;
- (d) loans or advances to employees permitted under Section 5.6;
- (e) Capital Expenditures in an aggregate amount not to exceed \$2,000,000 and to the extent expressly set forth in the Budget;
- (f) Investments by the Borrowers and the Subsidiaries in Stock and Stock Equivalents in their respective Subsidiaries that are Credit Parties;
- (g) loans or advances made by any Borrower to any Subsidiary that is a Credit Party or made by any Credit Party to any other Credit Party;
- (h) Guarantees constituting Contingent Obligations permitted by Section 5.9; provided that no such Guarantee shall be made by a Credit Party of Indebtedness of a Subsidiary which is not a Credit Party, other than Contingent Obligations permitted under Section 5.9(d);
- (i) Investments by the Credit Parties in Foreign Subsidiaries that are both (x) made in the Ordinary Course of Business (with respect to both amount and purpose) and (y) expressly set forth in the Budget;
- (j) additional Investments by the Credit Parties in Foreign Subsidiaries in an aggregate amount not to exceed \$50,000 outstanding at any time;
- (k) Investments received in connection with the dispositions of assets permitted by Section 5.2; and

(l) Investments constituting deposits described in clauses (c) and (d) of the definition of the term “Customary Permitted Encumbrances”.

### **5.5 Limitation on Indebtedness**

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, create, incur, assume, permit to exist, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(a) the Obligations;

(b) Indebtedness consisting of Contingent Obligations described in clause (j) of the definition of Indebtedness and permitted pursuant to Section 5.9;

(c) Indebtedness existing on the Closing Date and set forth on Schedule 5.5 ;

(d) [reserved];

(e) Indebtedness of any Borrower to any other Borrower, of any Borrower to any Subsidiary and of any Subsidiary to any Borrower or any other Subsidiary, provided that (i) Indebtedness of any Subsidiary that is not a Credit Party to any Borrower or any Subsidiary that is a Credit Party shall be subject to Section 5.4 and (ii) Indebtedness of any Borrower to any Subsidiary that is not a Borrower and Indebtedness of any Subsidiary that is a Credit Party to any Subsidiary that is not a Credit Party shall be subordinated to the Obligations on terms reasonably satisfactory to KPS;

(f) Indebtedness owed to any person providing workers’ compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such person, in each case incurred in the Ordinary Course of Business;

(g) any reimbursement obligations with respect to letters of credit in an aggregate amount not to exceed \$1,000,000 at any one time outstanding;

(h) [reserved];

(i) [reserved];

(j) [reserved]; and

(k) Existing Term Loan Obligations.

### **5.6 Employee Loans and Transactions with Affiliates**

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, enter into any transaction with any Affiliate of a Borrower or of any such Subsidiary, except:

(a) as expressly permitted by this Agreement;



(b) (i) Inventory purchase and sale transactions between the Credit Parties and Foreign Subsidiaries on terms and conditions consistent with past practice (including, transfer pricing arrangements) and (ii) other transactions in the Ordinary Course of Business and pursuant to the reasonable requirements of the business of such Credit Party or such Subsidiary upon fair and reasonable terms no less favorable to such Credit Party or such Subsidiary than would be obtained in a comparable arm's length transaction with a Person not an Affiliate of a Borrower or such Subsidiary and which are approved by KPS;

(c) loans or advances made by a Credit Party to its directors, officers and other employees on an arms-length basis in the Ordinary Course of Business for travel and entertainment expenses and similar purposes up to a maximum of \$250,000 in the aggregate at any one time outstanding;

(d) transactions between or among any Borrowers and any Subsidiary that is a Credit Party not involving any other Affiliate;

(e) any Investment permitted by Sections 5.4(f) and 5.4(g);

(f) any Indebtedness permitted under Section 5.5(e);

(g) any Restricted Payment permitted by Section 5.11;

(h) [reserved]; and

(i) the payment of reasonable fees to directors of any Borrower or any Subsidiary who are not employees of the Borrower or any Subsidiary, and reasonable compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Company or its Subsidiaries in the Ordinary Course of Business, in each case, as permitted by the Budget.

## **5.7 Management Fees and Compensation**

. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, pay any management, consulting or similar fees to any Affiliate of any Credit Party or to any officer, director or employee of any Credit Party or any Affiliate of any Credit Party, except (a) payment of reasonable compensation to officers and employees for actual services rendered to the Credit Parties and their Subsidiaries in the Ordinary Course of Business and as permitted by the Budget and (b) payment of reasonable directors' fees and reimbursement of actual out-of-pocket expenses incurred in connection with attending board of director meetings to the extent permitted by the Budget.

## **5.8 Margin Stock; Use of Proceeds**

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, use any portion of the Loan proceeds, directly or indirectly, to purchase or carry Margin Stock or repay or otherwise refinance Indebtedness of any Credit Party or others incurred to



purchase or carry Margin Stock, or otherwise in any manner which is in contravention of any Requirement of Law or in violation of this Agreement.

### **5.9 Contingent Obligations**

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Contingent Obligations except in respect of the Obligations and except:

- (a) endorsements for collection or deposit in the Ordinary Course of Business;
- (b) Contingent Obligations of the Borrower or any Subsidiary in respect of performance bonds, bid bonds, appeal bonds, surety bonds and similar obligations, in each case, provided in the Ordinary Course of Business;
- (c) Guarantees by any Borrower of Indebtedness of any other Borrower or any other Credit Party and by any Subsidiary of Indebtedness of any Borrower or any other Subsidiary, provided that (i) the Indebtedness so Guaranteed is permitted by Section 5.5, (ii) neither Borrower nor any Subsidiary that is a Credit Party shall Guarantee Indebtedness of any Subsidiary that is not a Credit Party, and (iii) Guarantees permitted under this Section 5.5(c) shall be subordinated to the Obligations of the applicable Subsidiary on the same terms as the Indebtedness so Guaranteed is subordinated to the Secured Obligations;
- (d) Guarantees (i) of the Borrowers or any of their Subsidiaries as a guarantor of the lessee under any lease pursuant to which a Borrower or a Subsidiary is the lessee so long as such lease is otherwise permitted hereunder, (ii) of the Company constituting Guarantees by the Company of trade payables owing by its Subsidiaries in the Ordinary Course of Business, (iii) of the Company and/or Thomasville consisting of Guarantees of actual or potential claims under Environmental Laws, and (iv) of any Borrower or any Subsidiary as a guarantor of the obligations of a lessee under any lease pursuant to which a third party is the lessee, in each case, to the extent any such Guarantee is in existence as of the Petition (and without any amendment or modification thereto);
- (e) [reserved];
- (f) Contingent Obligations of the Credit Parties and their Subsidiaries existing as of the Closing Date and listed on Schedule 5.9, including extension and renewals thereof which do not increase the amount of such Contingent Obligations or impose materially more restrictive or adverse terms on the Credit Parties or their Subsidiaries as compared to the terms of the Contingent Obligation being renewed or extended;
- (g) Contingent Obligations arising under indemnity agreements to title insurers to cause such title insurers to issue to Agent title insurance policies;
- (h) Contingent Obligations arising with respect to customary indemnification obligations in favor of (i) customers in the Ordinary Course of Business and (ii) purchasers in connection with dispositions permitted under Section 5.2(b);

(i) [reserved]; and

(j) Contingent Obligations arising under guaranties made in the Ordinary Course of Business of obligations of any Credit Party, which obligations are otherwise permitted hereunder; provided that if such obligation is subordinated to the Obligations, such guaranty shall be subordinated to the same extent.

#### **5.10 Compliance with ERISA**

. No ERISA Affiliate shall cause or suffer to exist (a) any event that could reasonably be expected to result in the imposition of a Lien on any asset of a Credit Party or a Subsidiary of a Credit Party with respect to any Title IV Plan or Multiemployer Plan or (b) any other ERISA Event, that would, in the aggregate, result in Liabilities in excess of \$5,000,000. No Credit Party shall cause or suffer to exist any event that could reasonably be expected to result in the imposition of a Lien with respect to any Benefit Plan or Multiemployer Plan.

#### **5.11 Restricted Payments**

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, (i) declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any Stock or Stock Equivalent, (ii) purchase, redeem or otherwise acquire for value any Stock or Stock Equivalent now or hereafter outstanding or (iii) make any payment or prepayment of principal of, premium, if any, interest, fees, redemption, exchange, purchase, retirement, defeasance, sinking fund or similar payment with respect to, Subordinated Indebtedness (the items described in clauses (i), (ii) and (iii) above are referred to as "Restricted Payments"); except that any Wholly-Owned Subsidiary of a Borrower may declare and pay dividends to a Borrower or any Wholly-Owned Subsidiary of a Borrower, and except that:

(a) each Borrower may declare and pay dividends with respect to its common Stock payable solely in additional shares of its common Stock, and, with respect to its preferred Stock, payable solely in additional shares of such preferred Stock or in shares of its common Stock; and

(b) Subsidiaries may declare and pay dividends ratably with respect to their Stock and Stock Equivalents.

This Section 5.11 shall not prohibit repurchases of common shares by the Company in the open market to offset the issuance of shares of common Stock pursuant to the exercise of employee stock options to the extent any such transactions do not result in a net use of cash.

#### **5.12 Change in Business**

. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, engage in any business other than businesses of the type conducted by the Borrowers and its Subsidiaries on the Closing Date and businesses reasonably related or complementary thereto.

**5.13 Change in Structure; Foreign Subsidiary Ownership of Domestic Subsidiaries**

. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, make any material changes in its equity capital structure, or issue any Stock or Stock Equivalents or amend any of its Organization Documents. No Foreign Subsidiary shall own any Stock or Stock Equivalents of any Domestic Subsidiary.

**5.14 Changes in Accounting, Name or Jurisdiction of Organization**

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, (i) make any change in accounting treatment or reporting practices, except as required by GAAP and as previously disclosed to the Lenders, (ii) change the Fiscal Year or method for determining Fiscal Quarters of any Credit Party or of any consolidated Subsidiary of any Credit Party, (iii) change its name as it appears in official filings in its jurisdiction of organization or (iv) change its jurisdiction of organization.

**5.15 Immaterial Subsidiaries**

. None of Broyhill Transport, HDM Transport or Laneventure shall (i) engage in any business or other commercial activities, (ii) own any assets or property, (iii) incur any Indebtedness or Contractual Obligations, or (iv) grant any Liens over any of its assets or property.

**5.16 No Negative Pledges**

. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, directly or indirectly, (a) create or otherwise cause or suffer to exist or become effective any consensual restriction or encumbrance of any kind on the ability of any Credit Party or Subsidiary to pay dividends or make any other distribution on any of such Credit Party's or Subsidiary's Stock or Stock Equivalents or to pay fees, including management fees, or make other payments and distributions to a Borrower or any other Credit Party or (b) enter into, assume or become subject to any Contractual Obligation prohibiting or otherwise restricting the existence of any Lien upon any of its assets in favor of Agent, whether now owned or hereafter acquired; provided that the foregoing in this Section 5.16 shall not apply to restrictions and conditions (in each case, subject to the Final Order) (i) imposed by Requirements of Law, (ii) imposed by the Loan Documents, (iii) imposed by the Existing Term Loan Documents, (iv) existing on the date hereof and identified on Schedule 5.16 (but shall apply to any extension or renewal of, or any amendment, supplement or modification expanding the scope of, any such restriction or condition), (v) to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted by the terms of this Agreement, (vi) clause (b) shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (vii) clause (b) of the foregoing shall not apply to customary provisions in leases restricting the assignment thereof.

**5.17 OFAC; Patriot Act**

. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to fail to comply with the laws, regulations and executive orders referred to in Sections 3.27 and 3.28.

**5.18 Sale- Leasebacks**

. Except as in existence on the Closing Date, no Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, engage in a sale leaseback, synthetic lease or similar transaction involving any of its assets.

**5.19 Hazardous Materials**

. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, cause or suffer to exist any Release of any Hazardous Material at, to or from any Real Estate that would (a) violate any Environmental Law, except where such failures to comply would not reasonably be expected to result in, either individually or in the aggregate, Material Environmental Liabilities to the Credit Parties and their Subsidiaries or (b) form the basis for any Material Environmental Liabilities.

**5.20 Prepayments and Amendments with respect to Other Indebtedness and Related Agreements**

. Except as required by this Agreement or the Orders (except with respect to adequate protection payments required in connection with Existing Term Loan Agreement), no Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, (i) directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness (including without limitation, any Subordinated Indebtedness) prior to its scheduled maturity or set aside any funds for such purpose (other than any payments to critical vendors to the extent permitted by the Bankruptcy Court pursuant to any first or second day motion or as expressly set forth in the Budget), (ii) agree to any amendment, restatement, supplement or other modifications to the Existing Term Loan Documents or (iii) make any interest payment in respect of any Indebtedness (including, without limitation, any Subordinated Indebtedness), other than (a) payments of the Obligations, (b) as expressly permitted by the Orders, and (c) prepayment of intercompany Indebtedness owed by Credit Parties.

**5.21 Limitation on the Creation of Subsidiaries**

. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, establish, create or acquire after the Closing Date any Subsidiary.

**5.22 Chapter 11 Claims**

. Until payment in full of the Obligations under this Agreement (other than contingent indemnification Obligations to the extent no claim giving rise thereto has been asserted), except for and to the extent permitted under the Carve-Out, the Credit Parties shall not, directly or indirectly, incur, create, assume, suffer to exist or permit any administrative expense claim or Lien which is pari passu with or senior to the claims or Liens, as the case may be, of Agent and

the other Secured Parties against the Credit Parties hereunder or under the Final Order, or apply to the Bankruptcy Court for authority to do so.

### **5.23 Revision of Final Order; Applications to Bankruptcy Court**

. The Credit Parties shall not, directly or indirectly (a) seek, support, consent to or suffer to exist any modification, stay, vacation or amendment of the Final Order except for any modifications and amendments agreed to in writing by Agent (but solely with respect to any modifications and amendments which directly affects the Agent) and KPS (in KPS's sole discretion), (b) apply to (or support, directly or indirectly, any application by any other party to) the Bankruptcy Court for authority to take any action prohibited by this Article V (except to the extent such application and the taking of such action is conditioned upon receiving the written consent of KPS and such consent is provided) or (c) seek authorization for or permit the existence of, any claims other than that of the Lenders entitled to a superpriority claim under Section 364(c)(1) of the Bankruptcy Code that is senior or pari passu with the Lenders' Section 364(c)(1) claim.

### **5.24 Prepetition Claims**

. No Credit Party shall make or commit to make payments to holders of "claims" (as defined in section 101(5) of the Bankruptcy Code) against a Credit Party in respect of prepetition amounts in excess of the line item amount for such claim included in the Budget, other than those payment of those claims that are approved in writing by the Required Lenders.

### **5.25 Compliance with Budget**

(a) Except as otherwise provided herein or approved by KPS, the Credit Parties shall not, and shall not permit any Subsidiary to, directly or indirectly (i) use any cash or the proceeds of any Loans in a manner or for a purpose other than those consistent with this Agreement, the Final Order and the Budget (and Permitted Variances related thereto), (ii) permit a disbursement causing any variance other than Permitted Variances without the prior written consent of KPS or (iii) make any payment (as adequate protection or otherwise), or application for authority to pay, on account of any claim or Indebtedness arising prior to the Petition Date other than payments authorized by the Bankruptcy Court. For the avoidance of doubt, the Credit Parties' compliance with the Budget shall be measured without regard to proceeds realized from the liquidation of Excluded Assets (as defined in the Asset Purchase Agreement).

(b) Prior to the occurrence of an Event of Default, the Credit Parties shall be permitted to pay compensation and reimbursement of fees and expenses solely to the extent that such fees and expenses are in accordance with the Budget and authorized to be paid under Sections 330 and 331 of the Bankruptcy Code pursuant to an order of the Bankruptcy Court, as the same may be due and payable. Upon receipt of the Carve-Out Trigger Notice, the right of the Credit Parties to pay professional fees outside the Carve-Out shall terminate, and the Credit Parties shall provide immediate notice to all professionals informing them that such notice was delivered and further advising them

that the Credit Parties' ability to pay such professionals is subject to and limited by the Carve-Out.

### **5.26 Use of Collateral**

. Without limiting Section 4.10, no Collateral, proceeds of Loans, portion of the Carve-Out or any other amounts may be used directly or indirectly by any of the Credit Parties, the Committee, if any, or any trustee or other estate representative appointed in the Cases (or any successor case) or any other Person (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith):

(a) to seek authorization to obtain Liens or security interests that are senior to, or on a parity with, the Liens granted under the Loan Documents or the DIP Superpriority Claims other than, to the extent the Asset Purchase Agreement has been terminated in accordance with its terms, in connection with any replacement debtor-in-possession financing that will pay the Lenders in "full" in cash; or

(b) to investigate (including by way of examinations or discovery proceedings), prepare, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, against Agent, the Lenders, the other Secured Parties or the Prepetition Parties, and each of their respective officers, directors, controlling persons, employees, agents, attorneys, affiliates, assigns, or successors of each of the foregoing, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) any Avoidance Actions; (ii) any so-called "lender liability" claims and causes of action; (iii) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the Obligations, the DIP Superpriority Claims, the Liens granted under the Loan Documents, the Loan Documents, the Existing Term Loan Document, the Existing Term Loan Obligations, the Existing Term Loan Liens, the Prepetition ABL Credit Agreement, the Prepetition ABL Obligations or the Prepetition ABL Liens; (iv) any action seeking to invalidate, modify, reduce, expunge, disallow, set aside, avoid or subordinate, in whole or in part, the Obligations or the Existing Term Loan Obligations (including, for the avoidance doubt, the "Prepayment Premium" as defined in the Existing Term Loan Documents); (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to either (A) Agent or the Lenders hereunder or under any of the other Loan Documents or (B) the Existing Term Loan Agent, the Existing Term Loan Lenders, the Prepetition ABL Agent, or the Prepetition ABL Lenders (in each case, as applicable, including, without limitation, claims, proceedings or actions that might prevent, hinder or delay any of their respective assertions, enforcements, realizations or remedies on or against the Collateral in accordance with the applicable Loan Documents and the Final Order); or (vi) objecting to, contesting, or interfering with, in any way, Agent's and the Lenders' enforcement or realization upon any of the Collateral once an Event of Default has occurred. Notwithstanding anything to the contrary herein, the Committee may use up to \$50,000.00 in the aggregate amount of the Carve-Out, any cash-collateral, or



proceeds of the Loan to investigate the Prepetition Parties (the “Committee Investigation Budget”). Any and all claims incurred by the Committee in excess of the Committee Investigation Budget (the “Unbudgeted Investigation Claims”) shall not constitute any allowed administrative expense claim (including, without limitation, Section 1129(a)(9)(A) of the Bankruptcy Code), and the Unbudgeted Investigation Claims shall not be satisfied by the Carve-Out, any cash collateral or proceeds of the Loan, and shall be satisfied solely from the unencumbered assets of the Credit Parties (if any) (the “Unencumbered Assets”), thereby reducing recoveries to the holders of unsecured claims (other than any deficiency claim held by the Prepetition Parties); provided, however, that to the extent there are no Unencumbered Assets available to satisfy the Unbudgeted Investigation Claims, then such claims shall be automatically disallowed without further action by any party or Court order and shall not receive a recovery in the Cases and any Successor Cases.

**ARTICLE VI**  
**[INTENTIONALLY OMITTED]**

**ARTICLE VII**  
**EVENTS OF DEFAULT**

**7.1 Events of Default**

. Any of the following shall constitute an “Event of Default”:

(a) Non-Payment. Any Credit Party fails to pay when and as required to be paid herein, any amount of principal of any Loan, including after maturity of the Loans, or to pay the same shall become due, any interest on any Loan, any fee or any other amount payable hereunder or pursuant to any other Loan Document;

(b) Representation or Warranty. Any representation, warranty or certification by or on behalf of any Credit Party or any of its Subsidiaries made or deemed made herein, in any other Loan Document, or which is contained in any certificate, document or financial or other statement by any such Person, or their respective Responsible Officers, furnished at any time under this Agreement, or in or under any other Loan Document, shall prove to have been incorrect in any material respect (without duplication of other materiality qualifiers contained therein) on or as of the date made or deemed made;

(c) Specific Defaults. Any Credit Party fails to perform or observe any term, covenant or agreement contained in any of Section 4.2, 4.3, 4.4(a) (with respect to any Credit Party) or 9.10(d), Section 4.1, 4.6, 4.9, 4.10, 4.11, 4.16 or 4.17 or Article V;

(d) Other Defaults. Any Credit Party or Subsidiary of any Credit Party fails to perform or observe any other term, covenant or agreement contained in this Agreement or any other Loan Document, and such default shall continue unremedied for a period of thirty (30) days after the earlier to occur of (i) the date upon which a Responsible Officer of any Credit Party becomes aware of such default and (ii) the date upon which written notice thereof is given to the Borrower Representative by any Lender;

(e) Cross Default. Any Credit Party or any Subsidiary of any Credit Party (i) fails to make any payment in respect of any other Indebtedness (other than the Obligations) or Contingent Obligation (other than the Obligations) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$2,500,000 incurred after the Petition Date, in each case, when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such failure continues after the applicable grace or notice period, if any, specified in the document relating thereto (including the Term Loan Agreement) on the date of such failure; or (ii) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Indebtedness or Contingent Obligation (other than the Obligations and Contingent Obligations owing by one Credit Party with respect to the obligations of another Credit Party permitted hereunder or earnouts permitted hereunder) incurred after the Petition Date, if the effect of such failure, event or condition is to cause, or to permit the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause such Indebtedness to be declared to be due and payable prior to its stated maturity (without regard to any subordination terms with respect thereto), or such Contingent Obligation to become payable or cash collateral in respect thereof to be demanded;

(f) Cases Motions. Any of the following shall occur in any Case:

(i) filing of a Plan by the Credit Parties that does not propose to repay the Obligations and the Existing Term Loan Obligations in full in cash, unless otherwise consented to by KPS;

(ii) any of the Credit Parties shall file a pleading seeking to vacate or modify the Final Order, unless otherwise consented to by KPS;

(iii) entry of an order without the prior consent of KPS amending, supplementing or otherwise modifying any Order;

(iv) reversal, vacation or stay of the effectiveness of any Order;

(v) any violation of the terms of any Order;

(vi) dismissal of the Cases or conversion of the Cases to a case under Chapter 7 of the Bankruptcy Code;

(vii) appointment of a Chapter 11 trustee or an examiner (other than a fee or other similar examiner);

(viii) the consummation of any sale of all or substantially all assets of the Credit Parties pursuant to Section 363 of the Bankruptcy Code, other than the Bankruptcy Sale;



(ix) appointment of a responsible officer or examiner with enlarged powers relating to the operation of the business of any Credit Party;

(x) granting of relief from the automatic stay in the Cases to permit foreclosure or enforcement on, or any right or remedy with respect to, assets of any Credit Party in excess of \$500,000 in the aggregate;

(xi) the Credit Parties' filing of (or supporting another party in the filing of) a motion seeking entry of, or the entry of an order, granting any superpriority claim or Lien (except as contemplated herein) which is senior to or pari passu with the Lenders' claims under the Loan Documents and the transactions contemplated thereby;

(xii) payment of or granting adequate protection with respect to prepetition debt, other than as expressly set forth in the Budget;

(xiii) [reserved]; and

(xiv) cessation of the Liens or the DIP Superpriority Claims to be valid, perfected and enforceable in all respects;

(g) Financial Matters. Any of the Credit Parties shall (i) use cash collateral or Loans for any item other than those set forth in, and in accordance with, the Budget and as approved by the Bankruptcy Court or prepays any pre-petition debt, (ii) assert any right of subrogation or contribution against any other Credit Party prior to the payment in full of the Obligations and the Existing Term Loan Obligations, or (iii) exceed the Permitted Variances under the Budget for any applicable Testing Period (other than as approved in writing by KPS);

(h) Monetary Judgments. One or more judgments, non-interlocutory orders, decrees or arbitration awards shall be entered with respect to any post-petition liabilities against any one or more of the Credit Parties or any of their respective Subsidiaries or Properties involving in the aggregate a liability of \$2,500,000 or more (excluding amounts covered by insurance to the extent the relevant independent third party insurer has not denied coverage therefor), and the same shall remain unsatisfied, unvacated and unstayed pending appeal for a period of thirty (30) days after the entry thereof;

(i) Non-Monetary Judgments. One or more non-monetary judgments, orders or decrees shall be rendered with respect to any post-petition liabilities against any one or more of the Credit Parties or any of their respective Subsidiaries which has or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, and there shall be any period of ten (10) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect;

(j) Collateral. Any material provision of any Loan Document shall for any reason cease to be valid and binding on or enforceable against any Credit Party or any Subsidiary of any Credit Party party thereto or any Credit Party or any Subsidiary of any

Credit Party shall so state in writing or bring an action to limit its obligations or liabilities thereunder; or any Collateral Document shall for any reason (other than pursuant to the terms thereof or any Order) cease to create a valid security interest in the Collateral purported to be covered thereby or such security interest shall for any reason cease to be a perfected and first priority security interest subject only to the Carve-Out;

(k) Ownership. A Change in Control shall occur;

(l) Chapter 11 Cases Milestones. The failure to meet any of the following milestones:

(i) obtain entry of the Final Order on or before October 4, 2013;

(ii) obtain entry of the Bidding Procedures Order on or before October 4, 2013;

(iii) obtain entry of the Bankruptcy Sale Order on or before December 12, 2013; and

(iv) close the Bankruptcy Sale no later than December 23, 2013;

(m) ERISA Events. (i) An ERISA Event occurs with respect to a Benefit Plan or any Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any ERISA Affiliate under Title IV of ERISA to such Benefit Plan or Multiemployer Plan or the PBGC in an aggregate amount in excess of \$5,000,000 or which could reasonably likely result in a Material Adverse Effect, or (ii) a Credit Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$5,000,000;

(n) Adequate Protection Payments. Failure to pay, when due, any adequate protection payments to the Existing Term Loan Lenders, to the extent approved by the Bankruptcy Court;

(o) Alternate Transaction. Immediately upon the occurrence of the entry of a bidding procedures order or upon consummation of a sale with respect to all or substantially all of the assets of the Debtors to a purchaser other than Holdings (as defined in the Asset Purchase Agreement).

(p) Restraintment. If a Credit Party or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of the business affairs of the Credit Parties and their Subsidiaries, taken as a whole;

(q) Material Contract Default Event. A Material Contract Default Event shall have occurred and be continuing for 45 days; provided, that, (i) if on the 45th day following such Material Contract Default Event, the Variance from the Budget on a

cumulative basis for the period from the Petition Date through the last day covered by the most recent Variance Report delivered to the Agent and Lenders on or prior to such 45th day is not more than 5.0% less than the aggregate amount in the Budget for operating receipts for such period, then the date in this clause (q) shall be automatically extended for an additional 15 days and (ii) if on the 60th day following such Material Contract Default Event, the Variance from the Budget on a cumulative basis for the period from the Petition Date through the last day covered by the most recent Variance Report delivered to the Agent and Lenders on or prior to such 60th day is not more than 5.0% less than the aggregate amount in the Budget for operating receipts for such period, then the date in this clause (q) shall be further automatically extended for an additional 15 days and in each case, no Default or Event of Default shall be deemed to exist as a result of this Section 7.1(q).

After the occurrence of an Event of Default, such Event of Default shall be deemed to exist and be continuing unless waived in writing by KPS.

## **7.2 Remedies**

. Notwithstanding anything in Section 362 of the Bankruptcy Code, but subject to the Final Order, upon the occurrence and during the continuance of any Event of Default, Agent shall, at the request of KPS, take any or all of the following actions, at the same time or different times, in each case without further order of or application to the Bankruptcy Court (*provided*, that with respect to the enforcement of Liens or other remedies with respect to the Collateral under clause (c) below, the Agent shall provide the Borrower Representative with five Business Days' written notice (with a copy to counsel for any Committee and to the United States Trustee for the District of Delaware) prior to taking the action contemplated thereby; in any hearing after the giving of the aforementioned notice, the only issue that may be raised by any party in opposition thereto being whether, in fact, an Event of Default has occurred and is continuing):

(a) declare all or any portion of the Revolving Loan Commitment of each Revolving Lender to make Revolving Loans to be suspended or terminated, whereupon such Revolving Loan Commitments shall forthwith be suspended or terminated;

(b) declare all or any portion of the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable; without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by each Credit Party; and/or

(c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable law;

Neither the Credit Parties, the Committee, nor any other party-in-interest shall have the right to contest the enforcement of remedies set forth in the Final Order and the Loan Documents on any basis other than an assertion that an Event of Default has not occurred or has been cured within the cure periods expressly set forth in the applicable Loan Documents. The Credit Parties shall cooperate fully with the Agent and the Lenders in their exercise of rights and remedies,

whether against the Collateral or otherwise. The Credit Parties hereby waive any right to seek relief under the Bankruptcy Code, including under Section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the Agent and the Lenders set forth in the Final Order and in the Loan Documents.

In case any one or more of the covenants and/or agreements set forth in this Agreement or any other Loan Document shall have been breached by any Credit Party, then the Agent or any Lender may proceed to protect and enforce the Lenders' rights either by suit in equity and/or by action at law, including an action for damages as a result of any such breach and/or an action for specific performance of any such covenant or agreement contained in this Agreement or such other Loan Document. Without limitation of the foregoing, the Borrowers agree that failure to comply with any of the covenants contained herein will cause irreparable harm and that specific performance shall be available in the event of any breach thereof. The Agent and any Lender acting pursuant to this paragraph shall be indemnified by the Borrowers against all liability, loss or damage, together with all reasonable costs and expenses related thereto (including reasonable legal and accounting fees and expenses) in accordance with Section 9.6.

### **7.3 Rights Not Exclusive**

The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

## **ARTICLE VIII AGENT**

### **8.1 Appointment and Duties**

(a) Appointment of Agent. Each Lender hereby appoints Bank of America, N.A. (together with any successor Agent pursuant to Section 8.9) as Agent hereunder and authorizes Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from any Credit Party, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Agent under such Loan Documents and (iii) exercise such powers as are incidental thereto.

(b) Duties as Collateral and Disbursing Agent. Without limiting the generality of clause (a) above, Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents, and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on

behalf of such Person), (iii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Requirements of Law or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Agent and the Lenders for purposes of the perfection of Liens with respect to any deposit account maintained by a Credit Party with, and cash and Cash Equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) Limited Duties. Under the Loan Documents, Agent (i) is acting solely on behalf of the Secured Parties (except to the limited extent provided in Section 1.4(b) with respect to the Register), with duties that are entirely administrative in nature, notwithstanding the use of the defined term “Agent”, the terms “agent”, “Agent” and “collateral agent” and similar terms in any Loan Document to refer to Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Person and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Secured Party, by accepting the benefits of the Loan Documents, hereby waives and agrees not to assert any claim against Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above.

## **8.2 Binding Effect**

. Each Secured Party, by accepting the benefits of the Loan Documents, agrees that (i) any action taken by Agent, KPS or the Required Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by Agent in reliance upon the instructions of KPS or Required Lenders (or, where so required, such greater proportion) and (iii) the exercise by Agent, KPS or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are incidental thereto, shall be authorized and binding upon all of the Secured Parties.

## **8.3 Use of Discretion**

(a) Agent 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 Loan Documents that Agent is required to exercise as directed in writing by KPS (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided, that Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Agent to liability or that is contrary to any Loan Document or applicable Requirement of Law; and

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

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against 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, Agent in accordance with the Loan Documents for the benefit of all the Lenders; provided that the foregoing shall not prohibit (i) Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (ii) [reserved], (iii) any Lender from exercising setoff rights in accordance with Section 9.11 or (iv) 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 bankruptcy or other debtor relief law; and provided further that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then (A) KPS shall have the rights otherwise ascribed to Agent pursuant to Section 7.2 and (B) in addition to the matters set forth in clauses (ii), (iii) and (iv) of the preceding proviso and subject to Section 9.11, any Lender may, with the consent of KPS, enforce any rights and remedies available to it and as authorized by KPS.

#### **8.4 Delegation of Rights and Duties**

. Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co- agent, employee, attorney- in- fact and any other Person (including any Secured Party). Any such Person shall benefit from this Article VIII to the extent provided by Agent.

#### **8.5 Reliance and Liability**

(a) Agent may, without incurring any liability hereunder, (i) treat the payee of any Note as its holder until such Note has been assigned in accordance with Section 9.9, (ii) rely on the Register to the extent set forth in Section 1.4, (iii) consult with any of its



Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Credit Party) and (iv) rely and act upon any document and information (including those transmitted by Electronic Transmission) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(b) None of Agent and its Related Persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Secured Party, each Borrower and each other Credit Party hereby waive and shall not assert (and each of the Borrowers shall cause each other Credit Party to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of KPS or the Required Lenders or for the actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of Agent, when acting on behalf of Agent);

(ii) shall not be responsible to any Lender or other Person for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Lender or other Person for any statement, document, information, representation or warranty made or furnished by or on behalf of any Credit Party or any Related Person of any Credit Party in connection with any Loan Document or any transaction contemplated therein or any other document or information with respect to any Credit Party, whether or not transmitted or (except for documents expressly required under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by Agent in connection with the Loan Documents; and

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Credit Party or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower Representative or any Lender

describing such Default or Event of Default clearly labeled “notice of default” (in which case Agent shall promptly give notice of such receipt to all Lenders); and, for each of the items set forth in clauses (i) through (iv) above, each Lender and each Borrower hereby waives and agrees not to assert (and each Borrower shall cause each other Credit Party to waive and agree not to assert) any right, claim or cause of action it might have against Agent based thereon.

(c) Each Lender (i) acknowledges that it has performed and will continue to perform its own diligence and has made and will continue to make its own independent investigation of the operations, financial conditions and affairs of the Credit Parties and (ii) agrees that it shall not rely on any audit or other report provided by Agent or its Related Persons (an “Agent Report”). Each Lender further acknowledges that any Agent Report (i) is provided to the Lenders solely as a courtesy, without consideration, and based upon the understanding that such Lender will not rely on such Agent Report, (ii) was prepared by Agent or its Related Persons based upon information provided by the Credit Parties solely for Agent’s own internal use, (iii) may not be complete and may not reflect all information and findings obtained by Agent or its Related Persons regarding the operations and condition of the Credit Parties. Neither Agent nor any of its Related Persons makes any representations or warranties of any kind with respect to (i) any existing or proposed financing, (ii) the accuracy or completeness of the information contained in any Agent Report or in any related documentation, (iii) the scope or adequacy of Agent’s and its Related Persons’ due diligence, or the presence or absence of any errors or omissions contained in any Agent Report or in any related documentation, and (iv) any work performed by Agent or Agent’s Related Persons in connection with or using any Agent Report or any related documentation.

(d) Neither Agent nor any of its Related Persons shall have any duties or obligations in connection with or as a result of any Lender receiving a copy of any Agent Report. Without limiting the generality of the forgoing, neither Agent nor any of its Related Persons shall have any responsibility for the accuracy or completeness of any Agent Report, or the appropriateness of any Agent Report for any Lender’s purposes, and shall have no duty or responsibility to correct or update any Agent Report or disclose to any Lender any other information not embodied in any Agent Report, including any supplemental information obtained after the date of any Agent Report. Each Lender releases, and agrees that it will not assert, any claim against Agent or its Related Persons that in any way relates to any Agent Report or arises out of any Lender having access to any Agent Report or any discussion of its contents, and agrees to indemnify and hold harmless Agent and its Related Persons from all claims, liabilities and expenses relating to a breach by any Lender arising out of such Lender’s access to any Agent Report or any discussion of its contents.

## **8.6 Agent Individually**

. Agent and its Affiliates may make loans and other extensions of credit to, acquire Stock and Stock Equivalents of, engage in any kind of business with, any Credit Party or Affiliate thereof as though it were not acting as Agent and may receive separate fees and other payments therefor. To the extent Agent or any of its Affiliates makes any Loan or otherwise becomes a



Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms “Lender”, “Required Lender” and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Required Lenders.

### **8.7 Lender Credit Decision**

(a) Each Lender acknowledges that it shall, independently and without reliance upon Agent, any Lender or any of their Related Persons or upon any document (including any offering and disclosure materials in connection with the syndication of the Loans) solely or in part because such document was transmitted by Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of each Credit Party and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document to be transmitted by Agent to the Lenders, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, Property, financial and other condition or creditworthiness of any Credit Party or any Affiliate of any Credit Party that may come in to the possession of Agent or any of its Related Persons.

(b) If any Lender has elected to abstain from receiving MNPI concerning the Credit Parties or their Affiliates, such Lender acknowledges that, notwithstanding such election, Agent and/or the Credit Parties will, from time to time, make available syndicate- information (which may contain MNPI) as required by the terms of, or in the course of administering the Loans to the credit contact(s) identified for receipt of such information on the Lender’s administrative questionnaire who are able to receive and use all syndicate- level information (which may contain MNPI) in accordance with such Lender’s compliance policies and contractual obligations and applicable law, including federal and state securities laws; provided, that if such contact is not so identified in such questionnaire, the relevant Lender hereby agrees to promptly (and in any event within one (1) Business Day) provide such a contact to Agent and the Credit Parties upon request therefor by Agent or the Credit Parties. Notwithstanding such Lender’s election to abstain from receiving MNPI, such Lender acknowledges that if such Lender chooses to communicate with Agent, it assumes the risk of receiving MNPI concerning the Credit Parties or their Affiliates.

### **8.8 Expenses; Indemnities; Withholding**

(a) Each Lender agrees to reimburse Agent and each of its Related Persons (to the extent not reimbursed by any Credit Party) promptly upon demand, severally and ratably, for any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Credit Party) that may be incurred by Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement of, or the taking of any other action (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding (including, without limitation, preparation for and/or response to any subpoena or request for document production relating thereto) or otherwise) in respect of, or legal advice with respect to its rights or responsibilities under, any Loan Document; provided, however, that no Lender shall be liable to Agent or any of its Related Persons to the extent such liability has resulted primarily from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

(b) Each Lender further agrees to indemnify Agent and each of its Related Persons (to the extent not reimbursed by any Credit Party), severally and ratably, from and against Liabilities (including, to the extent not indemnified pursuant to Section 8.8(c), taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to or for the account of any Lender) that may be imposed on, incurred by or asserted against Agent or any of its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document, any Related Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by Agent or any of its Related Persons under or with respect to any of the foregoing; provided, however, that no Lender shall be liable to Agent or any of its Related Persons to the extent such liability has resulted primarily from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

(c) To the extent required by any applicable law, Agent may withhold from any payment to any Lender under a Loan Document an amount equal to any applicable withholding tax. If the IRS or any other Governmental Authority asserts a claim that Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate certification form was not delivered, was not properly executed, or fails to establish an exemption from, or reduction of, withholding tax with respect to a particular type of payment, or because such Lender failed to notify Agent or any other Person of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), or Agent reasonably determines that it was required to withhold taxes from a prior payment but failed to do so, such Lender shall promptly indemnify Agent fully for all amounts paid, directly or indirectly, by such Agent as tax or otherwise, including penalties and interest, and together with all expenses incurred by Agent, including legal expenses, allocated internal costs and out-of-pocket expenses. Agent may offset against any payment to any Lender under a Loan Document, any applicable withholding tax that was required to be withheld

from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which Agent is entitled to indemnification from such Lender under this Section 8.8(c).

## **8.9 Resignation and Replacement**

(a) Agent may resign at any time by delivering notice of such resignation to the Lenders and the Borrower Representative, effective on the date set forth in such notice or, if no such date is set forth therein, upon the date such notice shall be effective in accordance with the terms of this Section 8.9. If Agent delivers any such notice, KPS shall have the right to appoint a successor Agent. If, after thirty (30) days after the date of the retiring Agent's notice of resignation, no successor Agent has been appointed by KPS that has accepted such appointment, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent from among the Lenders. Each appointment under this clause (a) shall be subject to the prior consent of the Borrower Representative, which may not be unreasonably withheld but shall not be required during the continuance of an Event of Default.

(b) Effective immediately upon its resignation, (i) the retiring Agent shall be discharged from its duties and obligations under the Loan Documents, (ii) the Lenders shall assume and perform all of the duties of Agent until a successor Agent shall have accepted a valid appointment hereunder, (iii) the retiring Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Agent was, or because such Agent had been, validly acting as Agent under the Loan Documents and (iv) subject to its rights under Section 8.3, the retiring Agent shall take such action as may be reasonably necessary to assign to the successor Agent its rights as Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Agent, a successor Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Agent under the Loan Documents.

(c) KPS shall have the right to replace the Agent and appoint a successor Agent at any time. Effective immediately upon any replacement of the Agent, (i) the replaced Agent shall be discharged from its duties and obligations under the Loan Documents, (ii) the Lenders shall assume and perform all of the duties of Agent until a successor Agent shall have accepted a valid appointment hereunder, (iii) the replaced Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Agent was, or because such Agent had been, validly acting as Agent under the Loan Documents and (iv) subject to its rights under Section 8.3, the replaced Agent shall take such action as may be reasonably necessary to assign to the successor Agent its rights as Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Agent, a successor Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Agent under the Loan Documents.

### **8.10 Release of Collateral or Guarantors**

. Each Lender hereby consents to the release and hereby directs Agent to release (or, in the case of clause (b)(ii) below, release or subordinate) the following:

(a) any Subsidiary of a Borrower from its guaranty of any Obligation if all of the Stock and Stock Equivalents of such Subsidiary owned by any Credit Party are sold or transferred in a transaction permitted under the Loan Documents (including pursuant to a waiver or consent); and

(b) any Lien held by Agent for the benefit of the Secured Parties against (i) any Collateral that is sold, transferred, conveyed or otherwise disposed of by a Credit Party in a transaction permitted by the Loan Documents (including pursuant to a waiver or consent), (ii) any Property subject to a Lien permitted hereunder in reliance upon Section 5.1(h) or 5.1(i) and (iii) all of the Collateral and all Credit Parties, upon (A) termination of the Revolving Loan Commitments, (B) payment and satisfaction in full of all Loans, and all other Obligations under the Loan Documents, that Agent has theretofore been notified in writing by the holder of such Obligation are then due and payable, (C) deposit of cash collateral with respect to all contingent Obligations, in amounts and on terms and conditions and with parties satisfactory to Agent and each Indemnitee that is, or may be, owed such Obligations (excluding contingent Obligations as to which no claim has been asserted) and (D) to the extent requested by Agent, receipt by Agent and the Secured Parties of liability releases from the Credit Parties each in form and substance reasonably acceptable to Agent.

Each Lender hereby directs Agent, and Agent hereby agrees, upon receipt of at least five (5) Business Days' advance notice from the Borrower Representative, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guaranties and Liens when and as directed in this Section 8.10.

### **8.11 Additional Secured Parties**

. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender party hereto as long as, by accepting such benefits, such Secured Party agrees, as among Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by Agent, shall confirm such agreement in a writing in form and substance acceptable to Agent) this Article VIII and Sections 9.3, 9.9, 9.10, 9.11, 9.17, 9.24 and 10.1 and the decisions and actions of Agent and KPS or the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders or other parties hereto as required herein) to the same extent a Lender is bound; provided, however, that, notwithstanding the foregoing, (a) such Secured Party shall be bound by Section 8.8 only to the extent of Liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of pro rata share or similar concept, (b) each of Agent and the Lenders party hereto shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is

deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (c) except as otherwise set forth herein, such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

## **ARTICLE IX MISCELLANEOUS**

### **9.1 Amendments and Waivers**

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by any Credit Party therefrom, shall be effective unless the same shall be in writing and signed by Agent, KPS, the Required Lenders (or by Agent with the consent of KPS and/or the Required Lenders), and the Borrowers, and then such waiver shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by all the Lenders directly affected thereby (or by Agent with the consent of all the Lenders directly affected thereby), in addition to Agent and the Required Lenders (or by Agent with the consent of the Required Lenders) and the Borrowers, do any of the following:

(i) increase or extend the Revolving Loan Commitment of any Revolving Lender (or reinstate any Revolving Loan Commitment terminated pursuant to Section 7.2(a));

(ii) postpone or delay any date fixed for, or reduce or waive, any scheduled installment of principal or any payment of interest, fees or other amounts (other than principal) due to the Lenders (or any of them) hereunder or under any other Loan Document (for the avoidance of doubt, (x) the waiver of a Default or Event of Default or the waiver of the imposition of increased interest pursuant to Section 1.3(c) shall not constitute a reduction of interest for purposes hereof and (y) mandatory prepayments pursuant to Section 1.8 may be postponed, delayed, reduced, waived or modified with the consent of Required Lenders);

(iii) reduce the principal of, or the rate of interest specified herein or the amount of interest payable in cash specified herein on any Loan, or of any fees or other amounts payable hereunder or under any other Loan Document (for the avoidance of doubt, the waiver of a Default or Event of Default or the waiver of the imposition of increased interest pursuant to Section 1.3(c) shall not constitute a reduction of interest for purposes hereof);

(iv) amend or modify Section 1.8 or Section 1.10 in any manner that would alter the order of treatment or the pro rata sharing of payments required thereby;

(v) change the percentage of the Revolving Loan Commitments or of the aggregate unpaid principal amount of the Loans which shall be required for the Lenders or any of them to take any action hereunder;

(vi) amend this Section 9.1 or change (x) the term Required Lenders or Required Revolving Lenders, (y) the percentage of Lenders which shall be required for Lenders to take any action hereunder or (z) any specific right of Required Lenders or Required Revolving Lenders to grant or withhold consent or take or omit to take any action hereunder;

(vii) discharge any Borrower from its respective payment Obligations under the Loan Documents, permit any assignment of such obligations, or release all or substantially all of the Collateral or the value of the guaranty made by the Guarantors, except as otherwise may be provided in this Agreement or the other Loan Documents; or

(viii) subordinate (x) all or substantially all of the Liens granted pursuant to the Loan Documents or (y) the Obligations; it being agreed that all Lenders shall be deemed to be directly affected by an amendment or waiver of the type described in the preceding clauses (v) - (vii).

In addition, no such waiver, amendment, or consent shall, unless in writing and signed by Agent, amend Article VIII, Sections 9.5, 9.6, 9.8, 9.18, 9.19 and 9.24 of this Agreement or Article VII, Sections 8.9 and 8.13 of the Guaranty and Security Agreement.

(b) No amendment, waiver or consent shall, unless in writing and signed by Agent, in addition to the Required Lenders or Required Revolving Lenders or all Lenders directly affected thereby, as the case may be (or by Agent with the consent of the Required Lenders or Required Revolving Lenders or all the Lenders directly affected thereby, as the case may be), affect the rights or duties of Agent under this Agreement or any other Loan Document.

(c) Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Loan Document or constitute a "Lender" (or be, or have its Loans and Revolving Loan Commitments, included in the determination of "Required Lenders", "Required Revolving Lenders" or "Lenders directly affected" pursuant to this Section 9.1) for any voting or consent rights under or with respect to any Loan Document, except that a Non-Funding Lender shall be treated as an "affected Lender" for purposes of Sections 9.1(a)(i) and 9.1(a)(iii) solely with respect to an increase in such Non-Funding Lender's Revolving Loan Commitments, a reduction of the principal amount owed to such Non-Funding Lender or, unless such Non-Funding Lender is treated the same as the other Lenders holding Loans of the same type, a reduction in the interest rates applicable to the Loans held by such Non-Funding Lender. Moreover, for the purposes of determining Required Lenders, the Loans and Revolving Loan Commitments held by Non-Funding Lenders shall be excluded from the total Loans and Aggregate Revolving Loan Commitments outstanding.



## 9.2 Notices

(a) **Addresses.** All notices and other communications required or expressly authorized to be made by this Agreement shall be given in writing, unless otherwise expressly specified herein, and (i) addressed to the address set forth on the applicable signature page hereto or (ii) addressed to such other address as shall be notified in writing (A) in the case of the Borrowers and Agent, to the other parties hereto and (B) in the case of all other parties, to the Borrower Representative and Agent. Transmissions made by electronic mail or E-Fax to Agent shall be effective only (x) for notices where such transmission is specifically authorized by this Agreement, (y) if such transmission is delivered in compliance with procedures of Agent applicable at the time and previously communicated to Borrower Representative, and (z) if receipt of such transmission is acknowledged by Agent. Notices and other communications shall not be delivered via facsimile.

(b) **Effectiveness.** (i) All communications described in clause (a) above and all other notices, demands, requests and other communications made in connection with this Agreement shall be effective and be deemed to have been received (i) if delivered by hand, upon personal delivery, (ii) if delivered by overnight courier service, one (1) Business Day after delivery to such courier service, (iii) if delivered by mail, three (3) Business Days after deposit in the mail, (iv) if delivered by facsimile (other than to post to an E- System pursuant to clause (a)(ii) or (a)(iii) above), upon sender's receipt of confirmation of proper transmission, and (v) if delivered by posting to any E- System, on the later of the Business Day of such posting and the Business Day access to such posting is given to the recipient thereof in accordance with the standard procedures applicable to such E- System; provided, however, that no communications to Agent pursuant to Article I shall be effective until received by Agent.

(i) The posting, completion and/or submission by any Credit Party of any communication pursuant to an E-System shall constitute a representation and warranty by the Credit Parties that any representation, warranty, certification or other similar statement required by the Loan Documents to be provided, given or made by a Credit Party in connection with any such communication is true, correct and complete except as expressly noted in such communication or E-System.

(c) Each Lender shall notify Agent in writing of any changes in the address to which notices to such Lender should be directed, of addresses of its Lending Office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as Agent shall reasonably request.

## 9.3 Electronic Transmissions

(a) Authorization. Subject to the provisions of Section 9.2(a), each of Agent, Lenders, each Credit Party and each of their Related Persons, is authorized (but not required) to transmit, post or otherwise make or communicate, in its sole discretion, Electronic Transmissions in connection with any Loan Document and the transactions contemplated therein. Each Credit Party and each Secured Party hereto acknowledges and agrees that the use of Electronic Transmissions is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing the transmission of Electronic Transmissions.

(b) Signatures. Subject to the provisions of Section 9.2(a), (i)(A) no posting to any E- System shall be denied legal effect merely because it is made electronically, (B) each E-Signature on any such posting shall be deemed sufficient to satisfy any requirement for a “signature” and (C) each such posting shall be deemed sufficient to satisfy any requirement for a “writing”, in each case including pursuant to any Loan Document, any applicable provision of any UCC, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Requirement of Law governing such subject matter, (ii) each such posting that is not readily capable of bearing either a signature or a reproduction of a signature may be signed, and shall be deemed signed, by attaching to, or logically associating with such posting, an E-Signature, upon which Agent, each Secured Party and each Credit Party may rely and assume the authenticity thereof, (iii) each such posting containing a signature, a reproduction of a signature or an E-Signature shall, for all intents and purposes, have the same effect and weight as a signed paper original and (iv) each party hereto or beneficiary hereto agrees not to contest the validity or enforceability of any posting on any E-System or E-Signature on any such posting under the provisions of any applicable Requirement of Law requiring certain documents to be in writing or signed; provided, however, that nothing herein shall limit such party’s or beneficiary’s right to contest whether any posting to any E-System or E-Signature has been altered after transmission.

(c) Separate Agreements. All uses of an E-System shall be governed by and subject to, in addition to Section 9.2 and this Section 9.3, the separate terms, conditions and privacy policy posted or referenced in such E-System (or such terms, conditions and privacy policy as may be updated from time to time, including on such E-System) and related Contractual Obligations executed by Agent and Credit Parties in connection with the use of such E-System.

(d) LIMITATION OF LIABILITY. ALL E-SYSTEMS AND ELECTRONIC TRANSMISSIONS SHALL BE PROVIDED “AS IS” AND “AS AVAILABLE”. NONE OF AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS WARRANTS THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY E- SYSTEMS OR ELECTRONIC TRANSMISSION AND DISCLAIMS ALL LIABILITY FOR ERRORS OR OMISSIONS THEREIN. NO WARRANTY OF ANY KIND IS MADE BY AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS IN CONNECTION WITH ANY ESYSTEMS OR ELECTRONIC COMMUNICATION, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A



PARTICULAR PURPOSE, NON- INFRINGEMENT OF THIRD- PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS. Each of each Borrower, each other Credit Party executing this Agreement and each Secured Party agrees that Agent has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System.

#### **9.4 No Waiver; Cumulative Remedies**

. No failure to exercise and no delay in exercising, on the part of Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. No course of dealing between any Credit Party, any Affiliate of any Credit Party, Agent or any Lender shall be effective to amend, modify or discharge any provision of this Agreement or any of the other Loan Documents.

#### **9.5 Costs and Expenses**

. Any action taken by any Credit Party under or with respect to any Loan Document, even if required under any Loan Document or at the request of Agent or Required Lenders, shall be at the expense of such Credit Party, and neither Agent nor any other Secured Party shall be required under any Loan Document to reimburse any Credit Party or any Subsidiary of any Credit Party therefor except as expressly provided therein. In addition, the Borrowers agree to pay or reimburse within five (5) Business Days of the demand therefor (a) Agent and KPS (including any Affiliates and Approved Funds of KPS, the “Initial Lenders”) for all reasonable and documented out-of-pocket costs and expenses incurred by it or any of their Related Persons (including the reasonable fees and out-of-pocket expenses of one primary counsel for Agent and each Initial Lender and of appropriate local (including, for the avoidance of doubt, foreign) counsel for Agent and each Initial Lender in applicable local (including, for the avoidance of doubt, foreign) jurisdictions, but limited to one local (including, for the avoidance of doubt, foreign) counsel for each such Person in each such jurisdiction), in connection with the diligence, syndication (limited to the costs associated with the establishment and maintenance of a data site such as Syndtrak or Intralinks), preparation, negotiation, execution, interpretation or administration of, any modification of any term of or termination of, any Loan Document, any commitment or proposal letter therefor, any other document prepared in connection therewith (including, without limitation, the Asset Purchase Agreement) or the consummation and administration of any transaction contemplated therein (including, without limitation, the Bankruptcy Sale), the cost of environmental audits, Collateral audits, appraisals and examinations, background checks and similar expenses (subject to any limitations set forth herein) or the engagement and retention of any consultants or advisor and (b) each of Agent, its Related Persons and the Lenders for all documented out-of-pocket expenses incurred in connection with (i) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a “work-out”, (ii) the enforcement or preservation of any right or remedy under any Loan Document, any Obligation, with respect to the Collateral or any other related right or remedy or (iii) the commencement, defense, conduct of, intervention in, or the taking of any other action (including, without limitation, preparation for and/or response to any

subpoena or request for document production relating thereto) with respect to, any proceeding (including any bankruptcy or insolvency proceeding) related to any Credit Party, any Subsidiary of any Credit Party, Loan Document, or Obligation.

## **9.6 Indemnity**

(a) Each Credit Party agrees to indemnify, hold harmless and defend Agent, each Lender and each of their respective Related Persons (each such Person being an “Indemnitee”) from and against all Liabilities that may be imposed on, incurred by or asserted against any such Indemnitee in any matter relating to or arising out of, in connection with or as a result of (i) any Loan Document, any Obligation (or the repayment thereof), the use or intended use of the proceeds of any Loan or any securities filing of, or with respect to, any Credit Party, (ii) any commitment letter, proposal letter or term sheet with any Person or any Contractual Obligation, arrangement or understanding with any broker, finder or consultant, in each case entered into by or on behalf of any Credit Party or any Affiliate of any of them in connection with any of the foregoing and any Contractual Obligation entered into in connection with any E- Systems or other Electronic Transmissions, (iii) any actual or prospective investigation, litigation or other proceeding, whether or not brought by any such Indemnitee or any of its Related Persons, any holders of securities or creditors, whether or not any such Indemnitee, Related Person, holder or creditor is a party thereto, and whether or not based on any securities or commercial law or regulation or any other Requirement of Law or theory thereof, including common law, equity, contract, tort or otherwise or (iv) any other act, event or transaction related, contemplated in or attendant to any of the foregoing (provided that in the absence of conflicts, reimbursement of legal fees and expenses shall be limited to the reasonable legal fees and expenses of one counsel to Indemnitees taken as a whole (which shall be designated by Agent) and of one local (including, for the avoidance of doubt, foreign) counsel to the Indemnitees taken as a whole (which shall be designated by Agent) in any relevant jurisdiction) (collectively, the “Indemnified Matters”); provided, however, that no Credit Party shall have any liability under this Section 9.6 to any Indemnitee with respect to (x) any Indemnified Matter, and no Indemnitee shall have any liability with respect to any Indemnified Matter other than (to the extent otherwise liable), to the extent such liability has resulted from the gross negligence or willful misconduct of such Indemnitee, as determined by a court of competent jurisdiction in a final non-appealable judgment or order and (y) disputes solely among the Indemnitees other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent or any similar role under the Loan Documents and other than any claims arising out of any act or omission of the Credit Parties or their Subsidiaries. Furthermore, each Borrower and each other Credit Party executing this Agreement waives and agrees not to assert against any Indemnitee, and shall cause each other Credit Party to waive and not assert against any Indemnitee, any right of contribution with respect to any Liabilities that may be imposed on, incurred by or asserted against any Related Person.

(b) Without limiting the foregoing, “Indemnified Matters” includes all Environmental Liabilities, including those arising from, or otherwise involving, any Property of any Credit Party or any Related Person of any Credit Party or any actual, alleged or prospective damage to Property or natural resources or harm or injury alleged to have resulted from any Release of Hazardous Materials on, upon or into such Property or natural resource or any Property on or contiguous to any Real Estate of any Credit Party or any Related Person of any Credit Party, whether or not, with respect to any such Environmental Liabilities, any Indemnitee is a mortgagee pursuant to any leasehold mortgage, a mortgagee in possession, the successor- in- interest to any Credit Party or any Related Person of any Credit Party or the owner, lessee or operator of any Property of any Related Person through any foreclosure action, in each case except to the extent such Environmental Liabilities (i) resulting from the gross negligence or willful misconduct of any Indemnitee, as determined by a court of competent jurisdiction in a final non- appealable judgment or order, or (ii)(A) are incurred solely following foreclosure by Agent or following Agent or any Lender having become the successor- in- interest to any Credit Party or any Related Person of any Credit Party and (B) are attributable solely to acts of such Indemnitee.

#### **9.7 Marshaling; Payments Set Aside**

. Except as specifically set forth in the Final Order, no Secured Party shall be under any obligation to marshal any Property in favor of any Credit Party or any other Person or against or in payment of any Obligation. To the extent that any Secured Party receives a payment from a Borrower, from any other Credit Party, from the proceeds of the Collateral, from the exercise of its rights of setoff, any enforcement action or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

#### **9.8 Successors and Assigns**

. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided that any assignment by any Lender shall be subject to the provisions of Section 9.9, and provided further that no Borrower may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Agent and each Lender.

#### **9.9 Assignments and Participations; Binding Effect**

(a) Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrowers, the other Credit Parties signatory hereto and Agent and when Agent shall have been notified by each Lender that such Lender has executed it. Thereafter, it shall be binding upon and inure to the benefit of, but only to the benefit of, the Borrowers, the other Credit Parties hereto (in each case except for Article VIII),

Agent and each Lender receiving the benefits of the Loan Documents and, to the extent provided in Section 8.11, each other Secured Party and, in each case, their respective successors and permitted assigns. Except as expressly provided in any Loan Document (including in Section 8.9), none of any Borrower, any other Credit Party or Agent shall have the right to assign any rights or obligations hereunder or any interest herein.

(b) Right to Assign. Each Lender may sell, transfer, negotiate or assign (a “Sale”) all or a portion of its rights and obligations hereunder (including all or a portion of its Revolving Loan Commitments and its rights and obligations with respect to Loans and Letters of Credit) to (i) any existing Lender (other than a Non-Funding Lender or Impacted Lender), (ii) any Affiliate or Approved Fund of any existing Lender (other than a Non-Funding Lender or Impacted Lender), (iii) any Grandfathered Lender or (iv) any other Person acceptable (which acceptance shall not be unreasonably withheld or delayed) to the Required Lenders and, so long as no Event of Default has occurred or is continuing, the Borrower Representative (not to be unreasonably withheld or delayed); provided, however, that (x) such Sales must be ratable among the obligations owing to and owed by such Lender with respect to the Revolving Loans, (y) for each Revolving Loan, the aggregate outstanding principal amount (determined as of the effective date of the applicable Assignment) of the Revolving Loans, Revolving Loan Commitments subject to any such Sale shall be in a minimum amount of \$1,000,000 and increments of \$1,000,000 in excess thereof, unless such Sale is made to an existing Lender or an Affiliate or Approved Fund of any existing Lender, is of the assignor’s (together with its Affiliates and Approved Funds) entire interest in such facility or is made with the prior consent of the Required Lenders and, so long as no Event of Default has occurred or is continuing, the Borrower Representative (not to be unreasonably withheld or delayed), and (z) such Sales by Lenders who are Non-Funding Lenders due to clause (a) of the definition of Non-Funding Lender shall be subject to the Required Lenders’ prior written consent in all instances, unless in connection with such Sale, such Non-Funding Lender cures, or causes the cure of, its Non-Funding Lender status as contemplated in Section 1.11(e)(v). Notwithstanding any of the foregoing, KPS shall not consummate any Sale of the Loans prior to the entry of the Final Order, except for Sales to Affiliates and Approved Funds of KPS (it being understood and agreed that such Sales shall not require the consent of any party).

(c) Procedure. The parties to each Sale made in reliance on clause (b) above (other than those described in clause (e) or (f) below) shall execute and deliver to Agent an Assignment via an electronic settlement system designated by Agent (or, if previously agreed with Agent, via a manual execution and delivery of the Assignment) evidencing such Sale, together with any existing Note subject to such Sale (or any affidavit of loss therefor acceptable to Agent), any tax forms required to be delivered pursuant to Section 10.1 and payment of an assignment fee in the amount of \$3,500 to Agent, unless waived or reduced by Agent; provided, that (i) if a Sale by a Lender is made to an Affiliate or an Approved Fund of such assigning Lender, then no assignment fee shall be due in connection with such Sale, and (ii) if a Sale by a Lender is made to an assignee that is not an Affiliate or Approved Fund of such assignor Lender, and concurrently to one or more Affiliates or Approved Funds of such Assignee, then only one assignment fee of \$3,500 shall be due in connection with such Sale (unless waived or reduced by Agent). Upon

receipt of all the foregoing, and conditioned upon such receipt and, if such Assignment is made in accordance with clause (iii) of Section 9.9(b), upon the Required Lenders consenting to such Assignment, from and after the effective date specified in such Assignment, Agent shall record or cause to be recorded in the Register the information contained in such Assignment.

(d) Effectiveness. Subject to the recording of an Assignment by Agent in the Register pursuant to Section 1.4(b), (i) the assignee thereunder shall become a party hereto and, to the extent that rights and obligations under the Loan Documents have been assigned to such assignee pursuant to such Assignment, shall have the rights and obligations of a Lender, (ii) any applicable Note shall be transferred to such assignee through such entry and (iii) the assignor thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Assignment, relinquish its rights (except for those surviving the termination of the Aggregate Revolving Loan Commitments and the payment in full of the Obligations) and be released from its obligations under the Loan Documents, other than those relating to events or circumstances occurring prior to such assignment (and, in the case of an Assignment covering all or the remaining portion of an assigning Lender's rights and obligations under the Loan Documents, such Lender shall cease to be a party hereto).

(e) Grant of Security Interests. In addition to the other rights provided in this Section 9.9, each Lender may grant a security interest in, or otherwise assign as collateral, any of its rights under this Agreement, whether now owned or hereafter acquired (including rights to payments of principal or interest on the Loans), to (A) any federal reserve bank (pursuant to Regulation A of the Federal Reserve Board), without notice to Agent or (B) any holder of, or trustee for the benefit of the holders of, such Lender's Indebtedness or equity securities, by notice to Agent; provided, however, that no such holder or trustee, whether because of such grant or assignment or any foreclosure thereon (unless such foreclosure is made through an assignment in accordance with clause (b) above), shall be entitled to any rights of such Lender hereunder and no such Lender shall be relieved of any of its obligations hereunder.

(f) Participants and SPYs. In addition to the other rights provided in this Section 9.9, each Revolving Lender may, (x) with notice to Agent, grant to an SPY the option to make all or any part of any Revolving Loan that such Revolving Lender would otherwise be required to make hereunder (and the exercise of such option by such SPY and the making of Revolving Loans pursuant thereto shall satisfy the obligation of such Revolving Lender to make such Revolving Loans hereunder) and such SPY may assign to such Revolving Lender the right to receive payment with respect to any Obligation and (y) without notice to or consent from Agent or the Borrowers, sell participations to one or more Persons in or to all or a portion of its rights and obligations under the Loan Documents (including all its rights and obligations with respect to the Revolving Loans); provided, however, that, whether as a result of any term of any Loan Document or of such grant or participation, (i) no such SPY or participant shall have a commitment, or be deemed to have made an offer to commit, to make Loans hereunder, and, except as provided in the applicable option agreement, none shall be liable for any obligation of such Revolving Lender hereunder, (ii) such Revolving Lender's rights and obligations,



and the rights and obligations of the Credit Parties and the Secured Parties towards such Revolving Lender, under any Loan Document shall remain unchanged and each other party hereto shall continue to deal solely with such Revolving Lender, which shall remain the holder of the Obligations in the Register, except that (A) each such participant and SPY shall be entitled to the benefit of Article X, but, with respect to Section 10.1, only to the extent such participant or SPY delivers the tax forms such Revolving Lender is required to collect pursuant to Section 10.1(f) and then only to the extent of any amount to which such Revolving Lender would be entitled in the absence of any such grant or participation and (B) each such SPY may receive other payments that would otherwise be made to such Revolving Lender with respect to Revolving Loans funded by such SPY to the extent provided in the applicable option agreement and set forth in a notice provided to Agent by such SPY and such Revolving Lender, provided, however, that in no case (including pursuant to clause (A) or (B) above) shall an SPY or participant have the right to enforce any of the terms of any Loan Document, and (iii) the consent of such SPY or participant shall not be required (either directly, as a restraint on such Lender's ability to consent hereunder or otherwise) for any amendments, waivers or consents with respect to any Loan Document or to exercise or refrain from exercising any powers or rights such Revolving Lender may have under or in respect of the Loan Documents (including the right to enforce or direct enforcement of the Obligations), except for those described in clauses (ii) and (iii) of Section 9.1(a) with respect to amounts, or dates fixed for payment of amounts, to which such participant or SPY would otherwise be entitled and, in the case of participants, except for those described in clause (vi) of Section 9.1(a). No party hereto shall institute (and each Borrower shall cause each other Credit Party not to institute) against any SPY grantee of an option pursuant to this clause (f) any bankruptcy, reorganization, insolvency, liquidation or similar proceeding, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper of such SPY; provided, however, that each Revolving Lender having designated an SPY as such agrees to indemnify each Indemnitee against any Liability that may be incurred by, or asserted against, such Indemnitee as a result of failing to institute such proceeding (including a failure to be reimbursed by such SPY for any such Liability). The agreement in the preceding sentence shall survive the termination of the Aggregate Revolving Loan Commitments and the payment in full of the Obligations.

#### **9.10 Non- Public Information; Confidentiality**

(a) Non- Public Information. Each of Agent and each Lender acknowledges and agrees that it may receive material non- public information (“MNPI”) hereunder concerning the Credit Parties and their Affiliates and agrees to use such information in compliance with all relevant policies, procedures and applicable Requirements of Laws (including United States federal and state security laws and regulations).

(b) Confidential Information. Each of Agent, each Lender and Agent agrees to use all reasonable efforts to maintain, in accordance with its customary practices, the confidentiality of information obtained by it pursuant to any Loan Document, except that such information may be disclosed (i) with the Borrower Representative's consent, (ii) to

Related Persons of such Lender or Agent, as the case may be, that are advised of the confidential nature of such information and are instructed to keep such information confidential in accordance with the terms hereof, (iii) to the extent such information presently is or hereafter becomes (A) publicly available other than as a result of a breach of this Section 9.10 or (B) available to such Lender or Agent or any of their Related Persons, as the case may be, from a source (other than any Credit Party) not known by them to be subject to disclosure restrictions, (iv) to the extent disclosure is required by applicable Requirements of Law or other legal process or requested or demanded by any Governmental Authority, (v) to the extent necessary or customary for inclusion in league table measurements, (vi) (A) to the National Association of Insurance Commissioners or any similar organization, any examiner or any nationally recognized rating agency or (B) otherwise to the extent consisting of general portfolio information that does not identify Credit Parties, (vii) to current or prospective assignees, SPYs (including the investors or prospective investors therein) or participants, direct or contractual counterparties to any Secured Rate Contracts and to their respective Related Persons, in each case to the extent such assignees, investors, participants, counterparties or Related Persons agree to be bound by provisions substantially similar to the provisions of this Section 9.10 (and such Person may disclose information to their respective Related Persons in accordance with clause (ii) above), (viii) to any other party hereto, and (ix) in connection with the exercise or enforcement of any right or remedy under any Loan Document, in connection with any litigation or other proceeding to which such Lender or Agent or any of their Related Persons is a party or bound, or to the extent necessary to respond to public statements or disclosures by Credit Parties or their Related Persons referring to a Lender or Agent or any of their Related Persons. In the event of any conflict between the terms of this Section 9.10 and those of any other Contractual Obligation entered into with any Credit Party (whether or not a Loan Document), the terms of this Section 9.10 shall govern.

(c) Tombstones. Each Credit Party consents to the publication by Agent or any Lender of any press releases, tombstones, advertising or other promotional materials (including, without limitation, via any Electronic Transmission) relating to the financing transactions contemplated by this Agreement using such Credit Party's name, product photographs, logo or trademark. Agent or such Lender shall provide a draft of any such press release, advertising or other material to Borrower Representative for review and comment reasonably prior to the publication thereof.

(d) Press Release and Related Matters. No Credit Party shall, and no Credit Party shall permit any of its Affiliates to, issue any press release or other public disclosure (other than any document filed with any Governmental Authority relating to a public offering of securities of any Credit Party) using the name, logo or otherwise referring to KPS or of any of its Affiliates, the Loan Documents or any transaction contemplated herein or therein to which KPS or any of its Affiliates is party without the prior written consent of KPS or such Affiliate except to the extent required to do so under applicable Requirements of Law and then, only after consulting with KPS.

(e) Distribution of Materials to Lenders. The Credit Parties acknowledge and agree that the Loan Documents and all reports, notices, communications and other information or materials provided or delivered by, or on behalf of, the Credit Parties

hereunder (collectively, the “Borrower Materials”) may be disseminated by, or on behalf of, Agent, and made available, to the Lenders by posting such Borrower Materials on an E- System. The Credit Parties authorize Agent to download copies of their logos from its website and post copies thereof on an E- System.

(f) Material Non- Public Information. The Credit Parties hereby agree that if either they, any parent company or any Subsidiary of the Credit Parties has publicly traded equity or debt securities in the U.S., they shall (and shall cause such parent company or Subsidiary, as the case may be, to) (i) identify in writing, and (ii) to the extent reasonably practicable, clearly and conspicuously mark such Borrower Materials that contain only information that is publicly available or that is not material for purposes of U.S. federal and state securities laws as “PUBLIC”. The Credit Parties agree that by identifying such Borrower Materials as “PUBLIC” or publicly filing such Borrower Materials with the Securities and Exchange Commission, then Agent and the Lenders shall be entitled to treat such Borrower Materials as not containing any MNPI for purposes of U.S. federal and state securities laws. The Credit Parties further represent, warrant, acknowledge and agree that the following documents and materials shall be deemed to be PUBLIC, whether or not so marked, and do not contain any MNPI: (A) the Loan Documents, including the exhibits attached thereto, and (B) administrative materials of a customary nature prepared by the Credit Parties or Agent (including, Notices of Borrowing or notices posted on or through an E-System). Before distribution of any Borrower Materials, the Credit Parties agree to execute and deliver to Agent a letter authorizing distribution of the evaluation materials to prospective Lenders and their employees willing to receive MNPI, and a separate letter authorizing distribution of evaluation materials that do not contain MNPI and represent that no MNPI is contained therein.

#### **9.11 Set- off; Sharing of Payments**

(a) Right of Setoff. Each of Agent, each Lender and each Affiliate (including each branch office thereof) of any of them is hereby authorized, without notice or demand (each of which is hereby waived by each Credit Party), at any time and from time to time during the continuance of any Event of Default and to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (whether general or special, time or demand, provisional or final) at any time held and other Indebtedness, claims or other obligations at any time owing by Agent, such Lender or any of their respective Affiliates to or for the credit or the account of the Borrowers or any other Credit Party against any Obligation of any Credit Party now or hereafter existing, whether or not any demand was made under any Loan Document with respect to such Obligation and even though such Obligation may be unmatured. No Lender shall exercise any such right of setoff without the prior consent of the Required Lenders. Each of Agent, each Lender agrees promptly to notify the Borrower Representative and Agent after any such setoff and application made by such Lender or its Affiliates; provided, however, that the failure to give such notice shall not affect the validity of such setoff and application. The rights under this Section 9.11 are in addition to any other rights and



remedies (including other rights of setoff) that Agent, the Lenders, their Affiliates and the other Secured Parties, may have.

(b) **Sharing of Payments, Etc.** If any Lender, directly or through an Affiliate or branch office thereof, obtains any payment of any Obligation of any Credit Party (whether voluntary, involuntary or through the exercise of any right of setoff or the receipt of any Collateral or “proceeds” (as defined under the applicable UCC) of Collateral) other than pursuant to Section 9.9 or Article X and such payment exceeds the amount such Lender would have been entitled to receive if all payments had gone to, and been distributed by, Agent in accordance with the provisions of the Loan Documents, such Lender shall purchase for cash from other Lenders such participations in their Obligations as necessary for such Lender to share such excess payment with such Lenders to ensure such payment is applied as though it had been received by Agent and applied in accordance with this Agreement (or, if such application would then be at the discretion of the Borrowers, applied to repay the Obligations in accordance herewith); provided, however, that (i) if such payment is rescinded or otherwise recovered from such Lender in whole or in part, such purchase shall be rescinded and the purchase price therefor shall be returned to such Lender without interest and (ii) such Lender shall, to the fullest extent permitted by applicable Requirements of Law, be able to exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of the applicable Credit Party in the amount of such participation. If a Non-Funding Lender receives any such payment as described in the previous sentence, such Lender shall turn over such payments to Agent in an amount that would satisfy the cash collateral requirements set forth in Section 1.11(e).

#### **9.12 Counterparts; Facsimile Signature**

. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or Electronic Transmission shall be as effective as delivery of a manually executed counterpart hereof.

#### **9.13 Severability**

. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

#### **9.14 Captions**

.The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

#### **9.15 Independence of Provisions**

. The parties hereto acknowledge that this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, and that such limitations, tests and measurements are cumulative and must each be performed, except as expressly stated to the contrary in this Agreement.

#### **9.16 Interpretation**

. This Agreement is the result of negotiations among and has been reviewed by counsel to Credit Parties, Agent, each Lender and other parties hereto, and is the product of all parties hereto. Accordingly, this Agreement and the other Loan Documents shall not be construed against the Lenders or Agent merely because of Agent's or Lenders' involvement in the preparation of such documents and agreements. Without limiting the generality of the foregoing, each of the parties hereto has had the advice of counsel with respect to Sections 9.18 and 9.19.

#### **9.17 No Third Parties Benefited**

. This Agreement is made and entered into for the sole protection and legal benefit of the Borrowers, the Lenders, Agent and, subject to the provisions of Section 8.11, each other Secured Party, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. Neither Agent nor any Lender shall have any obligation to any Person not a party to this Agreement or the other Loan Documents.

#### **9.18 Governing Law and Jurisdiction**

(a) Governing Law. The laws of the State of New York shall govern all matters arising out of, in connection with or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance and enforcement (including, without limitation, any claims sounding in contract or tort law arising out of the subject matter hereof and any determinations with respect to post-judgment interest).

(b) Submission to Jurisdiction. Any legal action or proceeding with respect to any Loan Document shall be brought exclusively in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States of America for the Southern District of New York and, by execution and delivery of this Agreement, each party hereto executing this Agreement hereby accepts for itself and in respect of its Property, generally and unconditionally, the jurisdiction of the aforesaid courts: provided that nothing in this Agreement shall limit the right of Agent to commence any proceeding in the federal or state courts of any other jurisdiction to the extent Agent determines that such action is necessary or appropriate to exercise its rights or remedies under the Loan Documents. The parties hereto (and, to the extent set forth in any other Loan Document, each other Credit Party) hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions. Notwithstanding any other provision of this Section 9.18, the Bankruptcy Court shall have exclusive jurisdiction over any action

or dispute involving, relating to or arising out of this agreement or the other Loan Documents.

(c) Service of Process. Each party hereto hereby irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States of America with respect to or otherwise arising out of or in connection with any Loan Document by any means permitted by applicable Requirements of Law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of the Borrowers specified herein (and shall be effective when such mailing shall be effective, as provided therein). Each party hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(d) Non- Exclusive Jurisdiction. Nothing contained in this Section 9.18 shall affect the right of Agent or any Lender to serve process in any other manner permitted by applicable Requirements of Law or commence legal proceedings or otherwise proceed against any Credit Party in any other jurisdiction.

#### **9.19 Waiver of Jury Trial**

. THE PARTIES HERETO, TO THE EXTENT PERMITTED BY LAW, WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ANY OTHER TRANSACTION CONTEMPLATED HEREBY AND THEREBY. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE.

#### **9.20 Entire Agreement: Release: Survival**

(a) THE LOAN DOCUMENTS EMBODY THE ENTIRE AGREEMENT OF THE PARTIES AND SUPERSEDE ALL PRIOR AGREEMENTS AND UNDERSTANDINGS RELATING TO THE SUBJECT MATTER THEREOF AND ANY PRIOR LETTER OF INTEREST, COMMITMENT LETTER, CONFIDENTIALITY AND SIMILAR AGREEMENTS INVOLVING ANY CREDIT PARTY AND ANY LENDER OR ANY OF THEIR RESPECTIVE AFFILIATES RELATING TO A FINANCING OF SUBSTANTIALLY SIMILAR FORM, PURPOSE OR EFFECT OTHER THAN THE AGENT FEE LETTER AND THE AGENT PROPOSAL LETTER. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS AGREEMENT AND ANY OTHER LOAN DOCUMENT, THE TERMS OF THIS AGREEMENT SHALL GOVERN (UNLESS OTHERWISE EXPRESSLY STATED IN SUCH OTHER LOAN DOCUMENT OR SUCH TERMS OF SUCH OTHER LOAN DOCUMENTS ARE NECESSARY TO COMPLY WITH APPLICABLE REQUIREMENTS OF LAW, IN WHICH CASE SUCH TERMS SHALL GOVERN TO THE EXTENT NECESSARY TO COMPLY THEREWITH).

(b) Execution of this Agreement by the Credit Parties constitutes a full, complete and irrevocable release of any and all claims which each Credit Party may have at law or in equity in respect of all prior discussions and understandings, oral or written, relating to the subject matter of this Agreement and the other Loan Documents. In no event shall any Indemnitee or any Credit Party be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings). Each of each Credit Party, Agent and each Lender hereby waives, releases and agrees not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(c) (i) Any indemnification or other protection provided to any Indemnitee pursuant to this Section 9.20, Sections 9.5 (Costs and Expenses) and 9.6 (Indemnity) and Article VIII (Agent) and Article X (Taxes, Yield Protection and Illegality) and (ii) the provisions of Section 8.1 of the Guaranty and Security Agreement, in each case, shall (x) survive the termination of the Aggregate Revolving Loan Commitments and the payment in full of all other Obligations and (y) with respect to clause (i) above, inure to the benefit of any Person that at any time held a right thereunder (as an Indemnitee or otherwise) and, thereafter, its successors and permitted assigns.

#### **9.21 Patriot Act**

. Each Lender that is subject to the Patriot Act hereby notifies the Credit Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender to identify each Credit Party in accordance with the Patriot Act.

#### **9.22 Replacement of Lender**

. Within forty-five days after: (i) receipt by the Borrower Representative of written notice and demand from any Lender that is not Agent or an Affiliate of Agent (an “Affected Lender”) for payment of additional costs as provided in Sections 10.1 and/or 10.3 (in amounts in excess of additional costs demanded to be paid by other Lenders with respect to the same matters); (ii) any failure by any Lender (other than Agent or an Affiliate of Agent) to consent to a requested amendment, waiver or modification to any Loan Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender (or each Lender directly affected thereby, as applicable) is required with respect thereto; or (iii) the date any Lender becomes a Non- Funding Lender, the Borrowers may, at their option, notify Agent and such Affected Lender (or such non- consenting Lender or Non- Funding Lender) of the Borrowers’ intention to obtain, at the Borrowers’ expense, a replacement Lender (“Replacement Lender”) for such Affected Lender (or such non- consenting Lender or Non- Funding Lender), which Replacement Lender shall be reasonably satisfactory to Agent. In the event the Borrowers obtain a Replacement Lender within forty- five (45) days following notice of its intention to do so, the Affected Lender (or such non- consenting Lender or Non- Funding Lender) shall sell and assign its Loans and Revolving Loan Commitments to such Replacement Lender, at par, provided that the Borrowers have reimbursed such Affected Lender for its

increased costs for which it is entitled to reimbursement under this Agreement through the date of such sale and assignment. In the event that a replaced Lender does not execute an Assignment pursuant to Section 9.9 within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 9.22 and presentation to such replaced Lender of an Assignment evidencing an assignment pursuant to this Section 9.22, the Borrowers shall be entitled (but not obligated) to execute such an Assignment on behalf of such replaced Lender, and any such Assignment so executed by the Borrowers, the Replacement Lender and Agent, shall be effective for purposes of this Section 9.22 and Section 9.9. Notwithstanding the foregoing, with respect to a Lender that is a Non- Funding Lender or an Impacted Lender, Agent may, but shall not be obligated to, obtain a Replacement Lender and execute an Assignment on behalf of such Non- Funding Lender or Impacted Lender at any time with three (3) Business Days' prior notice to such Lender (unless notice is not practicable under the circumstances) and cause such Lender's Loans and Revolving Loan Commitments to be sold and assigned, in whole or in part, at par. Upon any such assignment and payment and compliance with the other provisions of Section 9.9, such replaced Lender shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such replaced Lender to indemnification hereunder shall survive.

### **9.23 Joint and Several**

. Each Borrower is part of a group of affiliated Persons, and each Borrower expects to receive substantial direct and indirect benefits from the extension of the credit facility established pursuant to this Agreement. In consideration of the foregoing, each Borrower hereby irrevocably and unconditionally agrees that it is jointly and severally liable for all of the liabilities, obligations, covenants and agreements of the Borrowers hereunder and under the other Loan Documents, whether now or hereafter existing or due or to become due. The obligations of the Borrowers under the Loan Documents may be enforced by Agent and the Lenders against any Borrower or all Borrowers in any manner or order selected by Agent or the Required Lenders in their sole discretion. Each Borrower hereby irrevocably waives (i) any rights of subrogation and (ii) any rights of contribution, indemnity or reimbursement, in each case, that it may acquire or that may arise against any other Borrower due to any payment or performance made under this Agreement, in each case until all Obligations shall have been fully satisfied. Without limiting the foregoing provisions of this Section 9.23, each Borrower acknowledges and agrees that:

(a) its obligations under this Agreement shall remain enforceable against it even though such obligations may be unenforceable or not allowable against any other Borrower due to the existence of an insolvency proceeding involving any other Borrower;

(b) its obligations under this Agreement are independent of the obligations of any other Borrower, and a separate action or actions may be brought and prosecuted against it in respect of such obligations irrespective of whether any action is brought against any other Borrower or any other Borrower is joined in any such action or actions;

(c) it hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of the following:

(i) any lack of validity or enforceability of this Agreement, any other Loan Document or any agreement or instrument relating hereto or thereto in respect of any other Borrower;

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of any other Borrower under or in respect of this Agreement, the other Loan Documents, or any other amendment or waiver of or any consent to departure from this Agreement or any other Loan Document, in respect of any other Borrower;

(iii) any change, restructuring or termination of the structure or existence of any other Borrower;

(iv) the failure of any other Person to execute or deliver any other agreement or the release or reduction of liability of any other Person with respect to any obligations of the Borrowers under this Agreement or any other Loan Document;

(v) any other circumstance (including any statute of limitations but other than the Obligations having been fully satisfied) or any existence of or reliance on any representation by any other Person that might otherwise constitute a defense available to, or a discharge of, any other Borrower; or

(vi) the application of any Loan proceeds to, or the extension of any other credit for the benefit of, any other Borrower, any other Credit Party, or any of their Subsidiaries;

(d) its obligations under this Agreement and the other Loan Documents shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any such obligations is rescinded or must otherwise be returned by any Person upon the insolvency, bankruptcy or reorganization of any other Borrower, all as though such payment had not been made; and

(e) it hereby unconditionally and irrevocably waives any right to revoke its joint and several liability under the Loan Documents and acknowledges that such liability is continuing in nature and applies to all obligations of the Borrowers under the Loan Documents, whether existing now or in the future.

Without limiting the generality of the foregoing, reference is hereby made to Article II of the Guaranty and Security Agreement, to which the obligations of Borrower and the other Credit Parties are subject.

#### **9.24 Creditor-Debtor Relationship**

. The relationship between Agent and each Lender, on the one hand, and the Credit Parties, on the other hand, is solely that of creditor and debtor. No Secured Party has any fiduciary relationship or duty to any Credit Party arising out of or in connection with, and there is



no agency, tenancy or joint venture relationship between the Secured Parties and the Credit Parties by virtue of, any Loan Document or any transaction contemplated therein.

### **9.25 Actions in Concert**

. Notwithstanding anything contained herein to the contrary, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights against any Credit Party arising out of this Agreement or any other Loan Document (including exercising any rights of setoff) without first obtaining the prior written consent of Agent or Required Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and the other Loan Documents shall be taken in concert and at the direction or with the consent of Agent or Required Lenders.

## **ARTICLE X TAXES, YIELD PROTECTION AND ILLEGALITY**

### **10.1 Taxes**

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(a) Except as otherwise provided in this Section 10.1, each payment by any Credit Party under any Loan Document shall be made free and clear of all present or future taxes, levies, imposts, deductions, charges or withholdings imposed by any Governmental Authority and all interest, penalties and additions to tax with respect thereto (and without deduction for any of them) (collectively, but excluding Excluded Taxes, the "Taxes").

(b) If any Taxes shall be required by any Requirement of Law to be deducted from or in respect of any amount payable under any Loan Document to any Secured Party (i) such amount shall be increased as necessary to ensure that, after all required deductions for Taxes are made (including deductions applicable to any increases to any amount under this Section 10.1), such Secured Party receives the amount it would have received had no such deductions been made, (ii) the relevant Credit Party shall make such deductions, (iii) the relevant Credit Party shall timely pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable Requirements of Law and (iv) within thirty (30) days after such payment is made, the relevant Credit Party shall deliver to Agent an original or certified copy of a receipt evidencing such payment or other evidence of payment reasonably satisfactory to Agent.

(c) In addition, the Borrowers agree to pay, and authorize Agent to pay in their name, any stamp, documentary, excise or property tax, charges or similar levies, or any privilege tax or other tax, charges or similar levies on the amount of indebtedness (including, but not limited to, The Finance Company Privilege Tax Law, Miss. Code Ann. § 27-21-1 to -19, in Section 27-21-3), in each case, imposed by any applicable Requirement of Law or Governmental Authority and all interest, penalties and additions to tax with respect thereto, in each case arising from the execution, delivery or registration of, or otherwise with respect to, any Loan Document or any transaction contemplated therein (collectively, "Other Taxes"). Within thirty (30) days after the date

of any payment of Other Taxes by any Credit Party, the Borrowers shall furnish to Agent, at its address referred to in Section 9.2, the original or a certified copy of a receipt evidencing payment thereof or other evidence of payment reasonably satisfactory to Agent.

(d) The Borrowers shall reimburse and indemnify, within 30 days after receipt of demand therefor (with copy to Agent), each Secured Party for all Taxes and Other Taxes (including any Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this Section 10.1) paid by such Secured Party, whether or not such Taxes or Other Taxes were correctly or legally asserted. A certificate of the Secured Party (or of Agent on behalf of such Secured Party) claiming any compensation under this clause (d), setting forth the amounts to be paid thereunder and delivered to the Borrower Representative with copy to Agent, shall be conclusive, binding and final for all purposes, absent manifest error. In determining such amount, Agent and such Secured Party may use any reasonable averaging and attribution methods.

(e) Any Lender claiming any additional amounts payable pursuant to this Section 10.1 shall use its commercially reasonable efforts (consistent with its internal policies and Requirements of Law) to change the jurisdiction of its Lending Office if such a change would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, be otherwise disadvantageous to such Lender.

(f) (i) Each Non-U.S. Lender Party that, at any of the following times, is entitled to an exemption from United States withholding tax or is subject to such withholding tax at a reduced rate under an applicable tax treaty, shall (w) on or prior to the date such Non- U.S. Lender Party becomes a “Non-U.S. Lender Party” hereunder, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (i) and (z) from time to time if requested by the Borrower Representative or Agent (or, in the case of a participant or SPY, the relevant Lender), provide Agent and the Borrower Representative (or, in the case of a participant or SPY, the relevant Lender) with two completed originals of each of the following, as applicable: (A) Forms W-8ECI (claiming exemption from U.S. withholding tax because the income is effectively connected with a U.S. trade or business), W-8BEN (claiming exemption from, or a reduction of, U.S. withholding tax under an income tax treaty) and/or W-8IMY (together with appropriate forms, certifications and supporting statements) or any successor forms, (B) in the case of a Non-U.S. Lender Party claiming exemption under Sections 871(h) or 881(c) of the Code, Form W-8BEN (claiming exemption from U.S. withholding tax under the portfolio interest exemption) or any successor form and a certificate in form and substance acceptable to Agent that such Non- U.S. Lender Party is not (1) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (2) a “10 percent shareholder” of the Borrowers within the meaning of Section 881(c)(3)(B) of the Code or (3) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code or (C) any other applicable document prescribed by the IRS certifying as to the entitlement of such Non-U.S. Lender Party to such exemption from United States withholding tax or reduced rate



with respect to all payments to be made to such Non-U.S. Lender Party under the Loan Documents. Unless the Borrower Representative and Agent have received forms or other documents satisfactory to them indicating that payments under any Loan Document to or for a Non-U.S. Lender Party are not subject to United States withholding tax or are subject to such tax at a rate reduced by an applicable tax treaty, the Credit Parties and Agent shall withhold amounts required to be withheld by applicable Requirements of Law from such payments at the applicable statutory rate.

(i) Each U.S. Lender Party shall (A) on or prior to the date such U.S. Lender Party becomes a “U.S. Lender Party” hereunder, (B) on or prior to the date on which any such form or certification expires or becomes obsolete, (C) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (f) and (D) from time to time if requested by the Borrower Representative or Agent (or, in the case of a participant or SPY, the Revolving Lender), provide Agent and the Borrower Representative (or, in the case of a participant or SPY, the Revolving Lender) with two completed originals of Form W-9 (certifying that such U.S. Lender Party is entitled to an exemption from U.S. backup withholding tax) or any successor form.

(ii) Each Lender having sold a participation in any of its Obligations or identified an SPY as such to Agent shall collect from such participant or SPY the documents described in this clause (f) and provide them to Agent.

(iii) If a payment made to a Non-U.S. Lender Party would be subject to United States federal withholding tax imposed by FATCA if such Non-U.S. Lender Party fails to comply with the applicable reporting requirements of FATCA, such Non- U.S. Lender Party shall deliver to Agent and Borrower Representative any documentation under any Requirement of Law or reasonably requested by Agent or Borrower Representative sufficient for Agent or Borrowers to comply with their obligations under FATCA and to determine that such Non-U.S. Lender has complied with such applicable reporting requirements.

## **10.2 [Reserved]**

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## **10.3 Increased Costs and Reduction of Return**

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- (a) [Reserved].
- (b) If any Lender shall have determined that:
  - (i) the introduction of any Capital Adequacy Regulation;
  - (ii) any change in any Capital Adequacy Regulation;

(iii) any change in the interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof; or

(iv) compliance by such Lender (or its Lending Office) or any entity controlling the Lender, with any Capital Adequacy Regulation; affects the amount of capital required or expected to be maintained by such Lender or any entity controlling such Lender and (taking into consideration such Lender's or such entities' policies with respect to capital adequacy and such Lender's desired return on capital) determines that the amount of such capital is increased as a consequence of its Revolving Loan Commitment(s), loans, credits or obligations under this Agreement, then, within thirty (30) days of demand of such Lender (with a copy to Agent), the Borrowers shall pay to such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender (or the entity controlling the Lender) for such increase; provided, that the Borrowers shall not be required to compensate any Lender pursuant to this Section 10.3(b) for any amounts incurred more than one-hundred-eighty (180) days prior to the date that such Lender notifies the Borrower Representative, in writing of the amounts and of such Lender's intention to claim compensation thereof; provided, further, that if the event giving rise to such increase is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(c) 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 or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in a Requirement of Law under subsection (a) above and/or a change in a Capital Adequacy Regulation under subsection (b) above, as applicable, regardless of the date enacted, adopted or issued.

**10.4 [Reserved]**

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**10.5 [Reserved]**

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**10.6 [Reserved]**

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**10.7 Certificates of Lenders**

. Any Lender claiming reimbursement or compensation pursuant to this Article X shall deliver to the Borrower Representative (with a copy to Agent) a certificate setting forth in reasonable detail the amount payable to such Lender hereunder and such certificate shall be conclusive and binding on the Borrowers in the absence of manifest error.

## **ARTICLE XI DEFINITIONS**

### **11.1 Defined Terms**

. The following terms have the following meanings:

“A&M” means Alvarez & Marsal North America, LLC.

“Account” means, as at any date of determination, all “accounts” (as such term is defined in the UCC) of the Credit Parties, including, without limitation, the unpaid portion of the obligation of a customer of a Credit Party in respect of Inventory purchased by and shipped to such customer and/or the rendition of services by a Credit Party, as stated on the respective invoice of a Credit Party, net of any credits, rebates or offsets owed to such customer.

“Account Debtor” means the customer of a Credit Party who is obligated on or under an Account.

“Acquisition” means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (b) the acquisition of in excess of fifty percent (50%) of the Stock and Stock Equivalents of any Person or otherwise causing any Person to become a Subsidiary of a Borrower, or (c) a merger or consolidation or any other combination with another Person.

“Affected Lender” has the meaning set forth in Section 9.22.

“Affiliate” means, with respect to any Person, each officer, director, general partner or joint-venturer of such Person and any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person; provided, however, that no Secured Party shall be an Affiliate of any Credit Party or of any Subsidiary of any Credit Party solely by reason of the provisions of the Loan Documents. For purposes of this definition, “control” means the possession of either (a) the power to vote, or the beneficial ownership of, 10% or more of the voting Stock of such Person (either directly or through the ownership of Stock Equivalents) or (b) the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Agent” means Bank of America, N.A. in its capacity as administrative agent for the Lenders hereunder, and any successor administrative agent.

“Agent Fee Letter” means the letter agreement, dated as of the Closing Date, between the Borrower Representative and Agent, as amended, restated, supplemented or otherwise modified from time to time.

“Agent Report” has the meaning set forth in Section 8.5(c).

“Aggregate Excess Funding Amount” has the meaning set forth in Section 1.11(e).

“Aggregate Revolving Exposure” means, at any time, the aggregate Revolving Exposure of all the Lenders at such time.

“Aggregate Revolving Loan Commitments” means the combined Revolving Loan Commitments of the Lenders, which shall be in the amount of \$50,000,000, as such amount may be reduced from time to time pursuant to this Agreement.

“Aggregate Term Loan Commitments” means the combined Term Loan Commitments of the Lenders, which shall be \$90,000,000.

“Aircraft” means the 2003 Hawker 800XP owned by Action Transport, Inc.,

“Applicable Rate” means three percent (3.0%) per annum.

“Approved Fund” means, with respect to any Lender, any Person (other than a natural Person) that (a) (i) 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 Business or (ii) temporarily warehouses loans for any Lender or any Person described in clause (i) above and (b) is advised or managed by (i) such Lender, (ii) any Affiliate of such Lender or (iii) any Person (other than an individual) or any Affiliate of any Person (other than an individual) that administers or manages such Lender.

“Asset Purchase Agreement” means the asset purchase agreement filed on [\_\_\_\_\_], 2013 with respect to the Bankruptcy Sale, in form and substance acceptable to KPS.

“Assignment” means an assignment agreement entered into by a Lender, as assignor, and any Person, as assignee, pursuant to the terms and provisions of Section 9.9 (with the consent of any party whose consent is required by Section 9.9), accepted by Agent, substantially in the form of Exhibit 11.1(a) or any other form approved by Agent.

“Attorney Costs” means and includes all fees and disbursements of any law firm or other external counsel which is required to be reimbursed by any Credit Party pursuant to the terms of this Agreement or any other Loan Document.

“Avoidance Actions” means any avoidance actions or causes of action under chapter 5 of the Bankruptcy Code.

“Bankruptcy Code” means the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, et seq.), as amended.

“Bankruptcy Court” has the meaning set forth in the recitals to this Agreement.

“Bankruptcy Sale” means a sale pursuant to Section 363 of the Bankruptcy Code of all of the assets and other rights of the Company and its Subsidiaries to the Stalking Horse Purchaser

on the terms set forth in the Asset Purchase Agreement or such other terms acceptable to the Required Lenders.

“Bankruptcy Sale Motion” means a motion, in form and substance acceptable to the Required Lenders, seeking entry of the Bidding Procedures Order and the Bankruptcy Sale Order.

“Bankruptcy Sale Order” means an order of the Bankruptcy Court, in form and substance acceptable to KPS, approving and authorizing the Bankruptcy Sale.

“Benefit Plan” means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) other than a Multiemployer Plan, to which any Credit Party incurs or otherwise has any obligation or liability, contingent or otherwise.

“Bidding Procedures Order” means an order of the Bankruptcy Court, in form and substance acceptable to the Required Lenders, approving (i) bidding procedures relating to the Bankruptcy Sale and procedures for assuming executory contracts and unexpired leases, (ii) appointing the Stalking Horse Purchaser as the purchaser of the “Purchased Assets” as defined in the Asset Purchase Agreement, (iii) authorizing the Borrowers to enter into the Asset Purchase Agreement, and (iv) approving bid protections for the Stalking Horse Purchaser, in each case on terms acceptable to the Required Lenders and in all respects consistent with those set forth in on Exhibit A to the Asset Purchase Agreement.

“Borrower” and “Borrowers” has the meaning specified in the preamble to this Agreement.

“Borrower Materials” has the meaning specified in Section 9.10(e).

“Borrower Representative” has the meaning specified in Section 1.12.

“Borrowing” means a borrowing hereunder consisting of Loans made by the Lenders to or for the benefit of the Borrowers after the Lenders receive at least one Business Day notice pursuant to Article I.

“Broyhill Transport” means Broyhill Transport, Inc., a North Carolina corporation.

“Budget” means the cash flow forecast attached hereto as Exhibit A, with such adjustments thereto as approved in writing by KPS in its sole discretion.

“Business Day” means any day that is not a Saturday, Sunday or a day on which banks are required or authorized to close in New York City.

“Capital Adequacy Regulation” means any guideline, request or directive of any central bank or other Governmental Authority, or any other law, rule or regulation, whether or not having the force of law, in each case, regarding capital adequacy of any Lender or of any corporation controlling a Lender.

“Capital Expenditures” means, with respect to the Company and its Subsidiaries for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations).

“Capital Lease” means, with respect to any Person, any lease of, or other arrangement conveying the right to use, any Property by such Person as lessee that has been or should be accounted for as a capital lease on a balance sheet of such Person prepared in accordance with GAAP.

“Capital Lease Obligations” means, at any time, with respect to any Capital Lease, any lease entered into as part of any sale leaseback transaction of any Person or any synthetic lease, the amount of all obligations of such Person that is (or that would be, if such synthetic lease or other lease were accounted for as a Capital Lease) capitalized on a balance sheet of such Person prepared in accordance with GAAP.

“Carve-Out” means, collectively: (i) all unpaid fees required to be paid by the debtors to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717; (ii) all reasonable and documented fees and expenses incurred by a trustee under Section 726(b) of the Bankruptcy Code in an amount not to exceed \$50,000; (iii) to the extent allowed at any time, all accrued and unpaid reasonable and documented fees, disbursements, costs, and expenses incurred at any time before or on the first business day following delivery by the Agent or the Required Lenders of a Carve-Out Trigger Notice by any professionals or professional firms retained by the Borrowers or the Committee, whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) after the first business day following delivery by the Agent or the Required Lenders of the Carve-Out Trigger Notice, to the extent allowed at any time, all reasonable and documented unpaid fees, disbursements, costs, and expenses incurred by professionals or professional firms retained by the Borrowers or any Committee in an aggregate amount not to exceed the Post-Carve-Out Trigger Notice Cap.

“Carve-Out Estimate” means the projected amount of Committee expenses and professional fees reasonably and in good faith anticipated by the Debtors to be incurred by the Debtors and the Committee for the immediately succeeding 60-day period, as reasonably agreed by KPS, which amount shall be deposited in an escrow account subject to escrow arrangements satisfactory to KPS and Borrower Representative.

“Carve-Out Trigger Notice” means a written notice delivered by the Agent or the Required Lenders (which delivery may be made by any electronic method of transmission) to the Borrower Representative and its counsel, the United States Trustee, and lead counsel to any Committee, which notice may be delivered following the occurrence and continuance of an Event of Default, and stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

“Cash Equivalents” means

- (a) any readily-marketable securities (i) issued by, or directly, unconditionally and fully guaranteed or insured by the United States federal government or (ii) issued by

any agency of the United States federal government the obligations of which are fully backed by the full faith and credit of the United States federal government,

(b) any readily-marketable direct obligations issued by any other agency of the United States federal government, any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case having a rating of at least “A-1” from S&P or at least “P-1” from Moody’s,

(c) any commercial paper rated at least “A-1” by S&P or “P-1” by Moody’s and issued by any Person organized under the laws of any state of the United States, (d) any Dollar- denominated time deposit, insured certificate of deposit, overnight bank deposit or bankers’ acceptance issued or accepted by (i) any Lender or (ii) any commercial bank that is (A) organized under the laws of the United States, any state thereof or the District of Columbia, (B) “adequately capitalized” (as defined in the regulations of its primary federal banking regulators) and (C) has Tier 1 capital (as defined in such regulations) in excess of \$250,000,000 and (e) shares of any United States money market fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clause (a), (b), (c) or (d) above with maturities as set forth in the proviso below, (ii) has net assets in excess of \$500,000,000 and (iii) has obtained from either S&P or Moody’s the highest rating obtainable for money market funds in the United States; provided, however, that the maturities of all obligations specified in any of clauses (a), (b), (c) or (d) above shall not exceed 365 days.

“Cash Management Order” means an order of the Bankruptcy Court, in form and substance acceptable to KPS, (i) approving and authorizing the Credit Parties to use existing cash management system, (ii) authorizing and directing banks and financial institutions to honor and process checks and transfers, (iii) authorizing continued use of intercompany transactions, (iv) waiving requirements of Section 345(b) of the Bankruptcy Code and (v) authorizing the Credit Parties to use existing bank accounts and existing business forms.

“Cases” has the meaning set forth in the recitals to this Agreement.

“Change in Control” means the occurrence of any of the following: (a) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Subsidiaries, taken as a whole, to any “person” (as that term is used in Section 13(d)(3) of the Securities Exchange Act of 1934); (b) the adoption by the shareholders of Company of a plan relating to the liquidation or dissolution of the Company; (c) the acquisition by any “person” or “group” (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Securities Exchange Act of 1934, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d- 5(b)(1) under the Securities Exchange Act of 1934, or any successor provision), in a single transaction or in a series of related transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d- 3 under the Securities Exchange Act of 1934, or any successor provision) of 25% or more of the total voting power of the voting Stock and Stock Equivalents of the Company then outstanding; (d) the first day on which a majority of the members of the Board of

Directors of the Company are not Continuing Directors; (e) the Company consolidates with, or merges with or into, any Person, or any Person consolidates with, or merges with or into, the Company, in any such event pursuant to a transaction in which any of the outstanding voting Stock and Stock Equivalents of the Company or such other Person is converted into or exchanged for cash, securities or other property or (f) except pursuant to a transaction permitted under Section 5.3, the Company ceases to own, directly or indirectly, one hundred percent (100%) of the issued and outstanding Stock and Stock Equivalents of each of the other Borrowers, the other Credit Parties or any Subsidiary of any of them, in each case, free and clear of all Liens, rights, options, warrants or other similar agreements or understandings, other than Liens in favor of Agent and Liens in favor of Term Loan Agent, for the benefit of the Secured Parties.

“Closing Date” means the date upon which the conditions set forth in Sections 2.1 and 2.2 have been satisfied or waived by the Required Lenders.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means all Property and interests in Property and proceeds thereof now owned or hereafter acquired by any Credit Party, upon which a Lien in favor of Agent, on behalf of itself, the Lenders and the other Secured Parties, is granted, purported to be granted or otherwise exists, in each case, to secure the Obligations, whether under this Agreement, under any Collateral Document or otherwise. For the avoidance of doubt, “Collateral” shall include all “proceeds” (as such term is defined under the UCC) of Collateral including, without limitation, any equity interests or assets constituting indebtedness received or acquired by any Credit Party in exchange for, or proceeds from the sale of, assets which constituted Collateral prior to such exchange or sale.

“Collateral Documents” means, collectively, the Guaranty and Security Agreement, the IP Security Agreements, the Mortgages, each Control Agreement, and all other security agreements, pledge agreements, patent and trademark security agreements, lease assignments, guaranties and other similar agreements, and all amendments, restatements, modifications or supplements thereof or thereto, by or between any one or more of any Credit Party, and any Lender or Agent for the benefit of Agent, the Lenders and other Secured Parties now or hereafter delivered to the Lenders or Agent pursuant to or in connection with the transactions contemplated hereby, and all financing statements (or comparable documents now or hereafter filed in accordance with the UCC or comparable law) against any such Person as debtor in favor of any Lender or Agent for the benefit of Agent, the Lenders and the other Secured Parties, as secured party, as any of the foregoing may be amended, restated and/or modified from time to time.

“Collection Account” means that certain account of Agent set forth on Schedule C-1, or such other account as may be specified in writing by Agent as the “Collection Account.”

“Commitment Percentage” or “Pro Rata Percentage” means, (a) as to any Revolving Lender, the percentage equivalent of such Revolving Lender’s Revolving Loan Commitment, divided by the Aggregate Revolving Loan Commitments and (b) as to any Term Lender, the percentage equivalent to the outstanding principal amount of the Term Loan held by such Term



Lender, divided by the aggregate principal amount of the Term Loan held by all Term Lenders; provided, that, in the case of clauses (a) and (b), following acceleration of the Loans and the termination of the Revolving Loan Commitments, such term means, as to any Lender, the percentage equivalent of the principal amount of the Loans held by such Lender, divided by the aggregate principal amount of the Loans held by all Lenders.

“Committee” means an official committee of unsecured creditors appointed in the Cases pursuant to section 1102 of the Bankruptcy Code.

“Consolidated” means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable) based upon the consolidation, in accordance with GAAP, of the financial position, cash flows, or operating results of such Person and its Subsidiaries.

“Contingent Obligation” means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person:

(a) with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; (b) with respect to any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (c) under any Rate Contracts; (d) to make take- or- pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (e) for the obligations of another Person through any agreement to purchase, repurchase or otherwise acquire such obligation or any Property constituting security therefor, to provide funds for the payment or discharge of such obligation or to maintain the solvency, financial condition or any balance sheet item or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if not a fixed and determined amount, the maximum amount so guaranteed or supported.

“Continuing Directors” means, as of any date of determination, those members of the board of directors of the Company (the “Board of Directors”), each of whom: (a) was a member of such Board of Directors on the Closing Date; or (b) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board of Directors at the time of such nomination or election (excluding, in the case of clause (b), any individual whose initial nomination for, or assumption of office as, a member of that Board of Directors occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the Board of Directors).

“Contractual Obligations” means, as to any Person, any provision of any security (whether in the nature of Stock, Stock Equivalents or otherwise) issued by such Person or of any

agreement, undertaking, contract, indenture, mortgage, deed of trust or other instrument, document or agreement (other than a Loan Document) to which such Person is a party or by which it or any of its Property is bound or to which any of its Property is subject.

“Control Account” means each deposit account, securities account, or commodities account now or hereafter owned by the Credit Parties, other than (a) payroll accounts (so long as each such payroll account does not contain amounts in excess of amounts necessary to pay payroll expenses), trust accounts, accounts used exclusively for withholding tax, goods and services tax, sales tax, payroll tax and other fiduciary accounts and (b) Local Accounts and other accounts (other than (x) lockbox accounts and other accounts into which Account Debtor payments are made or (y) any concentration accounts) with cash or Cash Equivalents and other entitlements not exceeding \$250,000 at any time in the aggregate for all such accounts excluded pursuant to this clause (b) (the accounts set forth in the clauses (a)-(b) above, collectively, the “Excluded Accounts”).

“Control Agreement” means, with respect to any deposit account, securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance satisfactory to Agent, among Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried and the Credit Party maintaining such account, entitlement or contract, as applicable, effective to grant “control” (within the meaning of Articles 8 and 9 under the applicable UCC) over such account to Agent.

“Copyrights” means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to copyrights and all mask work, database and design rights, whether or not registered or published, all registrations and recordations thereof and all applications in connection therewith.

“Credit Parties” means each Borrower, each Guarantor and each other Person which executes a guaranty of the Obligations, which grants a Lien on all or substantially all of its assets to secure payment of the Obligations.

“Customary Permitted Encumbrances” means:

(a) Liens imposed by law for taxes, assessments or governmental charges or levies that are not yet due and payable or are being contested in compliance with Section 5.1; (b) carriers’, warehousemen’s, landlord’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the Ordinary Course of Business and securing obligations that are not overdue by more than 30 days or which are being contested in good faith and by appropriate proceedings diligently prosecuted, which proceedings have the effect of preventing the forfeiture or sale of the Property subject thereto and for which adequate reserves in accordance with GAAP are being maintained; (c) pledges and deposits made in the Ordinary Course of Business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations; (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the Ordinary Course of Business; (e) judgment liens in

respect of judgments (other than for payment of taxes, assessments or other governmental charges) that do not constitute an Event of Default under Section 7.1(h); and (f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the Ordinary Course of Business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the Ordinary Course of Business of the Company or any Subsidiary; provided that the term “Customary Permitted Encumbrances” shall not include any Lien securing Indebtedness.

“Debtors” means the Borrowers, the Guarantors and the Immaterial Subsidiaries..

“Default” means any event or circumstance that, with the passing of time or the giving of notice or both, would (if not cured or otherwise remedied during such time) become an Event of Default.

“Designated Leases” has the meaning set forth in Section 3.29.

“DIP Superpriority Claim” means the allowed superpriority administrative expense claim granted to the Agent and the Lenders in each of the Cases and any Successor Cases pursuant to Section 364(c)(1) of the Bankruptcy Code for all of the Obligations with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of these chapter 11 cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b) (except as set forth in the Final Order), 546(c), 546(d), 726 (to the extent permitted by law), 1113, and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative; provided, however, that, subject to entry of the Final Order, the DIP Superpriority Claim shall attach to the proceeds of Avoidance Actions; provided, further, that the DIP Superpriority Claim shall be subject to Permitted Liens and the Carve-Out.

“Disposition” means (a) the sale, lease, conveyance or other disposition of Property, other than sales or other dispositions expressly permitted under Sections 5.2(a), 5.2(b), 5.2(g) and 5.2(h), and (b) the sale or transfer by a Borrower or any Subsidiary of a Borrower of any Stock or Stock Equivalent issued by any Subsidiary of a Borrower and held by such transferor Person.

“Dollars”, “dollars” and “\$” each mean lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary other than a Foreign Subsidiary.

“Electronic Transmission” means each document, instruction, authorization, file, information and any other communication transmitted, posted or otherwise made or communicated by e-mail or E-Fax, or otherwise to or from an E-System.

“Environmental Laws” means all Requirements of Law and Permits imposing liability or standards of conduct for or relating to the regulation and protection of human health, safety, the

workplace, the environment and natural resources, and including public notification requirements and environmental transfer of ownership, notification or approval statutes.

“Environmental Liabilities” means all Liabilities (including costs of Remedial Actions, natural resource damages and costs and expenses of investigation and feasibility studies, including the cost of environmental consultants and the cost of attorney’s fees) that may be imposed on, incurred by or asserted against any Credit Party or any Subsidiary of any Credit Party as a result of, or related to, any claim, suit, action, investigation, proceeding or demand by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law or otherwise, arising under any Environmental Law or in connection with any environmental, health or safety condition or with any Release and resulting from the ownership, lease, sublease or other operation or occupation of property by any Credit Party or any Subsidiary of any Credit Party, whether on, prior or after the date hereof.

“Equipment” means all “equipment,” as such term is defined in the UCC, now owned or hereafter acquired by any Credit Party, wherever located.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means, collectively, any Credit Party and any Person under common control or treated as a single employer with, any Credit Party, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“ERISA Event” means any of the following:

(a) a reportable event described in Section 4043(b) of ERISA (or, unless the 30- day notice requirement has been duly waived under the applicable regulations, Section 4043(c) of ERISA) with respect to a Title IV Plan;

(b) the withdrawal of any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA;

(c) the complete or partial withdrawal within the meaning of Sections 4203 or 4205 of ERISA of any ERISA Affiliate from any Multiemployer Plan;

(d) with respect to any Multiemployer Plan, the filing of a notice of reorganization, insolvency or termination (or treatment of a plan amendment as termination) under Section 4041A of ERISA;

(e) the filing of a notice of intent to terminate a Title IV Plan (or treatment of a plan amendment as termination) under Section 4041 of ERISA;

(f) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC;

(g) the failure to make any required contribution to any Title IV Plan or Multiemployer Plan when due;

(h) the imposition of a lien under Section 412 or 430(k) of the Code or Section 303 or 4068 of ERISA on any property (or rights to property, whether real or personal) of any ERISA Affiliate;

(i) a written determination from the Internal Revenue Service or any other Governmental Authority regarding the failure of a Benefit Plan or any trust thereunder intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirements of Law to qualify thereunder;

(j) a Title IV Plan is in “at risk” status within the meaning of Code Section 430(i);

(k) a Multiemployer Plan is in “endangered status” or “critical status” within the meaning of Section 432(b) of the Code; and

(l) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan; or

(m) the imposition of any material liability upon any ERISA Affiliate under Title IV of ERISA other than for PBGC premiums due but not delinquent.

“Event of Default” has the meaning set forth in Section 7.1.

“Event of Loss” means, with respect to any Property, any of the following: (a) any loss, destruction or damage of such Property; or (b) any actual condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, of such Property, or confiscation of such Property or the requisition of the use of such Property.

“Excluded Accounts” has the meaning set forth in the definition of “Control Account”.

“Excluded Equity Issuance” means Net Issuance Proceeds resulting from the issuance of (a) Stock or Stock Equivalents by the Company to management, consultants or employees of a Credit Party under any employee stock option or stock purchase plan, employee incentive plan or other employee benefits plan in existence from time to time, (b) Stock or Stock Equivalents by a Wholly- Owned Subsidiary of a Borrower to a Borrower or another Wholly- Owned Subsidiary of a Borrower constituting an Investment permitted hereunder, and (c) Stock or Stock Equivalents by a Foreign Subsidiary of such Foreign Subsidiary to qualify directors where required pursuant to a Requirement of Law or to satisfy other requirements of applicable law, in each instance, with respect to the ownership of Stock of Foreign Subsidiaries.

“Excluded Tax” means with respect to any Secured Party

(a) taxes measured by net income (including branch profits taxes) and franchise taxes imposed in lieu of net income taxes, in each case imposed on any Secured Party as a result of a present or former connection between such Secured Party and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than such connection arising solely from any

Secured Party having executed, delivered or performed its obligations or received a payment under, or enforced, any Loan Document);

(b) withholding taxes to the extent that the obligation to withhold amounts existed on the date that such Person became a “Secured Party” under this Agreement in the capacity under which such Person makes a claim under Section 10.1(b) or designates a new Lending Office, except in each case to the extent such Person is a direct or indirect assignee (other than pursuant to Section 9.22) of any other Secured Party that was entitled, at the time the assignment to such Person became effective, to receive additional amounts under Section 10.1(b);

(c) taxes that are directly attributable to the failure (other than as a result of a change in any Requirement of Law) by any Secured Party to deliver the documentation required to be delivered pursuant to Section 10.1(f), and

(d) in the case of a Non- U.S. Lender Party, any United States federal withholding taxes imposed on amounts payable to such Non- U.S. Lender Party as a result of such Non- U.S. Lender Party’s failure to comply with FATCA to establish a complete exemption from withholding thereunder.

“Existing DIP Loan Agent” means NexBank, SSB, as administrative agent and collateral agent under the Existing DIP Loan Documents.

“Existing DIP Loan Agreement” means that certain Senior Secured Super-Priority Debtor-in-Possession Credit Agreement, dated as of September 10, 2013, by and among the Borrowers, the other Credit Parties party thereto, the Existing DIP Loan Lenders, the Existing DIP Loan Agent and any other Persons party thereto, as amended, or otherwise modified prior to the Closing Date.

“Existing DIP Loan Documents” means “Loan Documents” as defined in the Existing DIP Loan Agreement as in effect on the Closing Date, as such Existing DIP Loan Documents may have been amended or otherwise modified prior to the Closing Date.

“Existing DIP Loan Lenders” means the lenders under the Existing DIP Loan Agreement.

“Existing DIP Loan Liens” means the Liens granted on the Collateral under the Existing DIP Loan Documents securing the Existing DIP Loan Obligations.

“Existing DIP Loan Obligations” means all “Obligations” (as defined in the Existing DIP Loan Agreement) as of the Closing Date, including, without limitation, the outstanding principal amount of the loans provided under the Existing DIP Loan Agreement as of the Closing Date *plus* any interest accumulating from time to time in accordance with the terms of the Existing DIP Loan Agreement in effect on the Closing Date *minus* any payments or prepayments with respect thereto.

“Existing Term Loan Agent” means NexBank, SSB, as administrative agent and collateral agent under the Existing Term Loan Documents.

“Existing Term Loan Agreement” means that certain Term Loan Agreement, dated as of September 25, 2012, by and among the Borrowers, the other Credit Parties party thereto, the Existing Term Loan Lenders, the Existing Term Loan Agent and any other Persons party thereto, as amended, or otherwise modified prior to the Closing Date and as further amended or otherwise modified from time to time in accordance with this Agreement.

“Existing Term Loan Documents” means “Loan Documents” as defined in the Existing Term Loan Agreement as in effect on the Closing Date, as such Existing Term Loan Documents may have been amended or otherwise modified prior to the Closing Date and as further amended or otherwise modified from time to time in accordance with this Agreement.

“Existing Term Loan Lenders” means the lenders under the Existing Term Loan Agreement.

“Existing Term Loan Liens” means the Liens granted on the Collateral under the Existing Term Loan Documents securing the Existing Term Loan Obligations.

“Existing Term Loan Obligations” means all “Obligations” (as defined in the Existing Term Loan Agreement) as of the Closing Date, including, without limitation, the outstanding principal amount of the loans provided under the Existing Term Loan Agreement as of the Closing Date *plus* (i) any interest accumulating from time to time in accordance with the terms of the Existing Term Loan Agreement in effect on the Closing Date and (ii) the “Prepayment Premium” (as defined in the Existing Term Loan Agreement) then due and payable under the Existing Term Loan Agreement as of the Closing Date *minus* any payments or prepayments with respect thereto.

“E-Fax” means any system used to receive or transmit faxes electronically.

“E-Signature” means the process of attaching to or logically associating with an Electronic Transmission an electronic symbol, encryption, digital signature or process (including the name or an abbreviation of the name of the party transmitting the Electronic Transmission) with the intent to sign, authenticate or accept such Electronic Transmission.

“E-System” means any electronic system approved by Agent, including Intralinks® and ClearPar® and any other Internet or extranet- based site, whether such electronic system is owned, operated or hosted by Agent, any of its Related Persons or any other Person, providing for access to data protected by passcodes or other security system.

“FATCA” means sections 1471, 1472, 1473 and 1474 of the Code, the United States Treasury Regulations promulgated thereunder and published guidance with respect thereto.

“Federal Flood Insurance” means federally backed Flood Insurance available under the National Flood Insurance Program to owners of real property improvements located in Special Flood Hazard Areas in a community participating in the National Flood Insurance Program.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System, or any entity succeeding to any of its principal functions.

“FEMA” means the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security that administers the National Flood Insurance Program.

“Final Order” means the order or judgment of the Bankruptcy Court as entered on the docket of the Bankruptcy Court with respect to the Cases substantially in the form of Exhibit B hereto, approving, inter alia, this Agreement and the other Loan Documents, and (a) authorizing the incurrence by the Credit Parties of secured indebtedness in accordance with this Agreement, (b) approving the indefeasible repayment of the Prior Indebtedness as described herein and (c) approving the payment by the Credit Parties of the fees contemplated by this Agreement and the Agent Fee Letter, which order shall not have been vacated, reversed, modified, amended or stayed.

“FIRREA” means the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

“First Tier Foreign Subsidiary” means a Foreign Subsidiary held directly by a Credit Party or indirectly by a Credit Party through one or more Domestic Subsidiaries.

“Fiscal Quarter” means any of the quarterly fiscal accounting periods of the Credit Parties based on a 13-week (4-4-5) method of accounting.

“Fiscal Year” means any of the annual accounting periods of the Credit Parties ending on the Saturday closest to December 31 of each year.

“Flood Insurance” means, for any Real Estate located in a Special Flood Hazard Area, Federal Flood Insurance or private insurance that (a) meets the requirements set forth by FEMA in its Mandatory Purchase of Flood Insurance Guidelines and (b) shall be in an amount equal to the full, unpaid balance of the Loans and any prior liens on the Real Estate up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Agent, with deductibles not to exceed \$50,000.

“Foreign Subsidiary” means, with respect to any Person, a Subsidiary of such Person that is a “controlled foreign corporation” under Section 957 of the Code.

“GAAP” means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions and comparable stature and authority within the accounting profession) that are applicable to the circumstances as of the date of determination. Subject to Section 11.3, all references to “GAAP” shall be to GAAP applied consistently with the principles used in the preparation of the financial statements described in Section 3.11(a).

“Governmental Authority” means any nation, sovereign or government, any state or other political subdivision thereof, any agency, authority or instrumentality thereof and any entity or authority exercising executive, legislative, taxing, judicial, regulatory or administrative functions of or pertaining to government, including any central bank, stock exchange, regulatory body, arbitrator, public sector entity, supra-national entity (including the European Union and the



European Central Bank) and any self-regulatory organization (including the National Association of Insurance Commissioners).

“Grandfathered Lender” means any Person that is a lender under the Existing Term Loan or the Prior Indebtedness immediately prior to the Closing Date.

“Guarantors” means, collectively, each of the Subsidiaries of the Borrowers listed on Schedule 3.19 and each other Subsidiary of the Borrowers that shall be required to execute and deliver a guaranty or guaranty supplement pursuant to Section 4.13. As of the Closing Date, the Guarantors are Action Transport, Inc., a Delaware corporation, Furniture Brands Holdings, Inc., a Delaware corporation, Furniture Brands Operations, Inc., a Delaware corporation, Furniture Brands Resource Company, Inc., a Delaware corporation, Broyhill Home Furnishings, Inc., a Delaware corporation, Broyhill Retail, Inc., a Delaware corporation, HDM Retail, Inc., a Delaware corporation, Lane Home Furnishings Retail, Inc., a Delaware corporation, Thomasville Retail, Inc., a Virginia corporation, and Thomasville Home Furnishings, Inc., a Delaware corporation.

“Guaranty and Security Agreement” means that certain Guaranty and Security Agreement, dated as of even date herewith, in form and substance reasonably acceptable to Agent and the Borrowers, made by the Credit Parties in favor of Agent, for the benefit of the Secured Parties, as the same may be amended, restated and/or modified from time to time, together with each other guaranty and security agreement executed and delivered by any other Credit Party in favor of Agent, for the benefit of the Secured Parties.

“Hazardous Material” means any substance, material or waste that is classified, regulated or otherwise characterized under any Environmental Law as hazardous, toxic, a contaminant or a pollutant or by other words of similar meaning or regulatory effect, including, without limitation, petroleum or any fraction thereof, asbestos, polychlorinated biphenyls and radioactive substances.

“HDM Transport” means HDM Transport, Inc., a North Carolina corporation.

“Identified Assets” means the assets listed on and specifically identified on Schedule 5.2(d).

“Identified Assets Trust Proceeds” has the meaning set forth in Section 5.2(d).

“Immaterial Subsidiaries” means Broyhill Transport, HDM Transport and Laneventure.

“Impacted Lender” means any Lender that fails to provide Agent, within three (3) Business Days following Agent’s written request, satisfactory assurance that such Lender will not become a Non-Funding Lender.

“Indebtedness” of any Person means, without duplication: (a) all indebtedness for borrowed money; (b) all obligations issued, undertaken or assumed as the deferred purchase price of Property or services (other than trade payables entered into in the Ordinary Course of Business); (c) the face amount of all letters of credit issued for the account of such Person and without duplication, all drafts drawn thereunder and all reimbursement or payment obligations

with respect to letters of credit, surety bonds and other similar instruments issued by such Person; (d) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of Property, assets or businesses; (e) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property); (f) all Capital Lease Obligations; (g) the principal balance outstanding under any synthetic lease, off-balance sheet loan or similar off balance sheet financing product; (h) all obligations, whether or not contingent, to purchase, redeem, retire, defease or otherwise acquire for value any of its own Stock or Stock Equivalents (or any Stock or Stock Equivalent of a direct or indirect parent entity thereof) prior to the date that is 180 days after the final scheduled installment payment date for the date specified in clause (b) of the definition of Termination Date, valued at, in the case of redeemable preferred Stock, the greater of the voluntary liquidation preference and the involuntary liquidation preference of such Stock plus accrued and unpaid dividends; (i) all indebtedness referred to in clauses (a) through (h) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in Property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness; and (j) all Contingent Obligations described in clause (a) of the definition thereof in respect of indebtedness or obligations of others of the kinds referred to in clauses (a) through (i) above.

“Indemnified Matters” has the meaning set forth in Section 9.6.

“Indemnitees” has the meaning set forth in Section 9.6.

“Insolvency Proceeding” means (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in each case in (a) and (b) above, undertaken under U.S. federal, state or foreign law, including the Bankruptcy Code.

“Intellectual Property” means all rights, title and interests in or relating to intellectual property and industrial property arising under any Requirement of Law and all IP Ancillary Rights relating thereto, including all Copyrights, Patents, Trademarks, Internet Domain Names, Trade Secrets and IP Licenses.

“Interest Payment Date” means each monthly anniversary of the Closing Date.

“Internet Domain Name” means all right, title and interest (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to internet domain names.

“Inventory” means all of the “inventory” (as such term is defined in the UCC) of the Credit Parties, including, but not limited to, all merchandise, raw materials, parts, supplies, work-in-process and finished goods intended for sale, together with all the containers, packing,

packaging, shipping and similar materials related thereto, and including such inventory as is temporarily out of a Credit Party's custody or possession, including inventory on the premises of others and items in transit.

“Investment Promissory Notes” has the meaning set forth in Section 1.8(c)(ii).

“Investments” has the meaning set forth in Section 5.4.

“IP Ancillary Rights” means, with respect to any Intellectual Property, as applicable, all foreign counterparts to, and all divisionals, reversions, continuations, continuations- in- part, reissues, reexaminations, renewals and extensions of, such Intellectual Property and all income, royalties, proceeds and Liabilities at any time due or payable or asserted under or with respect to any of the foregoing or otherwise with respect to such Intellectual Property, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment thereof, and, in each case, all rights to obtain any other IP Ancillary Right.

“IP License” means all Contractual Obligations (and all related IP Ancillary Rights), whether written or oral, granting any right, title and interest in or relating to any Intellectual Property.

“IRS” means the Internal Revenue Service of the United States and any successor thereto.

“KPS” means KPS Capital Partners, LP or one or more Affiliates thereof.

“Laneventure” means Laneventure, Inc., a Delaware corporation.

“Lender” has the meaning set forth in the Preamble and shall include, without limitation, the Revolving Lenders and Term Lenders.

“Lending Office” means, with respect to any Lender, the office or offices of such Lender specified as its “Lending Office” from time to time in writing to the Borrower Representative and Agent.

“Liabilities” means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, taxes, commissions (including brokerage commissions, fees and other similar compensation), charges, disbursements and expenses (including, without limitation, those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or otherwise), security interest or other security arrangement and any other preference, priority or preferential arrangement of any kind or nature whatsoever, including those created by, arising under or evidenced by any

conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

“Loan” means any Revolving Loan, Term Loan or other loan made or deemed made by any Lender hereunder.

“Loan Documents” means this Agreement, the Notes, the Agent Fee Letter, the Collateral Documents, and all documents delivered to Agent and/or any Lender in connection with any of the foregoing.

“Local Deposit Accounts” has the meaning specified in Section 4.11.

“Margin Stock” means “margin stock” as such term is defined in Regulation T, U or X of the Federal Reserve Board.

“Material Adverse Effect” means (i) any event, effect, change, circumstance, condition or matter that, individually or in the aggregate, is or could reasonably be expected to be materially adverse to, or materially impairs the value of, the Acquired Assets (as defined in the Asset Purchase Agreement), or results in a material adverse effect or change in the operation, results of operations or condition (financial or otherwise) of the Acquired Assets or the Business (as defined in the Asset Purchase Agreement), taken as a whole, without regard to the duration or persistence of such event, effect, change, circumstance, condition or matter, or which materially impairs the ability of the Sellers (as defined in the Asset Purchase Agreement) to perform their obligations under the Asset Purchase Agreement has a material adverse effect on or prevents or materially delays the consummation of the transactions contemplated hereby; provided, that the act of filing the Cases, in and of itself, shall not constitute a Material Adverse Effect or (ii) the occurrence of an event, circumstance or other matter which has resulted in or could reasonably be expected to result in a material adverse change in (1) the legality, validity or enforceability of any Loan Document or the Final Order, (2) the ability of the Borrowers or the other Credit Parties to perform their respective obligations under the Loan Documents, (3) the value of the Collateral, (4) the perfection or priority of the Liens granted pursuant to the Loan Documents or the Final Order, or (v) the ability of Agent and the other Secured Parties to enforce the Loan Documents.

“Material Contract” means any contract, purchase order or other arrangement having similar effect (whether embodied in a single instrument or related instruments), pursuant to which the Company and its subsidiaries received gross revenues of at least \$50,000,000 in calendar year 2012.

“Material Contract Notice Event” means (i) the termination of any Material Contract or any Material Contract otherwise ceasing to be a legal, valid and binding agreement in full force and effect, (ii) the material breach of any Material Contract by the Company, any of its Subsidiaries or any counterparty to any Material Contract, or (iii) the Company or any of its Subsidiaries receiving any indication (whether written or oral), with respect to any Material Contract, that (x) suggests such Material Contract could be terminated or otherwise cease to be a legal, valid and binding agreement in full force and effect (including, without limitation, as a

result of the counterparty to such Material Contract indicating to the Company that it will not agree to a novation and assignment to the Purchasers of such Material Contract in connection with the sale under the Sale Order; provided, however, that nothing herein shall affirmatively require the Company to seek a novation or an assignment of any Material Contract) or (y) gives any Credit Party reason to believe the counterparty to such Material Contract intends to commit a material breach of such Material Contract or seek alteration of the terms of such Material Contract in a manner materially adverse to the Company or any of its Subsidiaries, or intends to materially reduce purchases under, or expenditures in respect of, such Material Contract.

“Material Contract Default Event” means (i) the termination of any Material Contract or any Material Contract otherwise ceasing to be a legal, valid and binding agreement in full force and effect, (ii) the material breach of any Material Contract by the Company, any of its Subsidiaries or any counterparty to any Material Contract, or (iii) the Company or any of its Subsidiaries receiving any indication (whether written or oral), with respect to any Material Contract, that (x) such Material Contract will be terminated or otherwise cease to be a legal, valid and binding agreement in full force and effect (including, without limitation, as a result of the counterparty to such Material Contract indicating to the Company that it will not agree to a novation and assignment to the Purchasers (as defined in the Asset Purchase Agreement) of such Material Contract in connection with the sale under the Sale Order; provided, however, that nothing herein shall affirmatively require the Company to seek a novation or an assignment of any Material Contract) or (y) the counterparty to such Material Contract intends to commit a material breach of such Material Contract or seek alteration of the terms of such Material Contract in a manner materially adverse to the Company or any of its Subsidiaries, or intends to materially reduce purchases under, or expenditures in respect of, such Material Contract.

“Material Contract Default Event Period” means the period from the date that a Material Contract Default Event occurs through and including the earlier to occur of (x) the cessation or discontinuance of any such Material Contract Default Event as determined by KPS in its reasonable discretion and (y) the 45th day following such Material Contract Event; provided, that, (i) if on the 45th day following such Material Contract Event, the Variance from the Budget on a cumulative basis for the period from the Petition Date through the last day covered by the most recent Variance Report delivered to the Agent and Lenders on or prior to such 45th day is not more than 5.0% less than the aggregate amount in the Budget for operating receipts for such period, then the date in the preceding clause (y) shall be automatically extended for an additional 15 days and (ii) if on the 60th day following such Material Contract Event, the Variance from the Budget on a cumulative basis for the period from the Petition Date through the last day covered by the most recent Variance Report delivered to the Agent and Lenders on or prior to such 60th day is not more than 5.0% less than the aggregate amount in the Budget for operating receipts for such period, then the date in the preceding clause (y) shall be further automatically extended for an additional 15 days.

“Material Contract Default Event Period Amount” has the meaning set forth in Section 1.1(a)(i).

“Material Contract Default Event Period Starter Amount” has the meaning set forth in Section 1.1(a)(i).

“Material Contract Default Event Period Revolving Exposure” has the meaning set forth in Section 1.1(a)(i).

“Material Environmental Liabilities” means Environmental Liabilities exceeding \$1,000,000 in the aggregate over the term of this Agreement.

“Maximum Lawful Rate” has the meaning set forth in Section 1.3(d).

“MNPI” has the meaning set forth in Section 9.10(a).

“Mortgage” means any deed of trust, leasehold deed of trust, mortgage, leasehold mortgage, deed to secure debt, leasehold deed to secure debt or other document creating a Lien on Real Estate or any interest in Real Estate in favor of Agent, for the benefit of the Secured Parties.

“Multiemployer Plan” means any multiemployer plan, as defined in Section 3(37) or 4001(a)(3) of ERISA, as to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

“National Flood Insurance Program” means the program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994, that mandates the purchase of flood insurance to cover real property improvements located in Special Flood Hazard Areas in participating communities and provides protection to property owners through a federal insurance program.

“Net Cash Flow” means, with respect to any Testing Period, an amount equal to (a) the aggregate cash receipts of the Borrower and its Subsidiaries during such period (excluding proceeds of any Loans) less (b) the aggregate cash disbursements of the Borrower and its Subsidiaries during such period (other than any repayments of Loans).

“Net Issuance Proceeds” means, in respect of any issuance of debt or equity, cash proceeds (including cash proceeds as and when received in respect of non-cash proceeds received or receivable in connection with such issuance), net of underwriting discounts and reasonable out-of-pocket fees, costs and expenses paid or incurred in connection therewith in favor of any Person not an Affiliate of a Borrower.

“Net Proceeds” means proceeds in cash, checks or other cash equivalent financial instruments (including Cash Equivalents) as and when received by the Person making a Disposition, as well as insurance proceeds and condemnation and similar awards received on account of an Event of Loss, net of: (a) in the event of a Disposition (i) the fees, costs and expenses relating to such Disposition excluding amounts payable to a Borrower or any Affiliate of a Borrower, (ii) sale, use or other transaction taxes paid or payable as a result thereof, and (iii) amounts required to be applied to repay principal, interest and prepayment premiums and penalties on Indebtedness secured by a Lien on the asset which is the subject of such Disposition to the extent so applied and (b) in the event of an Event of Loss, (i) so long as no Default or Event of Default has occurred and is continuing, all money actually applied to repair or reconstruct the damaged Property or Property affected by the condemnation or taking, (ii) all of

the costs and expenses reasonably incurred in connection with the settlement or collection of such proceeds, award or other payments, and (iii) any amounts retained by or paid to parties having superior rights to such proceeds, awards or other payments.

“Non-Funding Lender” means any Revolving Lender that has (a) failed to fund any payments required to be made by it under the Loan Documents within two (2) Business Days after any such payment is due (excluding expense and similar reimbursements that are subject to good faith disputes), (b) given written notice (and Agent has not received a revocation in writing), to a Borrower, Agent or any Lender or has otherwise publicly announced (and Agent has not received notice of a public retraction) that such Revolving Lender believes it will fail to fund payments or purchases of participations required to be funded by it under the Loan Documents or one or more other syndicated credit facilities, (c) failed to fund, and not cured, loans, participations, advances, or reimbursement obligations under one or more other syndicated credit facilities, unless subject to a good faith dispute, or (d) (i) become subject to a voluntary or involuntary case under the Bankruptcy Code or any similar bankruptcy laws, (ii) a custodian, conservator, receiver or similar official appointed for it or any substantial part of such Person’s assets, or (iii) made a general assignment for the benefit of creditors, been liquidated, or otherwise been adjudicated as, or determined by any Governmental Authority having regulatory authority over such Person or its assets to be, insolvent or bankrupt, and for this clause (d), Agent has determined that such Revolving Lender is reasonably likely to fail to fund any payments required to be made by it under the Loan Documents.

“Non-U.S. Lender Party” means each of Agent, each Lender, each SPY and each participant, in each case that is not a United States person as defined in Section 770 1(a)(30) of the Code.

“Note” means any Term Note or Revolving Note and “Notes” means all such Notes.

“Notice of Borrowing” means a notice given by the Borrower Representative to Agent pursuant to Section 1.5, in substantially the form of Exhibit 11.1(c) hereto.

“Obligations” means all Loans (including Letters of Credit) and other Indebtedness, advances, debts, liabilities, obligations, covenants and duties owing by any Credit Party to any Lender, Agent or any other Person required to be indemnified, that arises under any Loan Document, whether or not for the payment of money, whether arising by reason of an extension of credit, loan, guaranty, indemnification or in any other manner, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired (including, without limitation, the interest, fees, expenses and other amounts which accrue after the commencement of any proceeding under the Bankruptcy Code (or other debtor relief law) whether or not such amounts are allowed or allowable in whole or in part in any such proceeding).

“OFAC” has the meaning set forth in Section 3.27.

“Ordinary Course of Business” means, in respect of any transaction involving any Person, the ordinary course of such Person’s business, as conducted by any such Person in

accordance with past practice and undertaken by such Person in good faith and not for purposes of evading any covenant or restriction in any Loan Document.

“Organization Documents” means, (a) for any corporation, the certificate or articles of incorporation, the bylaws, any certificate of determination or instrument relating to the rights of preferred shareholders of such corporation and any shareholder rights agreement, (b) for any partnership, the partnership agreement and, if applicable, certificate of limited partnership, (c) for any limited liability company, the operating agreement and articles or certificate of formation or (d) any other document setting forth the manner of election or duties of the officers, directors, managers or other similar persons, or the designation, amount or relative rights, limitations and preference of the Stock of a Person.

“Other Taxes” has the meaning set forth in Section 10.1(c).

“Patents” means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to letters patent and applications therefor.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107- 56.

“PBGC” means the United States Pension Benefit Guaranty Corporation any successor thereto.

“Permits” means, with respect to any Person, any permit, approval, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other Contractual Obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Permitted Liens” has the meaning set forth in Section 5.1.

“Permitted Variance” means a Variance from the Budget on a cumulative basis from the Petition Date through and including the last day of the relevant period (the “Testing Period”), which Variance (i) is not more than 17.5% less than the aggregate amount in the Budget for operating receipts for such Testing Period and (ii) is not more than the greater of (A) 15% less than the total aggregate amount in the Budget for Net Cash Flow for such Testing Period and (B) \$3,000,000 less than the total aggregate amount in the Budget for Net Cash Flow for such Testing Period, in the case of each of clauses (i) and (ii), tested weekly; provided, however, that the first such Variance with respect to clauses (i) and (ii) will be tested after the end of the fourth calendar week after the Petition Date.

“Person” means any individual, partnership, corporation (including a business trust and a public benefit corporation), joint stock company, estate, association, firm, enterprise, trust, limited liability company, unincorporated association, joint venture and any other entity or Governmental Authority.

“Petition Date” has the meaning set forth in the recitals to this Agreement.



“Plan” means of a plan of reorganization or plan of liquidation under Chapter 11 of the Bankruptcy Code of the Credit Parties (including all related schedules, supplements, exhibits and orders, as applicable), which shall otherwise be in form and substance satisfactory to the Required Lenders.

“Post-Carve Out Trigger Notice Cap” means \$1,000,000.

“Prepetition ABL Agent” means General Electric Capital Corporation, as agent under the Prepetition ABL Credit Agreement, and any successor thereto.

“Prepetition ABL Credit Agreement” means that certain Credit Agreement dated as of September 25, 2012, by and among the Borrowers party thereto, the lenders party thereto, General Electric Capital Corporation, as agent for such lenders, and the other Persons party thereto.

“Prepetition ABL Lenders” means the lenders under the Prepetition ABL Credit Agreement.

“Prepetition ABL Liens” means the Liens granted on the “Collateral” (as defined in the Prepetition ABL Credit Agreement) under the Prepetition ABL Credit Agreement securing the Prepetition ABL Obligations.

“Prepetition ABL Obligations” means all outstanding amounts of the loans provided under the Prepetition ABL Credit Agreement as of the Closing Date.

“Prepetition Parties” means, collectively, the Prepetition ABL Agent, the Prepetition ABL Lenders, the Existing Term Loan Agent, and the Existing Term Loan Lenders.

“Primed Liens” has the meaning set forth in the recitals to this Agreement.

“Prior Indebtedness” means the Indebtedness and all other obligations outstanding under the Existing DIP Loan Agreement.

“Prior Lenders” means the holders of any Prior Indebtedness and any agent for such holders.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

“Pro Rata Percentage” see the definition of “Commitment Percentage”.

“Purchasers” has the meaning assigned to such term in the Asset Purchase Agreement.

“Rate Contracts” means swap agreements (as such term is defined in Section 101 of the Bankruptcy Code) and any other agreements or arrangements designed to provide protection against fluctuations in interest or currency exchange rates, including, without limitation, 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.

“Real Estate” means any real property owned, leased, subleased or otherwise operated or occupied by any Credit Party or any Subsidiary of any Credit Party.

“Register” has the meaning set forth in Section 1.4(b).

“Related Persons” means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor (including those retained in connection with the satisfaction or attempted satisfaction of any condition set forth in Article II) and other consultants and agents of or to such Person or any of its Affiliates.

“Releases” means any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material into or through the environment.

“Remedial Action” means all actions under Environmental Laws required to (a) clean up, remove, treat or in any other way address any Hazardous Material in the indoor or outdoor environment, (b) prevent or minimize any Release so that a Hazardous Material does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment or (c) perform pre remedial studies and investigations and post- remedial monitoring and care with respect to any Hazardous Material.

“Required Lenders” means, as of any date of determination, Lenders then holding more than fifty percent (50%) of the sum of the Aggregate Revolving Loan Commitment then in effect and the aggregate unpaid principal amount of Term Loans then outstanding or, if the Aggregate Revolving Loan Commitments have terminated, Lenders then holding more than fifty percent (50%) of the sum of the aggregate unpaid principal amount of Revolving Loans then outstanding and the aggregate unpaid principal amount of Term Loans then outstanding.

“Required Revolving Lenders” means, as of any date of determination, Revolving Lenders then holding more than fifty percent (50%) of the sum of the Aggregate Revolving Loan Commitment then in effect or, if the Aggregate Revolving Loan Commitments have terminated, Revolving Lenders then holding more than fifty percent (50%) of the sum of the aggregate unpaid principal amount of Revolving Loans then outstanding.

“Requirement of Law” means, with respect to any Person, the common law and any federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any

Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Replacement Lender” has the meaning set forth in Section 9.22.

“Responsible Officer” means the chief executive officer, chief financial officer, the president or the senior vice president - finance of a Borrower or Borrower Representative, as applicable, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants or delivery of financial information, the chief financial officer, senior vice president - finance or the treasurer of a Borrower or Borrower Representative, as applicable, or any other officer having substantially the same authority and responsibility.

“Restricted Amount” means, at any time, an amount equal to the sum at such time of (a) the aggregate amount of Investments made by Credit Parties after the Closing Date in the Stock and Stock Equivalents of Subsidiaries that are not Credit Parties made pursuant to Section 5.4(f), and (b) the outstanding principal amount of intercompany loans and advances made by Credit Parties after the Closing Date to Subsidiaries which are not Credit Parties pursuant to Section 5.4(g) (in each case determined without regard to any write-downs or write-offs).

“Restricted Payments” has the meaning set forth in Section 5.11.

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

“Revolving Lender” means a Lender that has a Revolving Loan Commitment or that has an outstanding Revolving Loan.

“Revolving Loan” has the meaning set forth in Section 1.1(a)(i).

“Revolving Loan Commitment” has the meaning set forth in Section 1.1(a)(i).

“Revolving Note” means a promissory note of the Borrowers payable to a Lender in substantially the form of Exhibit 11.1(d) hereto, evidencing Indebtedness of the Borrowers under the Revolving Loan Commitment of such Lender.

“Sale” has the meaning set forth in Section 9.9(b).

“SDN List” has the meaning set forth in Section 3.27.

“Secured Party” means Agent, each Lender, each other Indemnitee and each other holder of any Obligation of a Credit Party.

“Sellers” has the meaning assigned to such term in the Asset Purchase Agreement.

“Software” means (a) all computer programs, including source code and object code versions, (b) all data, databases and compilations of data, whether machine readable or

otherwise, and (c) all documentation, training materials and configurations related to any of the foregoing.

“Special Flood Hazard Area” means an area that FEMA’s current flood maps indicate has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100- year flood) in any given year.

“S&P” means Standard & Poor’s Ratings Services LLC and any successor thereto.

“SPY” means any special purpose funding vehicle identified as such in a writing by any Lender to Agent.

“Stalking Horse Purchaser” means one or more newly-formed entities, controlled by investment funds managed by KPS and its affiliates, appointed as the stalking horse purchaser with respect to the Bankruptcy Sale.

“Stock” means all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or nonvoting.

“Stock Equivalents” means all securities convertible into or exchangeable for Stock or any other Stock Equivalent and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any Stock or any other Stock Equivalent, whether or not presently convertible, exchangeable or exercisable.

“Subordinated Indebtedness” means Indebtedness of any Credit Party or any Subsidiary of any Credit Party which is subordinated to the Obligations as to right and time of payment and as to other rights and remedies thereunder in accordance with a Subordination Agreement, and having such other terms as are, in each case, reasonably satisfactory to Agent.

“Subordination Agreement” means, collectively, each subordination agreement by and among Agent, the applicable Credit Parties, the applicable Subsidiaries of the Credit Parties and the holders of Subordinated Indebtedness, each in form and substance satisfactory to Agent and each evidencing and setting forth the priority of the Obligations over such Subordinated Indebtedness, as the same may be amended, restated and/or modified from time to time subject to the terms thereof.

“Subsidiary” means, with respect to any Person, any corporation, partnership, joint venture, limited liability company, association or other entity, the management of which is, directly or indirectly, controlled by, or of which an aggregate of more than fifty percent (50%) of the voting Stock is, at the time, owned or controlled directly or indirectly by, such Person or one or more Subsidiaries of such Person; provided, that notwithstanding the foregoing, for purposes of compliance with the covenants in this Agreement and the other Loan Documents, Furniture Brands Canada, ULC shall not be deemed to be a Subsidiary of any Credit Party.

“Successor Cases” means any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of these Cases, or in any other proceedings superseding or related to any of the foregoing.

“Tax Affiliate” means, (a) each Borrower and its Subsidiaries and (b) any Affiliate of a Borrower with which such Borrower files or is eligible to file consolidated, combined or unitary tax returns.

“Tax Returns” has the meaning set forth in Section 3.10.

“Taxes” has the meaning set forth in Section 10.1(a).

“Termination Date” means the earliest of (a) the date of the closing or consummation of a Bankruptcy Sale, (b) the date that is 150 days after the Petition Date, and (c) the occurrence of any Event of Default.

“Term Loan Commitment” has the meaning set forth in Section 1.1(b).

“Term Loan” means the term loan made by the Term Lenders to the Borrowers on the Closing Date pursuant to Section 1.1(b) hereof in the original principal amount of \$90,000,000.

“Term Lender” means a Lender that has a Term Loan Commitment or a portion of the outstanding and unpaid Term Loan.

“Term Note” means a promissory note of the Borrowers payable to a Term Lender in substantially the form of Exhibit 11.1(e) hereto, evidencing Indebtedness of the Borrowers under the portion of the Term Loan owing to such Term Lender.

“Testing Period” has the meaning set forth in the definition of “Permitted Variance”.

“Title IV Plan” means a pension plan subject to Title IV of ERISA, other than a Multiemployer Plan, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

“Trade Secrets” means all right, title and interest (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to trade secrets.

“Trademark” means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers and, in each case, all goodwill associated therewith, all registrations and recordations thereof and all applications in connection therewith.

“UCC” means the Uniform Commercial Code of any applicable jurisdiction and, if the applicable jurisdiction shall not have any Uniform Commercial Code, the Uniform Commercial Code as in effect from time to time in the State of New York.

“United States” and “U.S.” each means the United States of America.

“U.S. Lender Party” means each of Agent, each Lender, each SPY and each participant, in each case that is a United States person as defined in Section 770 1(a)(30) of the Code.

“Variance” means a difference in the amount contained in the Budget with respect to sales receipts and Net Cash Flow, in each case compared to the actual aggregate sales receipts and/or actual aggregate Net Cash Flow, as applicable, on a cumulative basis.

“Variance Report” has the meaning set forth in Section 4.2(d).

“Wholly-Owned Subsidiary” of a Person means any Subsidiary of such Person, all of the Stock and Stock Equivalents of which (other than directors’ qualifying shares required by law) are owned by such Person, either directly or through one or more Wholly-Owned Subsidiaries of such Person.

## **11.2 Other Interpretive Provisions**

(a) **Defined Terms.** Unless otherwise specified herein or therein, all terms defined in this Agreement or in any other Loan Document shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meanings of defined terms shall be equally applicable to the singular and plural forms of the defined terms. Terms (including uncapitalized terms) not otherwise defined herein and that are defined in the UCC shall have the meanings therein described.

(b) **The Agreement.** The words “hereof”, “herein”, “hereunder” and words of similar import when used in this Agreement or any other Loan Document shall refer to this Agreement or such other Loan Document as a whole and not to any particular provision of this Agreement or such other Loan Document; and subsection, section, schedule and exhibit references are to this Agreement or such other Loan Documents unless otherwise specified.

(c) **Certain Common Terms.** The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The term “including” is not limiting and means “including without limitation.”

(d) **Performance; Time.** Whenever any performance obligation hereunder or under any other Loan Document (other than a payment obligation) shall be stated to be due or required to be satisfied on a day other than a Business Day, such performance shall be made or satisfied on the next succeeding Business Day. For the avoidance of doubt, the initial payments of interest and fees relating to the Obligations (other than amounts due on the Closing Date) shall be due and paid on the first day of the first month or quarter, as applicable, following the entry of the Obligations onto the operations systems of Agent, but in no event later than the first day of the second month or quarter, as applicable, following the Closing Date. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”, and the word “through” means “to

and including.” If any provision of this Agreement or any other Loan Document refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision shall be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(e) Contracts. Unless otherwise expressly provided herein or in any other Loan Document, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, shall be deemed to include all subsequent amendments, thereto, restatements and substitutions thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(f) Laws. References to any statute or regulation may be made by using either the common or public name thereof or a specific cite reference and are to be construed as including all statutory and regulatory provisions related thereto or consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

### **11.3 Accounting Terms and Principles**

. All accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in accordance with GAAP. No change in the accounting principles used in the preparation of any financial statement hereafter adopted by the Company shall be given effect for purposes of measuring compliance with any provision of Article V unless the Borrowers, Agent and the Required Lenders agree to modify such provisions to reflect such changes in GAAP (and the Borrowers, the Agent and the Lenders agree to negotiate in good faith with respect thereto) and, unless such provisions are modified, all financial statements and similar documents provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to in Article V shall be made, without giving effect to any election under Accounting Standards Codification 825-10 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Credit Party or any Subsidiary of any Credit Party at “fair value.”

### **11.4 Payments**

. Agent may set up standards and procedures to determine or redetermine the equivalent in Dollars of any amount expressed in any currency other than Dollars and otherwise may, but shall not be obligated to, rely on any determination made by any Credit Party. Any such determination or redetermination by Agent shall be conclusive and binding for all purposes, absent manifest error. No determination or redetermination by any Secured Party or any Credit Party and no other currency conversion shall change or release any obligation of any Credit Party or of any Secured Party (other than Agent and its Related Persons) under any Loan Document, each of which agrees to pay separately for any shortfall remaining after any conversion and payment of the amount as converted. Agent may round up or down, and may set up appropriate

mechanisms to round up or down, any amount hereunder to nearest higher or lower amounts and may determine reasonable de minimus payment thresholds.

**11.5 Existing Term Loan Agreement**

. Notwithstanding anything to the contrary contained herein or any other Loan Documents, neither any Credit Party nor any Subsidiary or Affiliate of any Credit Party shall be required to comply with any term or provision of the Existing Term Loan Agreement or any other Loan Document (as such term is defined in the Existing Term Loan Agreement) and such non-compliance shall not be a Default or an Event of Default under the terms of this Agreement or any other Loan Document. In addition, the Lenders shall seek and obtain the consent of the Lenders (as such term is defined in the Existing Term Loan Agreement) under the Existing Term Loan Agreement of the transactions contemplated by this Agreement, the Bankruptcy Sale, the Lane Sale and the Orders.

**11.6 Required Lender**

. In the event that no affiliate of Initial Lender is a Lender, then references to “KPS” with respect to discretionary matters or matters requiring the approval or satisfaction of KPS shall mean the Required Lenders.

**[Signature Pages Follow.]**



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written.

**BORROWERS:**

**FURNITURE BRANDS  
INTERNATIONAL, INC.**

By: \_\_\_\_\_  
Name: Vance C. Johnston  
Title: Chief Financial Officer

BROYHILL FURNITURE INDUSTRIES,  
INC.

HDM FURNITURE INDUSTRIES, INC.  
LANE FURNITURE INDUSTRIES, INC.  
MAITLAND- SMITH FURNITURE  
INDUSTRIES, INC.  
THOMAS VILLE FURNITURE  
INDUSTRIES, INC.

By: /s/ Vance C. Johnston  
Name: Vance C. Johnston  
Title: Senior Vice President – Finance

**BORROWER REPRESENTATIVE:**

**FURNITURE BRANDS  
INTERNATIONAL, INC.**

By: /s/ Vance C. Johnston  
Name: Vance C. Johnston  
Title: Chief Financial Officer

Address for notices:

1 N. Brentwood Blvd., Ste 1500  
St. Louis, MO 63105

Attn: General Counsel  
Facsimile:

Address for wire transfers:

Wire Routing ABA Number: 121000248  
Bank Name: Wells Fargo Bank  
City, State: San Francisco, CA  
Account Number: 412-0550124  
Title of Account: Furniture Brands  
International

**CREDIT PARTIES:**

**ACTION TRANSPORT, INC.  
BROYHILL HOME FURNISHINGS,  
INC.  
BROYHILL RETAIL, INC.  
FURNITURE BRANDS RESOURCE  
COMPANY, INC.  
FURNITURE BRANDS HOLDINGS,  
INC.  
FURNITURE BRANDS OPERATIONS,  
INC.  
HDM RETAIL, INC.  
LANE HOME FURNISHINGS RETAIL,  
INC.  
THOMAS VILLE HOME  
FURNISHINGS, INC.  
THOMAS VILLE RETAIL, INC.**

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

Name: Vance C. Johnston

Title: Senior Vice President - Finance

With a copy to:

Paul Hastings LLP  
75 East 55th Street  
New York, NY 10022

Attention;

Leslie Plaskon  
Phone: (212) 318-6421  
Fax: (212) 230-5137  
Email: [leslieplaskon@paulhastings.com](mailto:leslieplaskon@paulhastings.com)

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

Name:

Title:

Addresses for Notices:

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

135 South LaSalle Street, Suite 943

Chicago, Illinois 60603

Attention: Mark E. Blankstein, Senior Vice  
President

Phone: (312) 234-4662

With a copy to:

Winston & Strawn LLP

35 West Wacker Drive

Chicago, Illinois 60601-9703

Attention: Timothy J. Dable

Phone: (312) 558-6369

Fax: (312) 558-5700

Email: tdable@winston.com

By: KPS Investors III, LP  
*its general partner*

By: KPS Capital Partners, LLC  
*its general partner*

By: \_\_\_\_\_  
Name: Raquel Palmer  
Title: Authorized Signatory

**KPS SPECIAL SITUATIONS FUND III (A),  
L.P.**, as Lender

By: KPS Investors III, Ltd.  
*its general partner*

By: \_\_\_\_\_  
Name: Raquel Palmer  
Title: Vice President

**KPS SPECIAL SITUATIONS FUND III  
(SUPPLEMENTAL), LP**, as Lender

By: KPS Investors III (AIV), LP  
*its general partner*

By: KPS Investors III (AIV), Ltd.  
*its general partner*

By: \_\_\_\_\_  
Name: Raquel Palmer  
Title: Vice President

**KPS SPECIAL SITUATIONS FUND III  
(SUPPLEMENTAL – AIV), LP**, as Lender

By: KPS Investors III (AIV), LP  
*its general partner*

By: KPS Investors III (AIV), Ltd.  
*its general partner*

By: \_\_\_\_\_  
Name: Raquel Palmer  
Title: Vice President

Addresses for notices:

KPS Special Situations Fund III, LP; KPS Special Situations Fund III(A), LP; KPS Special Situations Fund III (Supplemental), LP; KPS Special Situations Fund III (Supplemental - AIV), LP

c/o: KPS Capital Partners, LP  
485 Lexington Avenue  
New York, NY 10017

Attention:

Raquel Palmer  
Phone: (212) 338-5115  
Email: rpalmer@kpsfund.com

Evan LePatner  
Phone: (212) 338-5153  
Email: elepatner@kpsfund.com

Adam Fuchs  
Phone: (212) 338-5136  
Email: afuchs@kpsfund.com

Spencer Ross  
Phone: (212) 338-5146  
Email: sross@kpsfund.com

With a copy to:

Proskauer Rose LLP  
70 West Madison Street, Suite 3800  
Chicago, IL 60606

Attention: Mark Thomas  
Phone: (312) 962-3560  
Email: mthomas@proskauer.com

Proskauer Rose LLP  
Eleven Times Square  
New York, NY 10036

Attention: Ron Franklin  
Phone: (212) 969-3195  
Email: rfranklin@proskauer.com

**Exhibit A**

[Budget]

**EXHIBIT H**



~~EXHIBIT A TO AMENDMENT AGREEMENT~~

**SENIOR SECURED SUPER-PRIORITY DEBTOR IN POSSESSION**

**CREDIT AGREEMENT**

Dated as of ~~September 11~~                    , 2013

by and among

**FURNITURE BRANDS INTERNATIONAL, INC.,  
BROYHILL FURNITURE INDUSTRIES, INC.,  
HDM FURNITURE INDUSTRIES, INC.,  
LANE FURNITURE INDUSTRIES, INC.,  
MAITLAND- SMITH FURNITURE INDUSTRIES, INC.  
and  
THOMASVILLE FURNITURE INDUSTRIES, INC.,  
as the Borrowers,**

**THE OTHER PERSONS PARTY HERETO THAT ARE  
DESIGNATED AS CREDIT PARTIES,**

**THE FINANCIAL INSTITUTIONS PARTY HERETO,  
as Lenders,**

~~NEXBANK SSB~~BANK OF AMERICA, N.A.,  
as Agent

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## SENIOR SECURED SUPER-PRIORITY DEBTOR IN POSSESSION CREDIT AGREEMENT

This SENIOR SECURED SUPER-PRIORITY DEBTOR IN POSSESSION CREDIT AGREEMENT (including all exhibits hereto, as the same may be amended, modified and/or restated from time to time, this “Agreement”) is entered into as of ~~September 11~~ September 11, 2013, by and among Furniture Brands International, Inc., a Delaware corporation (the “Company”), Broyhill Furniture Industries, Inc., a North Carolina corporation (“Broyhill Furniture”), HDM Furniture Industries, Inc., a Delaware corporation (“HDM Furniture”), Lane Furniture Industries, Inc., a Mississippi corporation (“Lane Furniture”), Maitland-Smith Furniture Industries, Inc., a Delaware corporation (“Maitland Furniture”), and Thomasville Furniture Industries, Inc., a Delaware corporation (“Thomasville Furniture”; and the Company, Broyhill Furniture, HDM Furniture, Lane Furniture, Maitland Furniture and Thomasville Furniture are sometimes referred to herein collectively as the “Borrowers” and individually as a “Borrower”), the Company, as Borrower Representative, the other Persons party hereto that are designated as a “Credit Party”, each as a debtor and debtor in possession under Chapter 11 of the Bankruptcy Code, ~~NexBank~~ SSB Bank of America, N.A., as Agent for the Persons from time to time party to this Agreement as lenders (collectively, the “Lenders” and individually each a “Lender”) and for itself as a Lender, and such Lenders.

### PRELIMINARY STATEMENTS

On September 9, 2013, (the “Petition Date”), the Company and each of the other Credit Parties filed a voluntary petition for relief (collectively, the “Cases”) under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

On September 11, 2013, the Bankruptcy Court entered an Interim Order (i) Authorizing the Debtors to (a) Obtain Post-Petition Financing on a Super-Priority, Senior Secured Basis, (b) Use Cash Collateral, (c) Repay the Prepetition Revolver in Full, (ii) Granting Adequate Protection to Certain Prepetition Lenders, (iii) Modifying the Automatic Stay, and (iv) Scheduling a Final Hearing [Docket No. 78]. Thereafter, the Borrowers, the other persons party thereto that were designated as credit parties, the financial institutions party thereto, as lenders, and NexBank, SSB, as agent, entered into the Existing DIP Loan Agreement.

The Company and the other Credit Parties 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 Sections 1107(a) and 1108 of the Bankruptcy Code. The Borrowers have requested, and the Lenders have agreed to make available to the Borrowers, (a) a revolving credit facility and (b) a term loan facility, in each case, in order to (i) refinance Prior Indebtedness (and cash collateralize letters of credit outstanding per such Prior Indebtedness), (ii) fund the continued operation of the Credit Parties businesses as debtors and debtors in possession under the Bankruptcy Code and (iii) fund certain fees and expenses associated with the funding of the consummation of the transactions contemplated hereby, in each case, upon the terms and subject to the conditions set forth herein.

To provide security for the repayment of all obligations of the Credit Parties hereunder and under the other Loan Documents, each of the Credit Parties will seek to provide to the Agent (for the benefit of the Secured Parties) the following (as more fully described herein):

(a) pursuant to Section 364(c)(1) of the Bankruptcy Code and the ~~Orders~~Final Order, as applicable, a DIP Superpriority Claim in the Cases and any Successor Cases (without the need to file a proof of claim) for all of the Obligations with priority over any and all administrative expense claims and unsecured claims of any entity against the Debtors or their estates, including, without limitation, any claims specified in or ordered pursuant to Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b) (except as set forth in the ~~Orders~~Final Order), 546(c), 546(d), 726 (to the extent permitted by law), 1113, and 1114 or any other provisions of the Bankruptcy Code, which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative, subject only to Permitted Liens (as defined herein) and the Carve-Out (as defined herein),

(b) pursuant to Section 364(c)(2) of the Bankruptcy Code and the ~~Orders~~Final Order, as applicable, an automatically perfected, valid, enforceable, unavoidable, and first-priority security interest and Lien on all Collateral and assets of the Borrowers and the other Credit Parties of any kind (~~other than Avoidance Actions, but subject to entry of the Final Order including~~ proceeds of Avoidance Actions), whether now existing or hereafter acquire that is not subject to a valid, perfected, and non-avoidable lien in existence on the Petition Date, which first-priority liens and security interests shall be perfected without necessity of the execution or filing of mortgages, security agreements, pledge agreements, financing statements or other agreements or documents, subject only to Permitted Liens and the Carve-Out,

(c) pursuant to Section 364(c)(3) of the Bankruptcy Code and subject to clause (d) below, an automatically valid, enforceable, unavoidable and perfected Lien on the property of the Borrowers and the other Credit Parties as more fully described herein subject to (i) unavoidable valid and perfected Liens in existence at the time of the commencement of the Cases, (ii) unavoidable valid Liens in existence at the time of such commencement that are perfected subsequent to such commencement as permitted by Section 546(b) of the Bankruptcy Code (the Liens described in clause (i) above and this clause (ii), being "Existing Liens"), other than with respect to the Primed Liens (as defined herein), (iii) Liens for taxes not yet due and payable, (iv) easements, rights-of-way, covenants, conditions, zoning variances and similar encumbrances that do not materially interfere with the use or the value of the property subject thereto, (v) mechanic's, materialmen's, warehousemen's or similar Liens that arise by operation of law, (vi) postpetition Capital Leases or purchase money financings permitted to be entered into hereunder (the Liens described in clauses (iii) through this clause (vi), being "Permitted Liens"), and (vii) the Carve-Out, and

(d) pursuant to Section 364(d)(1) of the Bankruptcy Code and the ~~Orders, as applicable~~Final Order, be secured by an automatically perfected, first priority, valid, enforceable, unavoidable and, senior, priming Lien on all the property of the Borrowers and the other Credit Parties of any kind that secure obligations under the Existing Term

Loan Agreement and any Liens that are junior to such Liens, all of which existing Liens (the “Primed Liens”) shall be primed by and made subject and subordinate to the perfected first priority senior Liens to be granted to the Collateral Agent, which senior priming Liens in favor of the Collateral Agent shall also prime any Liens arising after the commencement of the Cases to provide adequate protection in respect of any Primed Liens, subject only to Permitted Liens and the Carve-Out.

In consideration of the mutual agreements, provisions and covenants contained herein, the parties hereto agree as follows:

## ARTICLE I THE CREDITS

### 1.1 Amounts and Terms of Commitments

(a) The Revolving Credit.

(i) Subject to the terms and conditions of this Agreement, ~~during the Interim Order Period, the Interim Order and after the entry of the Final Order, and~~ the Final Order, and in reliance upon the representations and warranties of the Credit Parties contained herein, each Revolving Lender severally and not jointly agrees to make revolving loans to the Borrowers (each such revolving loan, a “Revolving Loan”) from time to time on any Business Day during the period from the Closing Date through the Termination Date, in an aggregate amount not to exceed at any time outstanding the amount set forth opposite such Revolving Lender’s name on Schedule 1.1(a) under the heading “Revolving Loan Commitments” (such amount as the same may be reduced or increased from time to time in accordance with this Agreement, being referred to herein as such Revolving Lender’s “Revolving Loan Commitment”); provided, however, that ~~(A) after giving effect to any Borrowing of Revolving Loans, (x) the Aggregate Revolving Exposure shall not exceed the Aggregate Revolving Loan Commitment then in effect and (y) the Revolving Exposure of any Revolving Lender shall not exceed such Lender’s Revolving Loan Commitment—and (B) notwithstanding anything to the contrary herein or in any other Loan Document, during the Interim Order Period, only \$25,000,000 of the Revolving Loan Commitments will be available and each Revolving Lender shall make available a ratable portion of its Revolving Loan Commitment in accordance therewith and such lesser Revolving Loan Commitment is also set forth opposite such Revolving Lender’s name on Schedule 1.1(a) under the heading “Interim Order Period Revolving Loan Commitments”; provided, however; provided further that~~, notwithstanding anything to the contrary herein or in any other Loan Document, during a Material Contract Default Event Period, only the lesser of (x) an amount equal to the Aggregate Revolving Loan Commitment minus the Aggregate Revolving Exposure and (y) \$10,000,000 (such lesser amount, the “Material Contract Default Event Period Starter Amount”) will be available for



borrowing hereunder, with such Material Contract Event Period Starter Amount being reduced by any Revolving Loans made during such Material Contract Default Event Period (the aggregate principal amounts of Revolving Loans outstanding and made during such period, the “Material Contract Revolving Exposure”) and increased by any repayments of Revolving Loans during such Material Contract Default Event Period (such amount after giving effect to any reductions or increases in accordance with the foregoing, the “Material Contract Default Event Period Amount”); provided further that, ~~(x)~~ upon entry of the Final Order and the Bidding Procedures Order, the full amount of each Revolving Lender’s Revolving Loan Commitment shall be available subject to the limitations set forth above in clauses (A) and (B) above ~~and (y) during the Interim Order Period, Oaktree and its Affiliates and Approved Funds shall be the Revolving Lenders and shall not assign its Revolving Loans and Revolving Loan Commitments to any other Person (other than any other Affiliate or Approved Fund of Oaktree) during such period.~~ Subject to the other terms and conditions hereof, amounts borrowed under this Section 1.1(a) may be repaid and reborrowed from time to time.

(b) Term Loans. Subject to the terms and conditions of this Agreement ~~(including entry of the Interim Order)~~ and in reliance upon the representations and warranties of the Credit Parties contained herein, each Term Lender severally and not jointly agrees to make a term loan to the Borrowers (such loans, collectively, the “Term Loan”) on the Closing Date in an aggregate amount not to exceed the amount set forth opposite such Term Lender’s name on Schedule 1.1(a) under the heading “Term Loan Commitments” (such amount being referred to herein as such Term Lender’s “Term Loan Commitment”); ~~provided that such Term Loans shall be made with \$2,000,000 of original issue discount, such that the aggregate amount funded on the Closing Date by all Term Lenders in respect of the Term Loans shall be \$2,000,000 less than the Term Loan Commitment of all Term Lenders (which amount shall be allocated ratably among the Term Lenders as set forth on Schedule 1.1(a)); provided, that, during the Interim Order Period, Oaktree and its Affiliates and Approved Funds shall be the Term Lenders and shall not assign its Term Loans and Term Loan Commitments to any other Person (other than any other Affiliate or Approved Fund of Oaktree) during such period.~~ Upon each Term Lender’s making of its portion of Term Loan, the Term Loan Commitment of such Term Lender shall be terminated.

## **1.2 Evidence of Loans; Notes**

(a) The Revolving Loans made by each Lender are evidenced by this Agreement and, if requested by such Lender, a Revolving Note payable to such Lender in an amount equal to such Lender’s Revolving Loan Commitment.

(b) The portion of the Term Loan made by each Term Lender is evidenced by this Agreement and, if requested by such Term Lender, a Term Note payable to such Term Lender in an amount equal to such Term Lender’s Term Loan Commitment.

### 1.3 Interest

(a) Subject to Sections 1.3(c) and 1.3(d), each Loan shall bear interest on the outstanding principal amount thereof from the date when made at a rate per annum equal to the Applicable Rate. Each determination of an interest rate by ~~Oaktree~~-KPS shall be conclusive and binding on each Borrower in the absence of manifest error. All computations of fees and interest payable under this Agreement shall be made on the basis of a 360-day year and actual days elapsed. Interest and fees shall accrue during each period during which interest or such fees are computed from the first day thereof to the last day thereof.

(b) Interest on each Loan shall be payable in kind by capitalizing and adding such interest to the unpaid principal amount of the Loans (such capitalized interest "PIK Interest") at the Applicable Rate. All PIK Interest will be payable monthly in arrears on the last Business Day of each fiscal month by increasing the principal amount of the Loans and will be compounded monthly. All PIK Interest so added shall be treated as principal amount of the Loans for all purposes of this Agreement. Following any such increase in the principal amount of the Loans, interest will accrue on such increased amount. All PIK Interest shall be paid in cash on the Termination Date.

(c) At any time any Event of Default exists, the Borrowers shall pay interest (after as well as before entry of judgment thereon to the extent permitted by law) on the Loans under the Loan Documents from and after the date of occurrence of such Event of Default, at a rate per annum which is determined by adding two percent (2.00%) per annum to the Applicable Rate then in effect for such Loans. All such interest shall be payable on demand of Required Lenders.

(d) Anything herein to the contrary notwithstanding, the obligations of the Borrowers hereunder shall be subject to the limitation that payments of interest shall not be required, for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by the respective Lender would be contrary to the provisions of any law applicable to such Lender limiting the highest rate of interest which may be lawfully contracted for, charged or received by such Lender, and in such event the Borrowers shall pay such Lender interest at the highest rate permitted by applicable law ("Maximum Lawful Rate"); provided, however, that if at any time thereafter the rate of interest payable hereunder is less than the Maximum Lawful Rate, the Borrowers shall continue to pay interest hereunder at the Maximum Lawful Rate until such time as the total interest received by Agent, on behalf of Lenders, is equal to the total interest that would have been received had the interest payable hereunder been (but for the operation of this paragraph) the interest rate payable since the Closing Date as otherwise provided in this Agreement.

### 1.4 Loan Accounts

(a) Agent, on behalf of the Lenders, shall record on its books and records the amount of each Loan made, the interest rate applicable, all payments of principal and interest thereon and the principal balance thereof from time to time outstanding. Agent shall deliver to the Borrower Representative on a monthly basis a loan statement setting forth such record for the immediately preceding calendar month. Such record shall, absent manifest error, be conclusive evidence of the amount of the Loans made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so, or any failure to deliver such loan statement shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder (and under any Note) to pay any amount owing with respect to the Loans or provide the basis for any claim against Agent.

(b) Agent, acting as a non-fiduciary agent of the Borrowers solely for tax purposes and solely with respect to the actions described in this Section 1.4(b), shall establish and maintain at its address referred to in Section 9.2 (or at such other address as Agent may notify the Borrower Representative) (A) a record of ownership (the "Register") in which Agent agrees to register by book entry the interests (including any rights to receive payment hereunder) of Agent and each Lender in the Revolving Loan Commitments, Revolving Loans and Term Loans and each of their obligations under this Agreement to participate in each Loan, and any assignment of any such interest, obligation or right and (B) accounts in the Register in accordance with its usual practice in which it shall record (1) the names and addresses of the Lenders (and each change thereto pursuant to Sections 9.9 and 9.22), (2) the Revolving Loan Commitments of each Lender, (3) the outstanding amount of the Term Loan, (4) the amount of each Loan and each funding of any participation described in clause (A) above, (5) the amount of any principal or interest due and payable or paid, and (6) any other payment received by Agent from a Borrower and its application to the Obligations.

(c) This Section 1.4 and Section 9.9 shall be construed so that the Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any successor provisions).

(d) The Credit Parties, Agent and the Lenders shall treat each Person whose name is recorded in the Register as a Lender for all purposes of this Agreement. Information contained in the Register with respect to any Lender shall be available for access by the Borrowers, the Borrower Representative, Agent or such Lender during normal business hours and from time to time upon at least one (1) Business Day's prior notice. No Lender shall, in such capacity, have access to or be otherwise permitted to review any information in the Register other than information with respect to such Lender unless otherwise agreed by Required Lenders.

## **1.5 Procedure for Revolving Credit Borrowing**

(a) Each Borrowing of a Revolving Loan shall be made upon the Borrower Representative's irrevocable (subject to Section 10.5) written notice (or telephonic notice, followed by written notice not later than 1:00 p.m. (New York time) on the same Business Day on which such telephonic notice is provided) delivered to Agent and Lenders (to the extent such Lender's e-mail address is identified on the applicable signature page hereto or otherwise available to the Borrowers) substantially in the form of a Notice of Borrowing or in a writing in any other form reasonably acceptable to Agent and Lenders, which notice must be received by Agent and the Lenders prior to 11:00 a.m. (New York time) on the date which is one (1) Business Day prior to the requested Borrowing date of each Revolving Loan. Such Notice of Borrowing shall specify:

(i) the amount of the requested Borrowing (which shall be in an aggregate minimum principal amount of \$1,000,000); and

(ii) the requested Borrowing date, which shall be a Business Day.

(b) Upon receipt of a Notice of Borrowing, Agent will promptly notify each Revolving Lender of such Notice of Borrowing and of the amount of such Revolving Lender's Commitment Percentage of the Borrowing of a Revolving Loan.

(c) Unless Agent is otherwise directed in writing by the Borrower Representative, the proceeds of each requested Borrowing of a Revolving Loan after the Closing Date will be made available to the Borrowers by Agent by wire transfer of such amount to the Borrowers pursuant to the wire transfer instructions specified on the signature page hereto.

## **1.6 [Reserved]**

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## **1.7 Prepayments of Loans**

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(a) [Reserved].

(b) Optional Prepayments. The Borrowers may, upon prior notice by Borrower Representative to Agent, at any time or from time to time voluntarily prepay the Loans in whole or in part without premium or penalty or any reduction in the Aggregate Revolving Loan Commitment; provided that (i) such notice must be received by Agent not later than 11:00 a.m., New York time, one (1) Business Day prior to any date of prepayment of Loans; and (ii) any such prepayment shall be in a minimum amount equal to \$1,000,000 and in increments of \$1,000,000 in excess thereof, or if less, the entire principal amount thereof then outstanding (it being understood that no notice or minimum amount set forth herein shall be applicable with respect to any payments effected pursuant to Section 4.11(c)).

(c) Notice. Once provided, prepayment of Loans shall not thereafter be revocable by the Borrowers or Borrower Representative and Agent will promptly notify each Lender thereof and of such Lender's Pro Rata Percentage of such reduction or prepayment, as the case may be. In the case of any notice of prepayment, the payment amount specified in such notice shall be due and payable on the date specified therein. Together with each prepayment under this Section 1.7, the Borrowers shall pay any amounts required pursuant to Section 10.4.

## **1.8 Mandatory Prepayments of Loans and Commitment Reductions**

(a) Advances in Excess of Aggregate Revolving Loan Commitment then in Effect. If at any time the then Aggregate Revolving Exposure exceeds the Aggregate Revolving Loan Commitment then in effect (or, during a Material Contract Default Event Period, the Material Contract Revolving Exposure exceeds the Material Contract Default Event Period Amount), then the Borrowers shall immediately prepay outstanding Revolving Loans in an amount sufficient to eliminate such excess.

(b) Loans. The Borrowers shall repay to the Lenders in full on the Termination Date the aggregate principal amount of the Loans outstanding on the Termination Date.

(c) Asset Dispositions; Events of Loss. If a Credit Party or any Subsidiary of a Credit Party shall at any time or from time to time:

(i) make a Disposition ~~(including, without limitation, the Lane Sale)~~;  
or

(ii) suffer an Event of Loss; then (A) the Borrower Representative shall promptly notify Agent of such Disposition or Event of Loss (including the amount of the estimated Net Proceeds to be received by a Credit Party and/or such Subsidiary in respect thereof) and (B) promptly (and in any event, within 2 Business Days, but subject to an order of the Bankruptcy Court reasonably satisfactory to ~~Oaktree-KPS~~ with respect to any Disposition requiring Bankruptcy Court approval) upon receipt by a Credit Party and/or such Subsidiary of any Net Proceeds of such Disposition or Event of Loss (including, for the avoidance of doubt, the receipt by a Credit Party and/or such Subsidiary of any principal payment, including, without limitation, any payments in the ordinary course or prepayments made on any of the Investment Promissory Notes (as defined below in this Section 1.8(c)), but excluding (i) any Disposition of any Identified Assets (other than, to the extent set forth in the next succeeding proviso, with respect to the Identified Assets Trust Proceeds) and (ii) any Disposition permitted by Section 5.2(i) of this Agreement, the Borrowers shall deliver, or cause to be delivered, an amount equal to such Net Proceeds ~~(including, for the avoidance of doubt, Lane Sale Proceeds)~~ to Agent for distribution to the Term Lenders as a prepayment of the Term Loans; provided, that, to the extent the Asset Purchase

Agreement is terminated, amounts constituting Identified Assets Trust Proceeds shall be applied as a prepayment of the Term Loans. For the purposes of this Section 1.8(c), the term “Investment Promissory Notes” means any of the promissory notes listed on Schedule 5.4 and any future promissory notes executed after the Closing Date in favor of any Credit Party, but excluding, in each case, (i) any intercompany promissory note executed between Credit Parties and/or any Subsidiary thereof or (ii) any promissory note that evidences the proceeds of any disposition that is specifically excluded from the definition of “Disposition”. Each of the Term Lenders entitled to payment under this Section 1.8(c) shall receive an amount equal to its Pro Rata Percentage of amounts available to be applied.

(d) Issuance of Securities. Immediately upon the receipt by any Credit Party or any Subsidiary of any Credit Party of the Net Issuance Proceeds of the issuance of Stock or Stock Equivalents (including any capital contribution) or debt securities (other than Net Issuance Proceeds from the issuance of Excluded Equity Issuances), the Borrowers shall deliver, or cause to be delivered, to Agent an amount equal to such Net Issuance Proceeds, for application to the Term Loans. Each of the Term Lenders entitled to payment under this Section 1.8(d) shall receive an amount equal to its Pro Rata Percentage of amounts available to be applied.

(e) Cash. If, as of the end day that a weekly “flash” cash report is required to have been delivered pursuant to Section 4.2(e), the Credit Parties and their Subsidiaries have cash and Cash Equivalents on-hand in excess of \$3,000,000 (excluding (v) Identified Assets Trust Proceeds, (w) for the avoidance of doubt, cash which has been pre-funded to make payroll for such week, (x) any system cash that has not been transferred to the Credit Parties’ disbursement account(s) in the Ordinary Course of Business, (y) cash used to cash collateralize (1) any letters of credit and bank products (including P-cards), at 105% of the amount thereof, issued under Prior Indebtedness or (2) cash (including any cash resulting from the making of any Revolving Loans) that may be used to cash collateralize any letters of credit that are issued by a Person other than a Revolving Lender after the Petition Date in an aggregate amount not to exceed \$1,000,000 at any one time outstanding and (z) cash of the Credit Parties not maintained in accounts located in the United States), such excess amount shall, no later than the first Business Day following the day that a weekly “flash” cash report is required to have been delivered pursuant to Section 4.2(e), be applied to (i) repay Revolving Loans until the Revolving Exposure of all Revolving Lenders is zero dollars (\$0) (without any reduction to the Revolving Loan Commitment of any Revolving Lender) and (ii) once the Revolving Exposure of all Revolving Lenders is zero, any additional excess shall not be required to be applied to prepay the Term Loans. Each of the Lenders entitled to payment under this Section 1.8(e) shall receive an amount equal to its Pro Rata Percentage of amounts available to be applied. Notwithstanding the foregoing, no payments under this Section 1.8(e) will be required during a Material Contract Default Event Period.

(f) No Implied Consent. Provisions contained in this Section 1.8 for the application of proceeds of certain transactions shall not be deemed to constitute consent



of the Lenders to transactions that are not otherwise permitted by the terms hereof or the other Loan Documents.

(g) No Reduction in the Aggregate Revolving Loan Commitment. No prepayment made pursuant to this Section 1.8 (other than Section 1.8(h)) shall reduce the Aggregate Revolving Loan Commitment.

(h) Termination Prepayment. Immediately prior to and in connection with the consummation of the Bankruptcy Sale, all cash-on hand (other than cash in an amount equal to the sum of the Carve-Out Estimate) shall be applied to repay outstanding Revolving Loans until the Revolving Exposure of all Revolving Lenders is zero dollars (\$0) (without such repayments effecting a permanent reduction in the Revolving Loan Commitments on a ratable basis); provided, that to the extent the Carve-Out Estimate exceeds the actual amounts applied to pay Committee expenses and professional fees incurred by the Debtors and the Committee within 60 days after the Bankruptcy Sale, such amount shall be returned to the Borrower.

## **1.9 Fees**

(a) Agent Fees. The Borrowers shall pay to Agent, fees in the amounts and at the times specified in the Agent Fee Letter.

(b) Termination Fee. The Borrower shall pay to the Agent on the Termination Date, for distribution to the Lenders, a fee equal to \$2,000,000, except such fee shall not be payable if the Bankruptcy Sale has been consummated or will be consummated substantially concurrently with the Termination Date.

## **1.10 Payments by the Borrowers**

(a) All payments (including prepayments) to be made by each Credit Party on account of principal, interest, fees and other amounts required hereunder shall be made without setoff, recoupment, counterclaim or deduction of any kind, shall, except as otherwise expressly provided herein, be made to Agent (for the ratable account of the Persons entitled thereto) at the address for payment specified in the signature page hereof in relation to Agent (or such other address as Agent may from time to time specify in accordance with Section 9.2), including payments utilizing the ACH system, and shall be made in Dollars and by wire transfer or ACH transfer in immediately available funds (which shall be the exclusive means of payment hereunder), no later than 2:00 p.m. (New York time) on the date due. Any payment which is received by Agent later than 2:00 p.m. (New York time) may in ~~Oaktree's~~-KPS's discretion be deemed to have been received on the immediately succeeding Business Day and any applicable interest or fee shall continue to accrue. Each Borrower hereby authorizes each Revolving Lender to make a Revolving Loan to pay (i) interest, principal, Agent fees and expenses, in each instance, on the date due, or (ii) after five (5) Business Days' prior notice to the Borrower

Representative (unless Agent has received written notice from the Borrower Representative that such other fees, costs and expenses are being disputed in good faith by the Borrowers (it being understood and agreed that any such dispute shall not limit the effect of any Default or Event of Default which shall result from the failure to make any such payment)), other fees, costs or expenses payable by a Borrower or any of its Subsidiaries hereunder or under the other Loan Documents.

(b) If any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

(c) So long as no Event of Default has occurred and is continuing and except as otherwise set forth herein or in the ~~Orders~~Final Order, all payments received by Agent in respect of any Obligation and all funds transferred and credited to the Collection Account shall be applied to the Obligations as follows: first, to payment of interest, fees, costs and expenses and any other amounts then due and payable by the Credit Parties under this Agreement and the other Loan Documents until paid in full; second, to payment of principal of all Revolving Loans until paid in full; third, to payment of principal of all Term Loans until paid in full; and fourth to the Borrower Representative's operating account or for the account of and paid to whoever may be lawfully entitled thereto.

In carrying out the foregoing, (A) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category and (B) each of the Lenders or other Persons entitled to payment shall receive an amount equal to its Pro Rata Percentage of amounts available to be applied pursuant to clauses second and third above.

(i) Upon the occurrence and during the continuance of an Event of Default, Agent may, and shall upon the direction of Required Lenders, apply any and all payments received by Agent in respect of any Obligation in accordance with clauses first through eighth below (except to the extent such payments are to be applied in another manner as otherwise set forth herein). Notwithstanding any provision herein to the contrary, all amounts collected or received by Agent after any or all of the Obligations have been accelerated (so long as such acceleration has not been rescinded), including proceeds of Collateral, shall be applied as follows: first, to the payment of any fees, costs and expenses, including Attorney Costs, of Agent payable or reimbursable by the Credit Parties under the Loan Documents; second, to payment of Attorney Costs of Lenders payable or reimbursable by the Borrowers under this Agreement (subject to any limitations set forth herein (including Section 9.5)); third, to payment of all accrued unpaid interest on the Obligations and fees owed to Agent and the Lenders; fourth, to payment of principal of the Obligations then due and payable; fifth, to payment of any other amounts owing constituting Obligations; and sixth, any remainder shall be for the account of and paid to whoever may be lawfully entitled thereto.



In carrying out the foregoing, (A) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category and (B) each of the Lenders or other Persons entitled to payment shall receive an amount equal to its Pro Rata Commitment of amounts available to be applied pursuant to clauses third, fourth and fifth above.

(d) The Agent (at the direction of ~~Oaktree~~KPS) is hereby authorized by the Borrowers to, and at its sole election may, charge to the Revolving Loan balance on behalf of each Borrower and cause to be paid all fees, expenses, charges, costs and interest and principal, other than principal of the Revolving Loans, owing by the Borrowers and the Credit Parties under this Agreement or any of the other Loan Documents if and to the extent the Credit Parties fail to pay promptly any such amounts as and when due, even if the amount of such charges would exceed the Aggregate Revolving Loan Commitments at such time. At ~~Oaktree's~~KPS's option and to the extent permitted by law, any charges so made shall constitute part of the Revolving Loans hereunder.

#### **1.11 Payments by the Lenders to Agent; Settlement**

(a) Agent may, on behalf of the Revolving Lenders, disburse funds to the Borrowers for Revolving Loans requested. Each Revolving Lender shall reimburse Agent on demand for all funds disbursed on its behalf by Agent, or if Agent so requests, each Revolving Lender will remit to Agent its Commitment Percentage of any Revolving Loan before Agent disburses same to the Borrowers. If Agent elects to require that each Revolving Lender make funds available to Agent prior to disbursement by Agent to the Borrowers, Agent shall advise each Lender by telephone or fax of the amount of such Revolving Lender's Commitment Percentage of the Revolving Loan requested by the Borrower Representative no later than the Business Day prior to the scheduled Borrowing date applicable thereto, and each such Revolving Lender shall pay Agent such Lender's Commitment Percentage of such requested Revolving Loan, in same day funds, by wire transfer to Agent's account, as set forth on Agent's signature page hereto, no later than 2:00 p.m. (New York time) on such scheduled Borrowing date. Nothing in this Section 1.11(a) or elsewhere in this Agreement or the other Loan Documents, including the remaining provisions of Section 1.11, shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that Agent, any Lender or the Borrowers may have against any Lender as a result of any default by such Lender hereunder.

(b) At least once each calendar week or more frequently at Agent's election (each, a "Settlement Date"), Agent shall advise each Revolving Lender by telephone or fax of the amount of such Lender's Commitment Percentage of principal, interest and fees paid for the benefit of Revolving Lenders with respect to each applicable Revolving Loan. Agent shall pay to each Revolving Lender such Lender's Commitment Percentage (except as set forth herein with respect Non-Funding Lenders (including, without

limitation, adjustments to reflect any reallocation contemplated under Section 1.11(e)(ii)) of principal, interest and fees paid by the Borrowers since the previous Settlement Date for the benefit of such Revolving Lender on the Revolving Loans held by it. Such payments shall be made by wire transfer to such Revolving Lender not later than 2:00 p.m. (New York time) on the next Business Day following each Settlement Date.

(c) Availability of Revolving Lender's Commitment Percentage. Agent may assume that each Revolving Lender will make its Commitment Percentage of each Revolving Loan available to Agent on each Borrowing date. If such Commitment Percentage is not, in fact, paid to Agent by such Revolving Lender when due, Agent will be entitled to recover such amount on demand from such Lender without setoff, counterclaim or deduction of any kind. If any Revolving Lender fails to pay the amount of its Commitment Percentage forthwith upon Agent's demand, Agent shall promptly notify the Borrower Representative and the Borrowers shall immediately repay such amount to Agent. Nothing in this Section 1.11(c) shall be deemed to require Agent to advance funds on behalf of any Revolving Lender or to relieve any Revolving Lender from its obligation to fulfill its Revolving Loan Commitments hereunder or to prejudice any rights that the Borrowers may have against any Revolving Lender as a result of any default by such Revolving Lender hereunder. Without limiting the provisions of Section 1.11(b), to the extent that Agent advances funds to the Borrowers on behalf of any Revolving Lender and is not reimbursed therefor on the same Business Day as such advance is made, Agent shall be entitled to retain for its account all interest accrued on such advance from the date such advance was made until reimbursed by the applicable Revolving Lender.

(d) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from the Borrowers and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind.

(ii) If Agent reasonably determines at any time that any amount received by Agent under this Agreement or any other Loan Document must be returned to any Credit Party or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Loan Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind, and Agent will be entitled to set-off against future distributions to such Lender any such amounts (with interest) that are not repaid on demand.

(e) Non-Funding Lenders; Procedures.

(i) Responsibility. The failure of any Non-Funding Lender to make any Revolving Loan or any payment required by it, or to make any payment required by it under any Loan Document, or to fund any purchase of any participation to be made or funded by it on the date specified therefor shall not relieve any other Lender (each such other Lender, an “Other Lender”) of its obligations to make such loan, fund the purchase of any such participation, or make any other such required payment on such date, and neither Agent nor, other than as expressly set forth herein, any other Lender shall be responsible for the failure of any Non-Funding Lender to make a Loan, fund the purchase of a participation or make any other required payment under any Loan Document.

(ii) [Reserved].

(iii) Voting Rights. Notwithstanding anything set forth herein to the contrary, including Section 9.1, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Loan Document or constitute a “Lender” (or be, or have its Loans and Revolving Loan Commitments, included in the determination of “Required Lenders”, “Required Revolving Lenders” or “Lenders directly affected” pursuant to Section 9.1) for any voting or consent rights under or with respect to any Loan Document, provided that (A) the Revolving Loan Commitment of a Non-Funding Lender may not be increased, (B) the principal of a Non-Funding Lender’s Loans may not be reduced or forgiven, and (C) the interest rate applicable to Obligations owing to a Non-Funding Lender may not be reduced in such a manner that by its terms affects such Non-Funding Lender more adversely than other Lenders, in each case without the consent of such Non-Funding Lender. Moreover, for the purposes of determining Required Lenders and Required Revolving Lenders, the Loans and Revolving Loan Commitments held by Non-Funding Lenders shall be excluded from the total Loans and Aggregate Revolving Loan Commitments outstanding.

(iv) Borrower Payments to a Non-Funding Lender. Agent shall be authorized to use all payments received by Agent for the benefit of any Non-Funding Lender pursuant to this Agreement to pay in full the Aggregate Excess Funding Amount to the appropriate Secured Parties. Following such payment in full of the Aggregate Excess Funding Amount, Agent shall be entitled to hold such funds as cash collateral in a non-interest bearing account up to an amount equal to such Non-Funding Lender’s unfunded Revolving Loan Commitment and to use such amount to pay such Non-Funding Lender’s funding obligations hereunder until the Obligations are paid in full in cash and the Aggregate Revolving Loan Commitments have been terminated. Upon any such unfunded obligations owing by a Non-Funding Lender becoming due and payable, Agent shall be authorized to use such cash collateral to make such payment on behalf of such Non-Funding Lender. With respect to such Non-Funding Lender’s failure to fund Revolving Loans, any amounts applied by Agent to satisfy such funding shortfalls shall be deemed to constitute a Revolving Loan and, if necessary to

effectuate the foregoing, the other Revolving Lenders shall be deemed to have sold, and such Non-Funding Lender shall be deemed to have purchased, Revolving Loans from the other Revolving Lenders until such time as the aggregate amount of the Revolving Loans is held by the Revolving Lenders in accordance with their Commitment Percentages of the Aggregate Revolving Loan Commitment. Any amounts owing by a Non-Funding Lender to Agent which are not paid when due shall accrue interest at the Applicable Rate. In the event that Agent is holding cash collateral of a Non-Funding Lender that cures pursuant to clause (v) below or ceases to be a Non-Funding Lender pursuant to the definition of Non-Funding Lender, Agent shall return the unused portion of such cash collateral to such Revolving Lender. The “Aggregate Excess Funding Amount” of a Non-Funding Lender shall be the aggregate amount of all unpaid obligations owing by such Revolving Lender to Agent and the other Revolving Lenders under the Loan Documents, including such Revolving Lender’s pro rata share of all Revolving Loans.

(v) Cure. A Revolving Lender may cure its status as a Non-Funding Lender under clause (a) of the definition of Non-Funding Lender if such Revolving Lender (A) fully pays to Agent, on behalf of the applicable Secured Parties, the Aggregate Excess Funding Amount, plus all interest due thereon and (B) timely funds the next Revolving Loan required to be funded by such Revolving Lender. Any such cure shall not relieve any Lender from liability for breaching its contractual obligations hereunder.

(f) Procedures. Agent is hereby authorized by each Credit Party and each other Secured Party to establish reasonable procedures (and to amend such procedures in a reasonable manner from time to time) to facilitate administration and servicing of the Loans and other matters incidental thereto. Without limiting the generality of the foregoing, Agent is hereby authorized to establish reasonable procedures to make available or deliver, or to accept, notices, documents and similar items on, by posting to or submitting and/or completion on, E-Systems.

## **1.12 Borrower Representative**

. The Company hereby (i) is irrevocably designated and appointed by each Credit Party as its representative and agent on its behalf (the “Borrower Representative”) and (ii) accepts such appointment as Borrower Representative, in each case, for the purposes of issuing Notices of Borrowings, delivering certificates, giving instructions with respect to the disbursement of the proceeds of the Loans, selecting interest rate options, giving and receiving all other notices and consents hereunder or under any of the other Loan Documents and taking all other actions (including in respect of compliance with covenants) on behalf of any Credit Party or the Credit Parties under the Loan Documents. Such appointment shall remain in full force and effect unless and until the Required Lenders shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed as Borrower Representative. Agent and each Lender may regard any notice or other communication pursuant to any Loan Document from Borrower Representative as a notice or communication from all the Credit Parties. Each warranty, covenant, agreement and undertaking

made on behalf of a Credit Party by Borrower Representative shall be deemed for all purposes to have been made by such Credit Party and shall be binding upon and enforceable against such Credit Party to the same extent as if the same had been made directly by such Credit Party. It is understood that the handling of the loan account of the Borrowers and the Collateral in a combined fashion, as more fully set forth herein, is done solely as an accommodation to the Borrowers in order to facilitate in the most efficient and economical manner and at the Borrowers' request, and that Secured Parties shall not incur liability to any Borrower or any other Credit Party as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of their loan account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group.

### **1.13 Certain Bankruptcy Matters**

(a) Except to the extent expressly provided otherwise in an Order, the Credit Parties hereby agree that, subject only to Permitted Liens and the Carve-Out, the Obligations shall (i) constitute DIP Superpriority Claims over all administrative expense claims and claims against the Borrowers and the other Credit Parties now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(c), 546(d), 726, 1113, 1114 or any other provisions of the Bankruptcy Code and all super-priority administrative expense claims granted to any other Person the establishment of which super-priority shall have been approved and authorized by the Bankruptcy Court and (ii) be secured pursuant to Sections 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code and, to the extent provided in ~~any of the Orders~~ Final Order.

(b) In the event of a conflict between, or inconsistency among, ~~the Interim Order or~~ the Final Order, on the one hand, and any other Loan Document, on the other hand, the ~~Interim Order or the~~ Final Order, as the case may be, shall control.

(c) Notwithstanding anything to the contrary contained herein or elsewhere:

(i) Agent and the Lenders shall not be required to prepare, file, register or publish any financing statements, mortgages, hypothecs, account control agreements, notices of Lien or similar instruments in any jurisdiction or filing or registration office, or to take possession of any Collateral or to take any other action in order to validate, render enforceable or perfect the Liens on the Collateral granted by or pursuant to this Agreement, the ~~Orders~~ Final Order or any other Loan Document. If Agent (at ~~Oaktree's~~ KPS's direction, which shall be in its sole discretion), from time to time elects to prepare, file, register or publish any such financing statements, mortgages, hypothecs, account control agreements, notices of Lien or similar instruments, take possession of any Collateral, or take any other action to validate, render enforceable or perfect all or any portion of the Agent's Liens on the Collateral, (A) all such documents and actions shall be

deemed to have been filed, registered, published or recorded or taken at the time and on the date that the ~~Interim-Final~~ Order is entered, and (B) shall not negate or impair the validity or effectiveness of this Section 1.13(c) or of the perfection of any other Liens in favor of Agent, for the benefit of the Lenders and the other Secured Parties, on the Collateral. Notwithstanding anything to the contrary herein, neither Agent nor any Secured Party shall require the filing of a Mortgage with respect to any Real Property of the Credit Parties unless an Event of Default resulting from a breach of Section 7.1(a) has occurred and is continuing.

(ii) Except as otherwise agreed to by the Lenders, the Liens, Lien priorities, DIP Superpriority Claims and other rights and remedies granted to Agent, the Lenders and the other Secured Parties pursuant to this Agreement, the ~~Orders-Final Order~~ or the other Loan Documents (specifically including, but not limited to, the existence, perfection, enforceability and priority of the Liens provided for herein and therein, and the DIP Superpriority Claims provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of indebtedness by any Borrower or any other Credit Party (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by dismissal or conversion of any of the Cases, or by any other act or omission whatsoever.

(d) Without limiting the generality of the foregoing, notwithstanding any such financing, extension, incurrence, dismissal, conversion, act or omission:

(i) subject only to Permitted Liens and the Carve-Out and to the extent provided in ~~any of the Orders-Final Order~~ and subject to the ~~Orders~~Final Order, no costs or expenses of administration which have been or may be incurred in the Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on a parity with any claim of any Secured Party or Agent against the Borrower or any other Credit Parties in respect of any Obligations;

(ii) other than as provided in the ~~Orders-Final Order~~ or the Loan Documents, the Agent's Liens on the Collateral shall constitute valid, enforceable and perfected first priority Liens, and shall be prior to all other Liens (except Permitted Liens), now existing or hereafter arising, in favor of any other creditor or other Person; and

(iii) the Agent's Liens on the Collateral shall continue to be valid, enforceable and perfected without the need for the Agent or any Secured Party to prepare, file, register or publish any financing statements, mortgages, hypothecs, account control agreements, notices of Lien or similar instruments or to otherwise perfect the Agent's Liens under applicable non-bankruptcy law.

In connection with any Sale or Disposition of all or any portion of the Collateral, including in each case pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code or as part



of restructuring plan subject to confirmation under Section 1129(b)(2)(A)(iii) of the Bankruptcy Code, or at any sale or foreclosure conducted by Agent, in accordance with applicable law and, with respect to any credit bid, Section 363(k) of the Bankruptcy Code, each Borrower and each other Credit Party hereby gives Agent (at the direction of the Required Lenders) the power and right, without assent by such Credit Party, to “credit bid” the full amount of all Obligations in order to purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral.

## ARTICLE II CONDITIONS PRECEDENT

### 2.1 Conditions of Initial Loans

. The obligation of each Lender to make its initial Loans hereunder is subject to ~~Oaktree's~~ KPS's satisfaction (or waiver by ~~Oaktree~~KPS) of the following conditions in a manner reasonably satisfactory to ~~Oaktree~~KPS:

(a) Loan Documents. Agent shall have received on or before the Closing Date duly executed copies of: (i) this Agreement; (ii) the Notes (if any); (iii) the Collateral Documents; and (iv) all other Loan Documents, each in form and substance reasonably satisfactory to ~~Oaktree~~KPS;

(b) Legal Matters. All legal matters incident to this Agreement and the borrowings hereunder shall be satisfactory to Agent and ~~Oaktree~~KPS;

(c) Organizational Documents. Agent shall have received: (i) a copy of the certificate or articles of incorporation or other organizational documents, as applicable, including all amendments thereto, of each Credit Party, certified as of a recent date by the Secretary of State or other applicable authority of its respective jurisdiction of organization; (ii) a certificate as to the good standing of each Credit Party, as of a recent date, from the Secretary of State or other applicable authority of its respective jurisdiction of organization together, to the extent generally available, with a certificate or other evidence of good standing as to payment of any applicable franchise or similar taxes from the appropriate taxing authority of each such jurisdiction; (iii) resolutions of each Credit Party's board of directors (or other comparable managing body, in the case of an entity other than a corporation) then in full force and effect authorizing the execution, delivery and performance of each Loan Document (subject to the ~~Orders~~Final Order) to be executed by such Person and the transactions contemplated hereby and thereby; (iv) the incumbency and signatures of those of its officers, managing member or general partner, as applicable, authorized to act with respect to each Loan Document to be executed by each Credit Party, (v) a certificate, dated the Closing Date duly executed and delivered by each Credit Party's secretary or assistant secretary (or if there is no secretary or assistant secretary, a Responsible Officer of such Credit Party) certifying to the accuracy, truthfulness and completeness of the items and documents set forth in clauses (i) - (v) above; and (vi) a certificate of another Responsible Officer of such Credit Party as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate pursuant to clause (iv) above;

(d) Officer's Certificates. Agent shall have received a certificate, dated the Closing Date, and signed by a Responsible Officer of each Credit Party, confirming compliance (subject to entry of the ~~Initial~~ Final Order) with the conditions precedent set forth in Section 2.2;

(e) Opinions of Counsel. Agent and the Lenders shall have received satisfactory and customary opinions of independent counsel to the Credit Parties, addressing such matters as Agent or the Lenders shall reasonably request; provided that no local counsel opinion shall be required for Mississippi, North Carolina or Virginia;

(f) Evidence of Insurance. ~~Oaktree~~ KPS shall be reasonably satisfied with the amount, types and terms and conditions of all insurance maintained by the Credit Parties and their Subsidiaries;

(g) Consents; Absence of Conflicts. Subject to the entry of the ~~Orders~~ Final Order, (i) all governmental and third party consents and approvals necessary in connection with the transactions contemplated by the Loan Documents shall have been obtained (without the imposition of any conditions that are not reasonably acceptable to ~~Oaktree~~ KPS) and shall remain in effect, and (ii) there shall not exist any law, regulation, ruling, judgment, order, injunction or other restraint that, in the judgment of ~~Oaktree~~ KPS, restrains, prevents, prohibits, restricts or imposes materially adverse conditions upon the Credit Parties or the transactions contemplated hereby or the other Loan Documents ;

(h) Repayment of Prior Lender Obligations; Satisfaction of Outstanding Letters of Credit. (i) ~~Oaktree~~ KPS shall have received fully executed pay-off letters reasonably satisfactory to ~~Oaktree~~ KPS confirming that all Prior Indebtedness will be repaid in full from the proceeds of the ~~initial~~ Term Loan and all Liens upon any of the Property of the Credit Parties or any of their Subsidiaries in favor of the Prior Lenders shall be terminated by the Prior Lenders immediately upon such payment; and (ii) all letters of credit issued or guaranteed by the Prior Lenders or any other Person shall have been cash collateralized at an amount equal to 105% of the amount thereof;

(i) Funds Flow Memorandum. Agent shall have received a funds-flow memorandum from the Company setting forth the sources and uses of the proceeds of the Term Loan and any Revolving Loans to be borrowed, which funds-flow memorandum shall be in form and substance reasonably satisfactory to ~~Oaktree~~ KPS (the "Funds Flow Memorandum") and shall contain a description of the Credit Parties' sources and uses of funds on the Closing Date, the details of how funds from each source are to be transferred to particular uses and the wire transfer instructions for the particular uses of such funds and the Borrowers shall have identified each Person (other than any Credit Party) that will directly receive proceeds of any Loans to be made on the Closing Date and Agent and ~~Oaktree~~ KPS shall have received such information required by Agent and ~~Oaktree~~ KPS, respectively, under its "know your customer" compliance procedures with respect to each such Person;

(j) No Litigation. Other than the Cases, no action, suit, investigation, litigation or proceeding shall be pending or threatened in any court or before any



arbitrator or governmental instrumentality that could reasonably be expected to (i) materially and adversely affect the Collateral, the transactions contemplated hereby or the other Loan Documents or (ii) result in a Material Adverse Effect;

(k) [Reserved].

(l) Payment of Fees. The Borrowers shall have paid on before the Closing Date, in cash, all reasonable and documented costs, fees, disbursements and expenses of (i) Agent (including fees, costs, disbursements and expenses of their outside counsel, ~~King Winston & Spalding Strawn~~, LLP, and their local (including, for the avoidance of doubt, foreign) counsel) and (ii) the Lenders on the Closing Date (including fees, costs, disbursements and expenses of (A) their outside counsel, ~~Kirkland & Ellis Proskauer Rose~~ LLP, and their local counsel (including, for the avoidance of doubt, foreign) and (B) any professional advisors retained by ~~Oaktree KPS~~ (or any Affiliate thereof) or their counsel.

(m) First Day Motions. All first day motions filed by the Credit Parties and related orders entered by the Bankruptcy Court in the Cases shall be in form and substance reasonably satisfactory to ~~Oaktree~~KPS.

(n) Motions and Documents. All material motions and other material documents to be filed with and submitted to the Bankruptcy Court related to the commencement of the Cases or transactions contemplated hereby and the other Loan Documents and the approval thereof shall be in form and substance reasonably satisfactory to ~~Oaktree~~KPS.

(o) First Day Orders. All orders entered by the Bankruptcy Court relating to the relief sought in the motions described in Section 2.1(m) hereof shall be in form and substance reasonably satisfactory to ~~Oaktree KPS~~ and shall not, without ~~Oaktree's KPS's~~ prior written consent, (i) authorize any Credit Party to (A) use any of the material properties or assets of the Credit Parties outside of the Ordinary Course of Business (except as contemplated by the ~~Orders Final Order~~ or in connection with the transactions contemplated by the Asset Purchase Agreement ~~or the Lane Sale~~), (B) satisfy prepetition claims of the Credit Parties or (C) incur material administrative costs, in each case, to the extent such relief is inconsistent with this Agreement (including the Budget), (ii) reject or assume any contract, agreement, lease or other agreement to which any Credit Party is a party, or (iii) otherwise be inconsistent with this Agreement, the ~~Interim Final~~ Order, the Budget or the Asset Purchase Agreement.

(p) Interim-Final Order. The ~~Interim-Final~~ Order shall provide that the Agent, for the benefit of the Secured Parties, shall have a valid and perfected Lien on and security interest in the Collateral on the basis and with the priority set forth herein.

(q) Liens. Each Order shall provide that the Agent, for the benefit of the Secured Parties, shall have a valid and perfected Lien on and security interest in the Collateral on the basis and with the priority set forth herein.

(r) Budget. ~~Oaktree~~KPS shall have received the Budget (attached as Exhibit A), which shall be in form and substance satisfactory to ~~Oaktree~~KPS.

(s) Petition Date. The Petition Date shall have occurred on or before September 16, 2013.

## **2.2 Conditions to All Borrowings**

. Except as otherwise expressly provided herein, no Lender shall be obligated to fund any Loan, if, ~~as of the date thereof~~:

(a) any representation or warranty by any Credit Party contained herein or in any other Loan Document is untrue or incorrect in any material respect (without duplication of any materiality qualifier contained therein) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties were untrue or incorrect in any material respect (without duplication of any materiality qualifier contained therein) as of such earlier date);

(b) any Default or Event of Default has occurred and is continuing or would result after giving effect to any Loan (other than, solely with respect to a Revolving Loan made during a Material Contract Default Event Period, a Default resulting from the existence of a Material Contract Default Event);

(c) after giving effect to any Loan, the Aggregate Revolving Exposure would exceed the Aggregate Revolving Loan Commitment then in effect;

(d) Agent shall not have received an appropriate Notice of Borrowing, duly executed and completed by the Borrower Representative in accordance with the requirements set forth in Section 1.5(a);

(e) ~~the Interim Order or, following the entry of the Final Order,~~ the Final Order is not in full force and effect or, without the prior written consent of ~~Oaktree~~KPS, such order has been amended or modified; and

(f) the making of such Loan does not comply with, or is not for a purpose permitted under, the Budget, subject to Permitted Variances;~~and~~

(g) during any Material Contract Default Event Period, after the making of such Loan, the Material Contract Default Event Period Amount is not less than \$0; ~~and~~

(h) failure to engage A&M as financial advisor to the Debtors, working under the direction of the Board of Directors of the Company, to assist the Board of Directors, the Debtors' management team, other professionals engaged by the Debtors, and the DIP Lender, with respect to tasks, duties and responsibilities satisfactory to KPS.

The request by Borrower Representative and acceptance by the Borrowers of the proceeds of any Loan shall be deemed to constitute, as of the date thereof, (i) a representation

and warranty by the Borrowers that the conditions in this Section 2.2 have been satisfied and (ii) a reaffirmation by each Credit Party of the granting and continuance of Agent's Liens, on behalf of itself and the other Secured Parties, pursuant to the Collateral Documents.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES**

The Credit Parties, jointly and severally, represent and warrant to Agent and each Lender that the following are true, correct and complete:

#### **3.1 Corporate Existence and Power**

. Each Credit Party and each of their respective Subsidiaries:

(a) is a corporation, limited liability company or limited partnership, as applicable, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation, as applicable;

(b) has all requisite power and authority and all governmental licenses, authorizations, Permits, consents and approvals to (i) own its assets, (ii) carry on its business and (iii) subject to the entry of the ~~Interim Order or~~ Final Order, ~~as applicable~~, execute, deliver, and perform its obligations under, the Loan Documents to which it is a party;

(c) is duly qualified as a foreign corporation, limited liability company or limited partnership, as applicable, and licensed and in good standing, under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification or license; and

(d) subject to the entry of the ~~Interim Order or~~ Final Order, ~~as applicable~~, is in compliance with all Requirements of Law; except, in each case referred to in clauses (b)(i) and (ii), clause (c) or clause (d), to the extent that the failure to do so would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

#### **3.2 Corporate Authorization; No Contravention**

. The execution, delivery and performance by each of the Credit Parties of this Agreement, and by each Credit Party and each of their respective Subsidiaries of any other Loan Document to which such Person is party, have been duly authorized by all necessary organizational action, and do not and will not:

(i) contravene the terms of any of that Person's Organization Documents;

(ii) conflict with or result in the creation of any Lien (except Liens created pursuant to the Loan Documents) under, any document evidencing any Contractual Obligation to which such Person is a party or any order, injunction,

writ or decree of any Governmental Authority to which such Person or its Property is subject, except in each case, where enforcement is stayed upon the commencement of the Cases;

(iii) conflict with or result in any breach or contravention of any document evidencing any Contractual Obligation to which such Person is a party or any order, injunction, writ or decree of any Governmental Authority to which such Person or its Property is subject, except in each case, where enforcement is stayed upon the commencement of the Cases; or

(iv) subject to the entry of the ~~Interim Order or Final Order, as applicable~~, violate any Requirement of Law.

### **3.3 Governmental Authorization**

. Subject to the entry of ~~the Interim Order or, following the entry of the Final Order,~~ the Final Order, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Credit Party or any Subsidiary of any Credit Party of this Agreement or any other Loan Document except for the ~~Interim Order and the Final Order, as applicable~~.

### **3.4 Binding Effect**

. Subject to the entry of ~~the Interim Order or, following the entry of the Final Order,~~ the Final Order, this Agreement and each other Loan Document to which any Credit Party is a party constitute the legal, valid and binding obligations of each such Credit Party, enforceable against such Credit Party in accordance with their respective terms.

### **3.5 Litigation**

. Except for the Cases, as stayed upon the commencement of the Cases or as specifically disclosed on Schedule 3.5, there are no actions, suits or proceedings pending, or to the knowledge of each Credit Party, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, against any Credit Party, any Subsidiary of any Credit Party or any of their respective properties which:

(a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby or thereby; or

(b) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, would reasonably be expected to result in a Material Adverse Effect.

Subject to the entry of ~~the Interim Order or, following the entry of the Final Order,~~ the Final Order, no injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement, any other Loan Document or any Term

Loan Document, or directing that the transactions provided for herein or therein not be consummated as herein or therein provided. As of the Closing Date, except as specifically disclosed on Schedule 3.5, no Credit Party or any Subsidiary of any Credit Party is the subject of an audit or, to each Credit Party's knowledge, any review or investigation by any Governmental Authority (excluding the IRS and other taxing authorities) concerning the violation or possible violation of any Requirement of Law.

### **3.6 No Default**

. No Default or Event of Default exists or would result from the incurring of any Obligations by any Credit Party or the grant or perfection of Agent's Liens on the Collateral or the consummation of the transactions contemplated under the Credit Agreement and the other Loan Documents. Except as disclosed on Schedule 3.6 or where enforcement is stayed upon the commencement of the Cases, no Credit Party and no Subsidiary of any Credit Party is in default under or with respect to any Contractual Obligation in any respect which, individually or together with all such defaults, would reasonably be expected to have a Material Adverse Effect.

### **3.7 ERISA Compliance**

. As of the Closing Date, the Credit Parties have made available to the Lenders for their review copies of all (a) Title IV Plans, (b) Multiemployer Plans and (c) Benefit Plans intended to qualify for tax exempt status under Section 401 or 501 of the Code or any employee benefit plan, program or arrangement that provides for post-retirement medical, life insurance or other welfare-type benefits other than as required under applicable law. Each Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code has either received a favorable determination letter from the Internal Revenue Service, is within the remedial amendment period for obtaining such determination letter or may rely on a favorable opinion letter issued by the Internal Revenue Service and each such Benefit Plan is in substantial compliance with its terms and with all Requirements of Law. Except for those that would not reasonably be expected to result in Liabilities in excess of \$5,000,000 in the aggregate, (x) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Requirements of Law, (y) there are no existing or pending (or to the knowledge of any Credit Party, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan or Multiemployer Plan to which any Credit Party incurs or otherwise has or could have an obligation or any Liability and (z) no ERISA Event has or is reasonably expected to occur. There has been no failure to make any minimum required contribution to any Title IV Plan or Multiemployer Plan when due which could result in the imposition of a Lien with respect to any Benefit Plan or would reasonably be expected to result in Liabilities in excess of \$5,000,000 in the aggregate.

### **3.8 Use of Proceeds: Margin Regulations**

. No Credit Party and no Subsidiary of any Credit Party is engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock. Schedule 3.8 contains a description of the Credit Parties' sources and uses of

funds on the Closing Date, including Loans made on the Closing Date and a funds flow memorandum detailing how funds from each source are to be transferred to particular uses.

### **3.9 Ownership of Property: Liens**

. As of the Closing Date, the Real Estate listed on Schedule 3.9 constitutes all of the Real Estate of each Credit Party and each of their respective Subsidiaries. Each of the Credit Parties and each of their respective Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all Real Estate, and good and valid title to all owned personal property and valid leasehold interests in all leased personal property, in each instance, necessary or used in the ordinary conduct of their respective businesses, except for such defects in title or where failure to own such personal property or have such leasehold interest would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. As of the Closing Date, all material permits required to have been issued or appropriate to enable the Real Estate to be lawfully occupied and used for all of the purposes for which it is currently occupied and used have been lawfully issued and are in full force and effect, in each case, to the extent failure to maintain such permits would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

### **3.10 Taxes**

. All federal and material state, local and foreign income and franchise and other material tax returns, reports and statements (collectively, the "Tax Returns") required to be filed by any Tax Affiliate have been filed with the appropriate Governmental Authorities, all such Tax Returns are true and correct in all material respects, and, except to the extent failure to do so is permitted by the Bankruptcy Code or pursuant to the ~~Orders~~ Final Order, all taxes, assessments and other governmental charges and impositions reflected therein or otherwise due and payable have been paid prior to the date on which any Liability may be added thereto for non-payment thereof except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Tax Affiliate in accordance with GAAP. As of the Closing Date, except as set forth on Schedule 3.10, no written notice of any audit or examination or any assertion of any claim for Taxes has been given or made by any Governmental Authority to any Credit Party or any Subsidiary of any Credit Party and, to the knowledge of the Credit Parties, no Tax Return is under audit or examination by any Governmental Authority. Proper and accurate amounts have been withheld by each Tax Affiliate from their respective employees for all periods in compliance in all material respects with the tax, social security and unemployment withholding provisions of applicable Requirements of Law and such withholdings have been timely paid to the respective Governmental Authorities.

### **3.11 Financial Condition**

(a) Each of (i) the audited consolidated balance sheet of the Company and its Subsidiaries dated December 31, 2012, and the related audited consolidated statements of income or operations, shareholders' equity and cash flows for the Fiscal Year ended on that date and (ii) the unaudited interim consolidated balance sheet of the Company and its



Subsidiaries dated June 29, 2013 and the related unaudited consolidated statements of income, shareholders' equity and cash flows for the six (6) fiscal months then ended, in each case, delivered to the Agent and the Lenders prior to the Closing Date:

(i) were prepared in accordance with GAAP consistently applied throughout the respective periods covered thereby, except as otherwise expressly noted therein, subject to, in the case of the unaudited interim financial statements, normal year-end adjustments and the lack of footnote disclosures; and

(b) present fairly in all material respects the consolidated financial condition of the Company and its Subsidiaries as of the dates thereof and results of operations for the periods covered thereby.

### **3.12 Environmental Matters**

. Except as set forth on Schedule 3.12, and except where any failures to comply would not reasonably be expected to result in, either individually or in the aggregate, Material Environmental Liabilities to the Credit Parties and their Subsidiaries, (a) the operations of each Credit Party and each Subsidiary of each Credit Party are and have been in compliance with all applicable Environmental Laws, including obtaining, maintaining and complying with all Permits required by any applicable Environmental Law, (b) no Credit Party and no Subsidiary of any Credit Party is party to, and no Credit Party and no Subsidiary of any Credit Party and no Real Estate currently (or to the knowledge of any Credit Party previously) owned, leased, subleased, operated or otherwise occupied by or for any such Person is subject to or the subject of, any Contractual Obligation or any pending (or, to the knowledge of any Credit Party, threatened) order, action, investigation, suit, proceeding, audit, claim, demand, dispute or notice of violation or of potential liability or similar notice relating in any manner to any Environmental Laws, (c) no Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities has attached to any Property of any Credit Party or any Subsidiary of any Credit Party and, to the knowledge of any Credit Party, no facts, circumstances or conditions exist that could reasonably be expected to result in any such Lien attaching to any such Property, (d) no Credit Party and no Subsidiary of any Credit Party has caused or suffered to occur a Release of Hazardous Materials at, to or from any Real Estate, (e) all Real Estate currently (or to the knowledge of any Credit Party previously) owned, leased, subleased, operated or otherwise occupied by or for any such Credit Party and each Subsidiary of each Credit Party is free of contamination by any Hazardous Materials, and (f) no Credit Party and no Subsidiary of any Credit Party (i) is or has been engaged in, or, to the knowledge of any Credit Party, has permitted any current or former tenant to engage in, operations in violation of any Environmental Law or (ii) knows of any facts, circumstances or conditions reasonably constituting notice of a violation of any Environmental Law, including receipt of any information request or notice of potential responsibility under the Comprehensive Environmental Response, Compensation and Liability Act or similar Environmental Laws. Each Credit Party has made available to the Lenders copies of all material existing environmental reports, reviews and audits and all documents pertaining to actual or potential Environmental Liabilities, in each case to the extent such reports, reviews, audits and documents are in their possession, custody, control or otherwise available to the Credit Parties.

### **3.13 Regulated Entities**

. None of any Credit Party, any Person controlling any Credit Party, or any Subsidiary of any Credit Party, is (a) an “investment company” within the meaning of the Investment Company Act of 1940 or (b) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any state public utilities code, or any other federal or state statute, rule or regulation limiting its ability to incur Indebtedness, pledge its assets or perform its Obligations under the Loan Documents.

### **3.14 [Reserved]**

### **3.15 Labor Relations**

. There are no strikes, work stoppages, slowdowns or lockouts existing, pending (or, to the knowledge of any Credit Party, threatened) against or involving any Credit Party or any Subsidiary of any Credit Party, except for those that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.15, as of the Closing Date, (a) there is no collective bargaining or similar agreement with any union, labor organization, works council or similar representative covering any employee of any Credit Party or any Subsidiary of any Credit Party, (b) no petition for certification or election of any such representative is existing or pending with respect to any employee of any Credit Party or any Subsidiary of any Credit Party and (c) no such representative has sought certification or recognition with respect to any employee of any Credit Party or any Subsidiary of any Credit Party.

### **3.16 Intellectual Property**

. Each Credit Party and each Subsidiary of each Credit Party owns, or is licensed to use, all Intellectual Property necessary to conduct its business as currently conducted except for such Intellectual Property the failure of which to own or license would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. To the knowledge of each Credit Party, (a) the conduct and operations of the businesses of each Credit Party and each Subsidiary of each Credit Party do not infringe, misappropriate or dilute any Intellectual Property owned by any other Person and (b) no other Person has provided written notice to any Credit Party contesting any right, title or interest of any Credit Party or any Subsidiary of any Credit Party in, or relating to, any Intellectual Property, other than, in each case, as cannot reasonably be expected to affect the Loan Documents and the transactions contemplated therein and would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

### **3.17 Brokers' Fees: Transaction Fees**

. Except for fees payable to Agent and the Lenders, and other than fees payable to Miller Buckfire & Co., none of the Credit Parties or any of their respective Subsidiaries has any obligation to any Person in respect of any finder's, broker's or investment banker's fee in connection with the transactions contemplated hereby.



### **3.18 Insurance**

. The Credit Parties have made available to ~~Oaktree~~-KPS (or its representatives) for its review all insurance policies of any nature maintained, as of the Closing Date, for current occurrences by each Credit Party, including issuers, coverages and deductibles. Each of the Credit Parties and each of their respective Subsidiaries and their respective properties are insured with insurance companies or associations which are not Affiliates of the Borrowers that the Borrowers believe (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage are placed or renewed, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses of the same size and character as the business of the Credit Parties and, to the extent relevant, owning similar properties in localities where such Person operates.

### **3.19 Ventures, Subsidiaries and Affiliates: Outstanding Stock**

. Except as set forth on Schedule 3.19, no Credit Party and no Subsidiary of any Credit Party (a) has any Subsidiaries, or (b) is engaged in any joint venture or partnership with any other Person. All issued and outstanding Stock and Stock Equivalents of each of the Credit Parties and each of their respective Subsidiaries are duly authorized and validly issued, fully paid, non-assessable, and free and clear of all Liens other than (x) with respect to the Stock and Stock Equivalents of the Subsidiaries of the Borrower Representative pledged pursuant to the Collateral Documents, those in favor of Agent, for the benefit of the Secured Parties and (y) with respect to the Stock and Stock Equivalents of any other Subsidiary of the Borrower Representative not pledged pursuant to the Collateral Documents, Permitted Liens. All such securities were issued in compliance with all applicable state and federal laws concerning the issuance of securities. All of the issued and outstanding Stock of each Credit Party (other than the Company), each Subsidiary of each Credit Party is owned by each of the Persons and in the amounts set forth on Schedule 3.19. Except as set forth on Schedule 3.19, there are no preemptive or other outstanding rights to purchase, options, warrants or similar rights or agreements pursuant to which any Credit Party may be required to issue, sell, repurchase or redeem any of its Stock or Stock Equivalents or any Stock or Stock Equivalents of its Subsidiaries. Set forth on Schedule 3.19 is a true and complete organizational chart of the Company and all of its Subsidiaries.

### **3.20 Jurisdiction of Organization; Chief Executive Office**

. Schedule 3.20 lists each Credit Party's jurisdiction of organization, legal name and organizational identification number, if any, and the location of such Credit Party's chief executive office or sole place of business, in each case as of the date hereof.

### **3.21 Locations of Inventory, Equipment and Books and Records**

. Each Credit Party's inventory and equipment (other than inventory or equipment in transit or out for repair) and books and records concerning the Collateral are kept at the locations listed on Schedule 3.21 (which Schedule 3.21 shall be promptly updated by the Credit Parties upon notice to Agent as permanent Collateral locations change).

### **3.22 Deposit Accounts and Other Accounts**

. Schedule 3.22 lists all banks and other financial institutions at which any Credit Party maintains deposit or other accounts as of the Closing Date, and such Schedule correctly identifies the name and address of each depository, the name in which the account is held, a brief description of the purpose of the account, and the complete account number therefor.

### **3.23 Government Contracts**

. Except as set forth on Schedule 3.23, as of the Closing Date, no Credit Party is a party to any material contract or agreement with any Governmental Authority and no Credit Party's Accounts are subject to the Federal Assignment of Claims Act (31 U.S.C. Section 3727) or any similar state or local law.

### **3.24 Customer and Trade Relations**

. As of the Petition Date and except as set forth on Schedule 3.24, there exists no actual or, to the knowledge of any Credit Party, threatened termination or cancellation of, or any material adverse modification or change in (a) the business relationship of any Credit Party (other than with respect to the "Lane" division of the Credit Parties) with any customer or group of customers whose purchases during the preceding 12 calendar months caused them to be ranked among the ten largest customers of such Credit Party or (b) the business relationship of any Credit Party with any supplier essential to its operations which is not otherwise readily replaceable.

### **3.25 Bonding**

. Except as set forth on Schedule 3.25, as of the Closing Date, no Credit Party is a party to or bound by any surety bond agreement, indemnification agreement in respect of any surety bond agreement or bonding requirement with respect to products or services sold by it (exclusive of product warranties in the Ordinary Course of Business).

### **3.26 Full Disclosure**

. None of the representations or warranties made by any Credit Party or any of their Subsidiaries in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in each exhibit, report, statement or certificate furnished by or on behalf of any Credit Party or any of their Subsidiaries in connection with the Loan Documents, taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading as of the time when made or delivered; provided, that, with respect to projected financial information (including the Budget), the Company represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered, and if such projected financial information was delivered prior to the Closing Date, as of the Closing Date.

### **3.27 Foreign Assets Control Regulations and Anti- Money Laundering**

. Each Credit Party and each Subsidiary of each Credit Party is in compliance in all material respects with all U.S. economic sanctions laws, executive orders and implementing

regulations as promulgated by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), and all applicable anti-money laundering and counter- terrorism financing provisions of the Bank Secrecy Act and all regulations issued pursuant to it. No Credit Party and no Subsidiary or Affiliate of a Credit Party (i) is a Person designated by the U.S. government on the list of the Specially Designated Nationals and Blocked Persons (the "SDN List") with which a U.S. Person cannot deal with or otherwise engage in business transactions, (ii) is a Person who is otherwise the target of U.S. economic sanctions laws such that a U.S. Person cannot deal or otherwise engage in business transactions with such Person or (iii) is controlled by (including without limitation by virtue of such person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any person or entity on the SDN List or a foreign government that is the target of U.S. economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under U.S. law.

### **3.28 Patriot Act**

. The Credit Parties, each of their Subsidiaries and each of their Affiliates are in compliance with (a) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department and any other enabling legislation or executive order relating thereto, (b) the Patriot Act and (c) other federal or state laws relating to "know your customer" and anti- money laundering rules and regulations. No part of the proceeds of any Loan will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

### **3.29 Leasehold Payments; Sales Taxes; Bailee Payments**

. Each Credit Party has timely paid all material sales taxes, all obligations under all leases of Real Estate (other than with respect to leases of Real Estate not required to be assumed under the Asset Purchase Agreement (such leases, the "Designated Leases")) on which is located Inventory that is Collateral and all amounts payable to Inventory bailees (including all freight carriers, freight forwarders, customs brokers, non-vessel owning common carriers, shipping companies and warehousemen), except (x) to the extent failure to do so is permitted by the Bankruptcy Code or pursuant to the ~~Orders~~ Final Order or (y) for those amounts contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the Credit Parties in accordance with GAAP.

### **3.30 Security Interests**

. This Agreement, taken together with ~~the Interim Order and/or~~ the Final Order is effective to create in favor of Agent for the benefit of the Lenders and the other Secured Parties, legal, valid, and continuing first priority Liens on, and automatically perfected security interests in, the Collateral pledged hereunder or thereunder, in each case, subject to no Liens other than to Permitted Liens and the Carve-Out. Pursuant to the terms of the ~~Interim Order and/or~~ Final Order, no filing or other action will be necessary to perfect or protect such Liens and security interests. Pursuant to and to the extent provided in ~~the Interim Order and/or~~ the Final Order, the

Obligations of the Credit Parties under this Agreement will constitute allowed super-priority administrative expense claims in the Cases under Section 364(c) of the Bankruptcy Code, having priority over all administrative expense claims and unsecured claims against such Credit Parties now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code and all super-priority administrative expense claims granted to any other Person (other than Avoidance Actions, other than, ~~after and subject to the entry of the Final Order,~~ the proceeds of Avoidance Actions), subject only to the Carve-Out. Notwithstanding anything to the contrary herein, the Carve-Out shall be senior to all Liens and claims (including administrative and superpriority claims) securing the Obligations, the Credit Parties' pre-petition obligations, adequate protection Liens, and all other Liens or claims (including administrative claims and DIP Superpriority Claims), including all other forms of adequate protection, Liens, or claims (including administrative claims and DIP Superpriority Claims) securing the Obligations and pre-petition obligations granted or recognized as valid, including the Liens, security interests, and claims (including administrative claims and DIP Superpriority Claims) granted to Agent and the other Secured Parties.

### **3.31 Orders**

. The Credit Parties are in compliance with the terms and conditions of the ~~Orders. Each of the Interim Order (to the extent necessary during the Interim Order Period) or the Final Order.~~ The Final Order (from after the date the Final Order is entered) is in full force and effect and has not been vacated, reversed or rescinded or, without the prior written consent of Agent (but solely with respect to any vacation, reversal or rescission which directly affects the Agent) and ~~Oaktree~~KPS, in ~~Oaktree's~~KPS's sole discretion, amended or modified and no appeal of such order has been timely filed or, if timely filed, no stay pending such appeal is currently effective.

### **3.32 Budget**

. A true and complete copy of the Budget, as agreed to with ~~Oaktree~~KPS as of the Closing Date, is attached as Exhibit A hereto.

### **3.33 Immaterial Subsidiaries**

. None of Broyhill Transport, HDM Transport or Laneventure currently (i) engages in any business or other commercial activities, (ii) owns any assets or property (except in the case of Laneventure, which owns assets of *de minimis* value that are neither used nor useful in the business of the Company and its Subsidiaries), (iii) is obligated under any Indebtedness or Contractual Obligations, or (iv) has granted any Liens over any of its assets or property.

## **ARTICLE IV AFFIRMATIVE COVENANTS**

Each Credit Party covenants and agrees that, so long as any Lender shall have any Revolving Loan Commitment hereunder, or any Loan or other Obligation (other than contingent indemnification Obligations to the extent no claim giving rise thereto has been asserted) shall remain unpaid or unsatisfied:

#### 4.1 Financial Statements

. Each Credit Party shall maintain, and shall cause each of its Subsidiaries to maintain, a system of accounting established and administered in accordance with sound business practices to permit the preparation of financial statements in conformity with GAAP (provided that monthly financial statements shall not be required to have footnote disclosures and are subject to normal year-end adjustments). The Borrowers shall deliver to Agent (for distribution to each Lender) by Electronic Transmission:

(a) as soon as available, but not later than ninety (90) days after the end of each Fiscal Year, a copy of the audited consolidated balance sheet of the Company as at the end of such year and the related consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, and accompanied by the report of any "Big Four" or other nationally-recognized independent certified public accounting firm reasonably acceptable to Agent which report shall state that such consolidated financial statements present fairly in all material respects the financial position for the periods indicated in conformity with GAAP applied on a basis consistent with prior years; provided, that the Borrowers shall be deemed to have made such delivery if they have timely made such 10-K available on "EDGAR" and on the Company's home page on the worldwide web (as of the Closing Date located on [www.furniturebrands.com](http://www.furniturebrands.com)) and shall have given Agent prior notice of such availability on EDGAR and the Company's home page ("Electronic Delivery").

(b) as soon as available, but not later than forty-five (45) days after the end of each of the first three Fiscal Quarters of each year, a copy of the unaudited consolidated balance sheet of the Company, and the related consolidated statements of income, shareholders' equity and cash flows as of the end of such Fiscal Quarter and for the portion of the Fiscal Year then ended, all certified on behalf of the Borrowers by an appropriate Responsible Officer of the Borrower Representative as being complete and correct, in all material respects, and fairly presenting, in all material respects, in accordance with GAAP, the consolidated financial position and the results of operations of the Company, subject to normal year-end adjustments and absence of footnote disclosures; provided that delivery within the time period specified above of copies of the Company's Form 10-Q prepared in compliance with the requirements therefore and filed with the Securities and Exchange Commission shall be deemed to satisfy the requirements of this Section 4.1(b); provided, further, that the Company shall be deemed to have made such delivery of such Form 10-Q if it shall have made timely Electronic Delivery thereof; and

(c) as soon as available, but not later than thirty (30) days after the end of each fiscal month of each year, a copy of the unaudited consolidated balance sheet of the Company, and the related consolidated statement of income, shareholders' equity and cash flows as of the end of such fiscal month and for the portion of the Fiscal Year then ended, all certified on behalf of the Borrowers by an appropriate Responsible Officer of the Borrower Representative as being complete and correct, in all material respects, and fairly presenting, in all material respects, in accordance with GAAP, the consolidated

financial position and the results of operations of the Company, subject to normal year-end adjustments and absence of footnote disclosures.

#### **4.2 Certificates; Other Information**

. The Borrowers shall furnish to Agent (for distribution to each Lender) by Electronic Transmission:

(a) together with each delivery of financial statements pursuant to Sections 4.1(a) and 4.1(b), (i) a management discussion and analysis report, in reasonable detail, signed by the chief financial officer of the Borrower Representative, describing the operations and financial condition of the Credit Parties and their Subsidiaries for the Fiscal Quarter and the portion of the Fiscal Year then ended (or for the Fiscal Year then ended in the case of annual financial statements), and (ii) a report setting forth in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the most recent projections for the current Fiscal Year delivered pursuant to Section 4.2(k) and discussing the reasons for any significant variations;

(b) [reserved];

(c) promptly after the same are sent, copies of all financial statements and reports which any Credit Party sends to its shareholders or other equity holders, as applicable, generally and promptly after the same are filed, copies of all financial statements and regular, periodic or special reports which such Person may make to, or file with, the Securities and Exchange Commission or any successor or similar Governmental Authority, provided that, in each case, the Credit Parties shall be deemed to have made such delivery if it shall have made Electronic Delivery thereof;

(d) every Wednesday during the Cases, (i) commencing on the Wednesday following the first full calendar week after the Closing Date, a weekly cash flow forecast for the subsequent 13-week period, and (ii) commencing on the second Wednesday following the first full calendar week after the Closing Date, a variance report (the "Variance Report") setting forth actual cash receipts and disbursements of the Credit Parties for the prior week and setting forth all the variances (including Variances), on a line-item and aggregate basis, from the amount set forth for such week as compared to (1) the Budget on a weekly and cumulative basis (which shall be subject to the variances set forth in the DIP Loan Documents), and (2) the most recent weekly cash flow forecast delivered by the Credit Parties, in each case, on a weekly and cumulative basis (and each such Variance Report shall include reasonably detailed explanations for all material variances (including material Variances) and shall be certified by the chief financial officer of the Credit Parties;

(e) substantially concurrently with the delivery of the weekly cash flow forecast pursuant to Section 4.2(d), a "flash" cash report detailing all cash and Cash Equivalents on-hand of each of the Credit Parties and their Subsidiaries (broken out by entity) as of the close of business on such date;



(f) [reserved];

(g) [reserved];

(h) [reserved];

(i) [reserved];

(j) at the time of delivery of each of the monthly, quarterly or annual financial statements delivered pursuant to Section 4.1, (i) a listing of all government contracts of each Borrower (or an update to the most recently provided listing of such contracts pursuant to this clause (j)) (i) subject to the Federal Assignment of Claims Act of 1940 or any similar state or municipal law and (ii) a list of any applications for the registration of any Patent, Trademark (and, a list of any “intent to use” Trademark applications for which a registration has issued) or Copyright filed by any Credit Party with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in each case entered into or filed in the prior Fiscal Quarter;

(k) [reserved];

(l) promptly upon receipt thereof, copies of any reports submitted by the Borrowers’ certified public accountants in connection with each annual, interim or special audit or review of any type of the financial statements or internal control systems of any Credit Party made by such accountants, including any comment letters submitted by such accountants to management of any Credit Party in connection with their services;

(m) [reserved];

(n) ~~(m)~~[reserved]; and

~~(n)~~ ~~[reserved]; and~~

(o) promptly, such additional business, financial, perfection certificates and other information as ~~Oaktree~~-KPS may from time to time reasonably request in its Permitted Discretion.

### **4.3 Notices**

. The Borrowers shall notify promptly Agent of each of the following (and in no event later than three (3) Business Days (or, (i) in the case of clauses (c), (d) or (e) below, five (5) Business Days and (ii) in the case of clause (k) below, one (1) Business Day) after a Responsible Officer becomes aware thereof):

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

(b) except with respect to any Contractual Obligation to the extent enforcement is stayed pursuant to the Bankruptcy Code, any breach or nonperformance of, or any default under, any Contractual Obligation of any Credit Party or any Subsidiary

of any Credit Party, or any violation of, or non-compliance with, any Requirement of Law, which would reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect, including a description of such breach, non-performance, default, violation or non-compliance and the steps, if any, such Person has taken, is taking or proposes to take in respect thereof;

(c) any dispute, litigation, investigation, proceeding or suspension arising on or after the Petition Date which may exist at any time between any Credit Party or any Subsidiary of any Credit Party and any Governmental Authority which would reasonably be expected to result, either individually or in the aggregate, in Liabilities in excess of \$2,500,000;

(d) the commencement of, or any material development in, any litigation or proceeding affecting any Credit Party or any Subsidiary of any Credit Party (i) in which the amount of damages claimed is \$2,500,000 or more, (ii) in which injunctive or similar relief is sought and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect, or (iii) in which the relief sought is an injunction or other stay of the performance of this Agreement or any other Loan Document;

(e) (i) the receipt by any Credit Party of any notice of any material violation of or potential material liability or similar notice under Environmental Law, (ii)(A) unpermitted Releases, (B) the existence of any condition that could reasonably be expected to result in violations of or Liabilities under, any Environmental Law or (C) the commencement of, or any material change to, any action, investigation, suit, proceeding, audit, claim, demand, dispute alleging a violation of or Liability under any Environmental Law which in the case of clauses (A), (B) and (C) above, in the aggregate for all such clauses, would reasonably be expected to result in Environmental Liabilities on or after the Petition Date in excess of \$2,500,000, (iii) the receipt by any Credit Party of notification that any Property of any Credit Party is subject to any Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities and (iv) any proposed acquisition or lease of Real Estate, if such acquisition or lease would have a reasonable likelihood of resulting in Material Environmental Liabilities;

(f) (i) promptly, and in any event within ten (10) days, after any officer of any ERISA Affiliate knows or has reason to know that a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Title IV Plan or Multiemployer Plan, a notice describing such waiver request and any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto, or (ii) promptly, and in any event within ten (10) days after any officer of any ERISA Affiliate knows or has reason to know that an ERISA Event will or has occurred, a notice describing such ERISA Event, and any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notices received from or filed with the PBGC, IRS, Multiemployer Plan or other Benefit Plan pertaining thereto;

(g) any Material Adverse Effect subsequent to the date of the most recent audited financial statements delivered to Agent and Lenders pursuant to this Agreement;



(h) any material change in accounting policies or financial reporting practices by any Credit Party or any Subsidiary of any Credit Party;

(i) any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other labor disruption against or involving any Credit Party or any Subsidiary of any Credit Party if the same would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect;

(j) the creation, establishment or acquisition of any Subsidiary or the issuance by or to any Credit Party of any Stock or Stock Equivalent (other than issuances by the Company of Stock or Stock Equivalents not requiring a mandatory prepayment hereunder);

(k) after the Petition Date, (i) the creation, or filing with the IRS or any other Governmental Authority, of any Contractual Obligation or other document extending, or having the effect of extending, the period for assessment or collection of any income or franchise or other material taxes with respect to any Tax Affiliate, (ii) the creation of any Contractual Obligation of any Tax Affiliate or the receipt of any request directed to any Tax Affiliate, to make any material adjustment under Section 481(a) of the Code, by reason of a change in accounting method or otherwise, (iii) any tax assessment for delinquent taxes against any Credit Party or any Subsidiary of any Credit Party (other than to the extent the aggregate amount of such tax assessments for delinquent taxes do not exceed \$100,000 in the aggregate), (iv) the imposition or filing of any Lien in respect of taxes owed by any Credit Party or any Subsidiary of any Credit Party (other than to the extent the aggregate amount secured by such Liens would not exceed \$100,000 in the aggregate), or (v) all tax liabilities, assessments and governmental charges or levies that are being contested by a Credit Party or any Subsidiary of any Credit Party (other than to the extent the aggregate amount of such liabilities, assessments and governmental charges or levies that are being contested do not exceed \$100,000 in the aggregate) together with a summary of the amount which is being contested and a status of the proceedings under which such contest is being made; and

(l) the occurrence of any Material Contract Notice Event or any Material Contract Default Event.

Each notice pursuant to this Section 4.3 shall be in electronic form accompanied by a statement by a Responsible Officer of the Borrower Representative, on behalf of the Borrowers, setting forth details of the occurrence referred to therein, and stating what action the Borrowers or other Person proposes to take with respect thereto and at what time. Each notice under Section 4.3(a) shall describe with reasonable particularity any and all clauses or provisions of this Agreement or other Loan Document that have been breached or violated.

#### **4.4 Preservation of Corporate Existence, Etc.**

Each Credit Party shall, and shall cause each of its Subsidiaries to (except ~~in connection with, and only with respect to any Credit Party or its Subsidiaries that are the subject of, the Lane Sale or~~ any Subsidiary that is an Immaterial Subsidiary):

(a) preserve and maintain in full force and effect its organizational existence and good standing under the laws of its jurisdiction of incorporation, organization or formation, as applicable, except as permitted by Section 5.3;

(b) preserve and maintain in full force and effect all material rights, privileges, qualifications, permits, licenses and franchises necessary in the normal conduct of its business except as permitted by Sections 5.2 and 5.3;

(c) preserve its business organization and use its commercially reasonable efforts, in the Ordinary Course of Business, to preserve the goodwill and business of the customers, suppliers and others having material business relations with it;

(d) unless otherwise agreed in writing by ~~Oaktree~~KPS, preserve or renew all of its (i) Eligible Trade Names (as defined in the Existing Term Loan Agreement) or (ii) registered trademarks, trade names and service marks, in each case, where the failure to preserve or renew the same would be adverse in any respect to the Company and its Subsidiaries or the Lenders; and

(e) conduct its business and affairs without infringement of or interference with any Intellectual Property of any other Person in any material respect and shall comply in all material respects with the terms of its IP Licenses.

#### **4.5 Maintenance of Property**

. Each Credit Party shall maintain, and shall cause each of its Subsidiaries to maintain, and preserve all its Property which is used or useful in its business in good working order and condition, ordinary wear and tear excepted and shall make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

#### **4.6 Insurance**

(a) Each Credit Party shall, and shall cause each of its Subsidiaries to, (i) maintain or cause to be maintained in full force and effect all policies of insurance of any kind with respect to the Property and businesses of the Credit Parties and such Subsidiaries (including policies of fire, theft, product liability, public liability, Federal Flood Insurance or other Flood Insurance (if Federal Flood Insurance is not required by the last sentence of this Section 4.6(a)), property damage, other casualty, employee fidelity, workers' compensation, business interruption and employee health and welfare insurance) with insurance companies or associations (in each case, other than with respect to employee health and welfare insurance, that are not Affiliates of the Borrowers) that the Borrowers believe (in the good faith judgment of its management) are financially sound and reputable of a nature and providing such coverage as is sufficient and as is customarily carried by businesses of the size and character of the business of the Credit Parties (or with respect to Federal Flood Insurance or other Flood Insurance, in such amounts as required by the Lenders to comply with applicable

Requirements of Law) and (ii) not later than 90-days after the Closing Date (or such later date as may be agreed by ~~Oaktree~~KPS), cause all such insurance relating to any Property or business of any Credit Party to name Agent as additional insured or lenders loss payee as agent for the Lenders, as appropriate. All policies of insurance on real and personal Property of the Credit Parties will contain an endorsement, in form and substance acceptable to ~~Oaktree~~KPS, showing loss payable to Agent and business interruption endorsements. Such endorsement, or an independent instrument furnished to Agent, will provide that the insurance companies will give Agent at least 30 days' prior written notice (or such shorter period as may be agreed to by ~~Oaktree~~KPS) before any such policy or policies of insurance shall be altered or canceled and that no act or default of the Credit Parties or any other Person shall affect the right of Agent to recover under such policy or policies of insurance in case of loss or damage. Each Credit Party shall direct all present and future insurers under its "All Risk" policies of property insurance to pay all proceeds payable thereunder directly to Agent. If any insurance proceeds are paid by check, draft or other instrument payable to any Credit Party and Agent jointly, Agent may, upon the instruction of ~~Oaktree~~KPS, endorse such Credit Party's name thereon and do such other things as ~~Oaktree~~KPS may deem advisable to reduce the same to cash.

(b) Unless the Credit Parties provide Agent with evidence of the insurance coverage required by this Agreement (including, without limitation, Flood Insurance), Agent may, upon the instruction of ~~Oaktree~~KPS, purchase insurance (including, without limitation, Flood Insurance) at the Credit Parties' expense to protect Agent's and Lenders' interests in the Credit Parties' and their Subsidiaries' properties, provided that the Agent shall endeavor to provide the Borrower Representative prior notice of any such action (it being understood and agreed that the failure to provide any such notice shall not result in any liability to Agent or invalidate any such action taken by Agent). This insurance may, but need not, protect the Credit Parties' and their Subsidiaries' interests. The coverage that Agent purchases may not pay any claim that any Credit Party or any Subsidiary of any Credit Party makes or any claim that is made against such Credit Party or any Subsidiary in connection with said Property. The Borrowers may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that there has been obtained insurance as required by this Agreement. If Agent purchases insurance, the Credit Parties will be responsible for the costs of that insurance, including interest and any other reasonable charges Agent may impose in connection with the placement of insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance shall be added to the Obligations and shall bear interest at the Applicable Rate and the default rate under Section 1.3(c), and shall be due and payable upon demand of Agent. The costs of the insurance may be more than the cost of insurance the Credit Parties may be able to obtain on their own.

(c) The Credit Parties appoint Agent as their attorney-in-fact to settle or adjust all property damage claims under its property insurance policies; provided that such power of attorney shall only be exercised so long as an Event of Default has occurred and is continuing or if the property claim exceeds \$2,500,000. Agent shall have no duty to exercise such power of attorney, but may do so at its discretion.

#### **4.7 Payment of Obligations**

. In accordance with the Bankruptcy Code and subject to any required approval by an applicable order of the Bankruptcy Court each Credit Party shall timely pay, discharge or otherwise satisfy as the same shall become due and payable (i) all of its material post-petition taxes and other obligations of whatever nature that constitute administrative expenses under Section 503(b) of the Bankruptcy Code in the Cases and (ii) all material obligations arising from Contractual Obligations entered into after the Petition Date or from Contractual Obligations entered into prior to the Petition Date and assumed.

#### **4.8 Compliance with Laws**

. Each Credit Party shall, and shall cause each of its Subsidiaries to, comply with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business, except where the failure to comply would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

#### **4.9 Inspection of Property and Books and Records; Field Exams and Appraisals**

(a) Each Credit Party shall maintain and shall cause each of its Subsidiaries to maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Person. Each Credit Party shall, and shall cause each of its Subsidiaries to, provide access to its properties, books and records to Agent, the Lenders and their respective Related Persons and shall reasonably cooperate with Agent, the Lenders and any of their respective Related Persons in connection with any review or analysis of any such Person's business, financial condition, assets, prospects and results of operations.

(b) Each Credit Party shall, and shall cause each of its Subsidiaries to, with respect to each owned, leased, or controlled property, during normal business hours and upon reasonable advance notice (unless an Event of Default shall have occurred and be continuing, in which event no notice shall be required and Agent, the Lenders shall have access at any and all times during the continuance thereof) (a) provide access to such property to Agent and the Lenders and any of their Related Persons, as frequently as Agent and the Lenders determine to be appropriate; and (b) permit Agent, the Lenders and any of its Related Persons to conduct field examinations, audit, inspect and make extracts and copies (or take originals if reasonably necessary) from all of such Credit Party's books and records, and evaluate and make physical verifications of the Inventory and other Collateral in any manner and through any medium that Agent considers advisable, in each instance, at the Credit Parties' expense.

(c) Upon Agent's or any Lender's request from time to time, the Credit Parties shall permit and enable Agent and the Lenders to obtain appraisals in form and substance and from appraisers reasonably satisfactory to Agent and the Lenders stating (i) a value as determined by Agent or the Required Lenders, of all or any portion of the Inventory of any Credit Party or any Subsidiary of any Credit Party, provided, that

notwithstanding any provision herein to the contrary, the Borrowers shall only be obligated to reimburse Agent and the Lenders for the expenses of such appraisals occurring up to two (2) times in any twelve (12) consecutive month period, in the event that no Default or Event of Default has occurred and is continuing (it being understood and agreed that there shall be no limit on the number of appraisals during the occurrence and continuance of a Default or Event of Default and all such appraisals shall be at the sole cost and expense of the Credit Parties and (y) the foregoing limitations shall not apply to any appraisal conducted by Agent and the Lenders (at the cost and expense of Agent or the Lenders)), and (ii) the fair market value, or such other value of any Real Estate of any Credit Party or any Subsidiary of any Credit Party, solely to the extent required to comply with FIRREA.

#### **4.10 Use of Proceeds**

. The Borrowers shall use the proceeds of the Loans solely as follows: (a) with respect to proceeds from the Term Loan, to refinance on the Closing Date, Prior Indebtedness, including any costs and expenses associated therewith (including, for the avoidance of doubt, to cash collateralize any letters of credit, at 105% of the amount thereof, issued under such Prior Indebtedness), (b) to pay fees, costs and expenses required to be paid pursuant to Section 2.1, (c) for ongoing debtor-in-possession working capital purposes as approved in the Budget, and (d) in accordance with the terms of the ~~Orders~~Final Order, for general corporate purposes not in contravention of any Requirement of Law and not in violation of this Agreement (including, without limitation, Bankruptcy Court approved professional fees and other administrative fees arising in the Cases).

#### **4.11 Cash Management**

. The Credit Parties and their Subsidiaries shall comply at all times with the terms of the Cash Management Order.

#### **4.12 [Reserved]**

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#### **4.13 Further Assurances**

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(a) Each Credit Party shall ensure that all written information, exhibits and reports furnished to Agent or the Lenders do not and will not contain any untrue statement of a material fact and do not and will not omit to state any material fact or any fact necessary to make the statements contained therein not materially misleading in light of the circumstances in which made, and will promptly disclose to Agent and the Lenders and correct any defect or error that may be discovered therein or in any Loan Document or in the execution, acknowledgement or recordation thereof.

(b) Promptly upon request by Agent or any Lender, the Credit Parties shall (and, subject to the limitations hereinafter set forth, shall cause each of their Subsidiaries

to) take such additional actions and execute such documents as Agent or any Lender may reasonably require from time to time in order (i) to carry out more effectively the purposes of this Agreement or any other Loan Document, (ii) to subject to the Liens created by any of the Collateral Documents any of the Properties, rights or interests covered by any of the Collateral Documents, (iii) to perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and the Liens intended to be created thereby, and (iv) to better assure, convey, grant, assign, transfer, preserve, protect and confirm to the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document.

#### **4.14 Environmental Matters**

. Each Credit Party shall, and shall cause each of its Subsidiaries to, comply with, and maintain its Real Estate, whether owned, leased, subleased or otherwise operated or occupied, in compliance with, all applicable Environmental Laws (including by implementing any Remedial Action necessary to achieve such compliance) or that is required by orders and directives of any Governmental Authority except where the failure to comply would not reasonably be expected to, individually or in the aggregate, result in a Material Environmental Liability. Without limiting the foregoing, if an Event of Default is continuing or if Agent or any Lender at any time has a reasonable basis to believe that there exist violations of Environmental Laws by any Credit Party or any Subsidiary of any Credit Party or that there exist any Environmental Liabilities, then each Credit Party shall, promptly upon receipt of written request from Agent or any Lender, cause the performance of, and allow Agent, the Lenders and their Related Persons access to such Real Estate for the purpose of conducting, such environmental audits and assessments, solely to the extent necessary to determine the extent of such Event of Default, violations or Environmental Liabilities, including subsurface sampling of soil and groundwater, and cause the preparation of such reports, in each case as Agent or any Lender may from time to time reasonably request. Such audits, assessments and reports, to the extent not conducted by Agent, any Lender or any of their Related Persons, shall be conducted and prepared by reputable environmental consulting firms reasonably acceptable to the Required Lenders and shall be in form and substance reasonably acceptable to the Required Lenders.

#### **4.15 Leases**

. Except to the extent failure to do so is permitted by the Bankruptcy Code or pursuant to the ~~Orders~~[Final Order](#), each Credit Party shall, and shall cause each Subsidiary to, make all payments and otherwise perform all obligations in respect of all leases of Real Estate (other than the Designated Leases) and warehouse facilities where any material Collateral is located, keep such leases in full force and effect and not allow such leases to lapse or be terminated, notify Agent of any default by any party with respect to such leases and cooperate with Agent and the Lenders in all respects to cure any such default, and cause each of its Subsidiaries to do so, except, in any case, (i) for those amounts contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the Credit Parties in accordance with GAAP or (ii) for any lease that is terminated at its stated termination date or is terminated prior to its stated termination date by mutual agreement between the lessor and the applicable Credit Party, in each case, so long as any Inventory or other material Collateral has been removed from such location.



#### **4.16 Post-Closing Covenant**

. Each Credit Party, as applicable, shall execute and deliver the documents and complete the tasks set forth on Schedule 4.16, in each case within the time limits specified on such Schedule (or such later times as approved by ~~Oaktree~~KPS).

#### **4.17 Additional Information Obligations**

(a) Case Documents and Motions. As soon as practicable in advance of filing with the Bankruptcy Court of all documents and pleadings, including with respect to the ~~Orders-Final Order~~ and the Asset Purchase Agreement, the Borrowers shall deliver to Agent and ~~Oaktree-KPS~~ all such documents to be filed and provide ~~Oaktree~~KPS with a reasonable opportunity to review and comment on all such documents.

(b) Progress Calls. The Borrowers shall hold weekly progress conference calls for the Lenders, starting on the Thursday after the first day of the second week following the Closing Date and continuing on each Thursday thereafter, until the Termination Date. During such conference calls a Responsible Officer of the Company shall provide the participating Lenders with a reasonably comprehensive update on the Cases, variances with respect to the Budget and any other material information relating to the business, condition (financial or otherwise), operation, performance, properties or prospects of any of the Credit Parties and any other information that may be reasonably requested by Agent or any Lender.

(c) [Reserved].

(d) Access to Advisors. The Credit Parties shall allow Agent and the Lenders access to, upon reasonable notice during normal business hours, all financial professionals engaged by the Credit Parties (which engagement, with respect to any financial professionals engaged after the Closing Date, shall be on terms and conditions reasonably satisfactory to the Required Lenders, it being understood and agreed that the engagement of Alvarez & Marsal and Miller Buckfire & Co. (without amendment or modification of the terms in place as of the Closing Date) are satisfactory).

#### **4.18 Use of Property; Rejection and Assumption of Contracts; Post-Filing Pleadings**

. On or after the Petition Date, each Credit Party agrees that it shall not, without ~~Oaktree's~~KPS's prior written consent, file any motions or pleadings with the Bankruptcy Court (a) seeking authority for any Credit Party to (i) use any of the material properties or assets of the Credit Parties outside the ordinary course of business, except to the extent such use results in the payment in full of the Obligations, (ii) satisfy prepetition claims of the Credit Parties or (iii) incur material administrative costs, in each case, to the extent such relief is inconsistent with this Agreement (including the Budget), (b) seeking to reject or assume any contract, agreement, lease

or other agreement to which any Credit Party is a party, or (c) seeking relief that is otherwise inconsistent with this Agreement, the ~~Orders~~Final Order, or the Asset Purchase Agreement (unless, in the case of the Asset Purchase Agreement, such agreement shall have been terminated).

## ARTICLE V NEGATIVE COVENANTS

Each Credit Party covenants and agrees that, so long as any Lender shall have any Revolving Loan Commitment hereunder, or any Loan or other Obligation (other than contingent indemnification Obligations to the extent no claim giving rise thereto has been asserted) shall remain unpaid or unsatisfied:

### **5.1 Limitation on Liens**

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, directly or indirectly, make, create, incur, assume or suffer to exist any Lien upon or with respect to any part of its Property, whether now owned or hereafter acquired, other than the following (“Permitted Liens”):

(a) any Lien existing on the Property of a Credit Party or a Subsidiary of a Credit Party on the Closing Date and set forth on Schedule 5.1;

(b) any Lien created under any Loan Document;

(c) Customary Permitted Encumbrances;

(d) Liens on fixed or capital assets acquired, constructed or improved by the Borrowers or any Subsidiary; provided that (i) such security interests and the Indebtedness secured thereby are incurred prior to or within ninety (90) days after such acquisition or the completion of such construction or improvement, (ii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such fixed or capital assets and (iii) such security interests shall not apply to any other property or assets of such Borrower or Subsidiary or any other Borrower or Subsidiary;

(e) Liens on cash collateral securing letters of credit issued under the Prior Indebtedness and Liens on cash collateral used to cash collateralize any letters of credit that are issued by a Person other than a lender under the Prior Indebtedness in an aggregate amount not to exceed \$1,000,000 at any one time outstanding;

(f) any interest or title of a lessor or sublessor under any lease not prohibited by this Agreement;

(g) Liens arising from the filing of precautionary Uniform Commercial Code financing statements with respect to any lease not prohibited by this Agreement;

(h) non-exclusive licenses and non-exclusive sublicenses granted by a Credit Party and leases or subleases (by a Credit Party as lessor or sublessor) to third parties in



the Ordinary Course of Business not interfering with the business of the Credit Parties or any of their Subsidiaries, and with respect to any licenses or sublicenses entered into after the Closing Date, the Borrowers shall seek to include language that expressly provides that Intellectual Property that is the subject of such license or sublicense is subject to the Agent's Lien;

(i) Liens in favor of collecting banks arising by operation of law under Section 4-210 of the Uniform Commercial Code or, with respect to collecting banks located in the State of New York, under 4-208 of the Uniform Commercial Code;

(j) Liens (including the right of set-off) in favor of a bank or other depository institution arising as a matter of law encumbering deposits;

(k) Liens in favor of customs and revenue authorities arising as a matter of law which secure payment of customs duties in connection with the importation of goods in the Ordinary Course of Business;

(l) Liens securing the Carve-Out;

(m) Liens granted by a Subsidiary that is not a Credit Party in favor of the Borrower or another Credit Party in respect of Indebtedness owed by such Subsidiary; and

(n) Existing Term Loan Liens; provided that such Existing Term Loan Liens are subordinate in priority to the Liens granted under the Loan Documents in all respects.

## **5.2 Disposition of Assets**

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, directly or indirectly, sell, assign, lease, convey, transfer or otherwise dispose of (whether in one or a series of transactions) any Property (including the Stock of any Subsidiary of any Credit Party, whether in a public or a private offering or otherwise, and accounts and notes receivable, with or without recourse), except:

(a) dispositions of inventory, or worn-out, obsolete or surplus equipment or property, all in the Ordinary Course of Business;

(b) sales, transfers, leases and other dispositions (x) by a Credit Party to another Credit Party and (y) by a Subsidiary of any Credit Party to any Borrower or any Subsidiary that is a Credit Party;

(c) sales, transfers and dispositions of accounts receivable in connection with the compromise, settlement or collection thereof, all in the Ordinary Course of Business;

(d) sale of the Identified Assets; provided, that, concurrently with the sale of such Identified Assets, the proceeds thereof constituting "Restricted Cash" (as such term is defined in the Asset Purchase Agreement) shall be held in trust for the benefit of the

Purchasers (as defined in the Asset Purchase Agreement), in a manner acceptable to ~~Oaktree~~-KPS (such amount, the “Identified Assets Trust Proceeds”);

~~(e) — the Lane Sale in accordance with the Lane Sale Order;~~

(e) ~~(f)~~ dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Borrower or any Subsidiary;

(f) ~~(g)~~(i) dispositions of Cash Equivalents in the Ordinary Course of Business made to a Person that is not an Affiliate of any Credit Party, to the extent not in contravention of the Budget or the ~~Orders~~-Final Order and (ii) conversions of Cash Equivalents into cash or other Cash Equivalents;

(g) ~~(h)~~ transactions permitted under Section 5.1(h); and

(h) ~~(i)~~(x) Disposition of the Aircraft and (y) Dispositions constituting a sale or other disposition of Inventory, furniture, fixtures and equipment in accordance with the going-out-of-business liquidation of stores in respect of leases set forth on Schedule 2.6(f) of the Asset Purchase Agreement.

provided that all sales, transfers, leases and other dispositions permitted hereby (other than those permitted by clauses (c), (f) and (g) above) shall be made for fair value and for at least 75% cash consideration.

### **5.3 Consolidations and Mergers**

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to merge, consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person.

### **5.4 Acquisitions; Loans and Investments**

. No Credit Party shall and no Credit Party shall suffer or permit any of its Subsidiaries to (i) purchase or acquire, or make any commitment to purchase or acquire any Stock or Stock Equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, or (ii) make or commit to make any Acquisitions, or any other acquisition of all or substantially all of the assets of another Person, or of any business or division of any Person, including without limitation, by way of merger, consolidation or other combination or (iii) make or purchase, or commit to make or purchase, any advance, loan, extension of credit or capital contribution to or any other investment in, any Person including a Borrower, any Affiliate of a Borrower or any Subsidiary of a Borrower (the items described in clauses (i), (ii) and (iii) are referred to as “Investments”), except for:

(a) Investments in cash and Cash Equivalents;

(b) Investments acquired in connection with the settlement of delinquent Accounts in the Ordinary Course of Business or in connection with the bankruptcy or reorganization of suppliers or customers;

(c) Investments existing on the Closing Date and set forth on Schedule 5.4;

(d) loans or advances to employees permitted under Section 5.6;

(e) Capital Expenditures in an aggregate amount not to exceed \$2,000,000 and to the extent expressly set forth in the Budget;

(f) Investments by the Borrowers and the Subsidiaries in Stock and Stock Equivalents in their respective Subsidiaries that are Credit Parties;

(g) loans or advances made by any Borrower to any Subsidiary that is a Credit Party or made by any Credit Party to any other Credit Party;

(h) Guarantees constituting Contingent Obligations permitted by Section 5.9; provided that no such Guarantee shall be made by a Credit Party of Indebtedness of a Subsidiary which is not a Credit Party, other than Contingent Obligations permitted under Section 5.9(d);

(i) Investments by the Credit Parties in Foreign Subsidiaries that are both (x) made in the Ordinary Course of Business (with respect to both amount and purpose) and (y) expressly set forth in the Budget;

(j) additional Investments by the Credit Parties in Foreign Subsidiaries in an aggregate amount not to exceed \$50,000 outstanding at any time;

(k) Investments received in connection with the dispositions of assets permitted by Section 5.2; and

(l) Investments constituting deposits described in clauses (c) and (d) of the definition of the term "Customary Permitted Encumbrances".

## **5.5 Limitation on Indebtedness**

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, create, incur, assume, permit to exist, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(a) the Obligations;

(b) Indebtedness consisting of Contingent Obligations described in clause (j) of the definition of Indebtedness and permitted pursuant to Section 5.9;

(c) Indebtedness existing on the Closing Date and set forth on Schedule 5.5 ;

(d) [~~Reserved~~reserved];

(e) Indebtedness of any Borrower to any other Borrower, of any Borrower to any Subsidiary and of any Subsidiary to any Borrower or any other Subsidiary, provided that (i) Indebtedness of any Subsidiary that is not a Credit Party to any Borrower or any Subsidiary that is a Credit Party shall be subject to Section 5.4 and (ii) Indebtedness of any Borrower to any Subsidiary that is not a Borrower and Indebtedness of any Subsidiary that is a Credit Party to any Subsidiary that is not a Credit Party shall be subordinated to the Obligations on terms reasonably satisfactory to ~~Oaktree~~KPS;

(f) Indebtedness owed to any person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such person, in each case incurred in the Ordinary Course of Business;

(g) any reimbursement obligations with respect to letters of credit in an aggregate amount not to exceed \$1,000,000 at any one time outstanding;

(h) [reserved];

(i) [reserved];

(j) [reserved]; and

(k) Existing Term Loan Obligations.

## **5.6 Employee Loans and Transactions with Affiliates**

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, enter into any transaction with any Affiliate of a Borrower or of any such Subsidiary, except:

(a) as expressly permitted by this Agreement;

(b) (i) Inventory purchase and sale transactions between the Credit Parties and Foreign Subsidiaries on terms and conditions consistent with past practice (including, transfer pricing arrangements) and (ii) other transactions in the Ordinary Course of Business and pursuant to the reasonable requirements of the business of such Credit Party or such Subsidiary upon fair and reasonable terms no less favorable to such Credit Party or such Subsidiary than would be obtained in a comparable arm's length transaction with a Person not an Affiliate of a Borrower or such Subsidiary and which are approved by ~~Oaktree~~KPS;

(c) loans or advances made by a Credit Party to its directors, officers and other employees on an arms-length basis in the Ordinary Course of Business for travel and entertainment expenses and similar purposes up to a maximum of \$250,000 in the aggregate at any one time outstanding;

(d) transactions between or among any Borrowers and any Subsidiary that is a Credit Party not involving any other Affiliate;

- (e) any Investment permitted by Sections 5.4(f) and 5.4(g);
- (f) any Indebtedness permitted under Section 5.5(e);
- (g) any Restricted Payment permitted by Section 5.11;
- (h) [reserved]; and

(i) the payment of reasonable fees to directors of any Borrower or any Subsidiary who are not employees of the Borrower or any Subsidiary, and reasonable compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Company or its Subsidiaries in the Ordinary Course of Business, in each case, as permitted by the Budget.

### **5.7 Management Fees and Compensation**

. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, pay any management, consulting or similar fees to any Affiliate of any Credit Party or to any officer, director or employee of any Credit Party or any Affiliate of any Credit Party, except (a) payment of reasonable compensation to officers and employees for actual services rendered to the Credit Parties and their Subsidiaries in the Ordinary Course of Business and as permitted by the Budget and (b) payment of reasonable directors' fees and reimbursement of actual out-of-pocket expenses incurred in connection with attending board of director meetings to the extent permitted by the Budget.

### **5.8 Margin Stock; Use of Proceeds**

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, use any portion of the Loan proceeds, directly or indirectly, to purchase or carry Margin Stock or repay or otherwise refinance Indebtedness of any Credit Party or others incurred to purchase or carry Margin Stock, or otherwise in any manner which is in contravention of any Requirement of Law or in violation of this Agreement.

### **5.9 Contingent Obligations**

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Contingent Obligations except in respect of the Obligations and except:

- (a) endorsements for collection or deposit in the Ordinary Course of Business;
- (b) Contingent Obligations of the Borrower or any Subsidiary in respect of performance bonds, bid bonds, appeal bonds, surety bonds and similar obligations, in each case, provided in the Ordinary Course of Business;
- (c) Guarantees by any Borrower of Indebtedness of any other Borrower or any other Credit Party and by any Subsidiary of Indebtedness of any Borrower or any other Subsidiary, provided that (i) the Indebtedness so Guaranteed is permitted by

Section 5.5, (ii) neither Borrower nor any Subsidiary that is a Credit Party shall Guarantee Indebtedness of any Subsidiary that is not a Credit Party, and (iii) Guarantees permitted under this Section 5.5(c) shall be subordinated to the Obligations of the applicable Subsidiary on the same terms as the Indebtedness so Guaranteed is subordinated to the Secured Obligations;

(d) Guarantees (i) of the Borrowers or any of their Subsidiaries as a guarantor of the lessee under any lease pursuant to which a Borrower or a Subsidiary is the lessee so long as such lease is otherwise permitted hereunder, (ii) of the Company constituting Guarantees by the Company of trade payables owing by its Subsidiaries in the Ordinary Course of Business, (iii) of the Company and/or Thomasville consisting of Guarantees of actual or potential claims under Environmental Laws, and (iv) of any Borrower or any Subsidiary as a guarantor of the obligations of a lessee under any lease pursuant to which a third party is the lessee, in each case, to the extent any such Guarantee is in existence as of the Petition (and without any amendment or modification thereto);

(e) [reserved];

(f) Contingent Obligations of the Credit Parties and their Subsidiaries existing as of the Closing Date and listed on Schedule 5.9, including extension and renewals thereof which do not increase the amount of such Contingent Obligations or impose materially more restrictive or adverse terms on the Credit Parties or their Subsidiaries as compared to the terms of the Contingent Obligation being renewed or extended;

(g) Contingent Obligations arising under indemnity agreements to title insurers to cause such title insurers to issue to Agent title insurance policies;

(h) Contingent Obligations arising with respect to customary indemnification obligations in favor of (i) customers in the Ordinary Course of Business and (ii) purchasers in connection with dispositions permitted under Section 5.2(b);

(i) [reserved]; and

(j) Contingent Obligations arising under guaranties made in the Ordinary Course of Business of obligations of any Credit Party, which obligations are otherwise permitted hereunder; provided that if such obligation is subordinated to the Obligations, such guaranty shall be subordinated to the same extent.

#### **5.10 Compliance with ERISA**

. No ERISA Affiliate shall cause or suffer to exist (a) any event that could reasonably be expected to result in the imposition of a Lien on any asset of a Credit Party or a Subsidiary of a Credit Party with respect to any Title IV Plan or Multiemployer Plan or (b) any other ERISA Event, that would, in the aggregate, result in Liabilities in excess of \$5,000,000. No Credit Party shall cause or suffer to exist any event that could reasonably be expected to result in the imposition of a Lien with respect to any Benefit Plan or Multiemployer Plan.

#### **5.11 Restricted Payments**

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, (i) declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any Stock or Stock Equivalent, (ii) purchase, redeem or otherwise acquire for value any Stock or Stock Equivalent now or hereafter outstanding or (iii) make any payment or prepayment of principal of, premium, if any, interest, fees, redemption, exchange, purchase, retirement, defeasance, sinking fund or similar payment with respect to, Subordinated Indebtedness (the items described in clauses (i), (ii) and (iii) above are referred to as “Restricted Payments”); except that any Wholly-Owned Subsidiary of a Borrower may declare and pay dividends to a Borrower or any Wholly-Owned Subsidiary of a Borrower, and except that:

(a) each Borrower may declare and pay dividends with respect to its common Stock payable solely in additional shares of its common Stock, and, with respect to its preferred Stock, payable solely in additional shares of such preferred Stock or in shares of its common Stock; and

(b) Subsidiaries may declare and pay dividends ratably with respect to their Stock and Stock Equivalents.

This Section 5.11 shall not prohibit repurchases of common shares by the Company in the open market to offset the issuance of shares of common Stock pursuant to the exercise of employee stock options to the extent any such transactions do not result in a net use of cash.

#### **5.12 Change in Business**

. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, engage in any business other than businesses of the type conducted by the Borrowers and its Subsidiaries on the Closing Date and businesses reasonably related or complementary thereto.

#### **5.13 Change in Structure; Foreign Subsidiary Ownership of Domestic Subsidiaries**

. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, make any material changes in its equity capital structure, or issue any Stock or Stock Equivalents or amend any of its Organization Documents. No Foreign Subsidiary shall own any Stock or Stock Equivalents of any Domestic Subsidiary.

#### **5.14 Changes in Accounting, Name or Jurisdiction of Organization**

. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, (i) make any change in accounting treatment or reporting practices, except as required by GAAP and as previously disclosed to the Lenders, (ii) change the Fiscal Year or method for determining Fiscal Quarters of any Credit Party or of any consolidated Subsidiary of any Credit Party, (iii) change its name as it appears in official filings in its jurisdiction of organization or (iv) change its jurisdiction of organization.

#### **5.15 Immaterial Subsidiaries**



. None of Broyhill Transport, HDM Transport or Laneventure shall (i) engage in any business or other commercial activities, (ii) own any assets or property, (iii) incur any Indebtedness or Contractual Obligations, or (iv) grant any Liens over any of its assets or property.

#### **5.16 No Negative Pledges**

. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, directly or indirectly, (a) create or otherwise cause or suffer to exist or become effective any consensual restriction or encumbrance of any kind on the ability of any Credit Party or Subsidiary to pay dividends or make any other distribution on any of such Credit Party's or Subsidiary's Stock or Stock Equivalents or to pay fees, including management fees, or make other payments and distributions to a Borrower or any other Credit Party or (b) enter into, assume or become subject to any Contractual Obligation prohibiting or otherwise restricting the existence of any Lien upon any of its assets in favor of Agent, whether now owned or hereafter acquired; provided that the foregoing in this Section 5.16 shall not apply to restrictions and conditions (in each case, subject to the ~~Orders~~Final Order) (i) imposed by Requirements of Law, (ii) imposed by the Loan Documents, (iii) imposed by the Existing Term Loan Documents, (iv) existing on the date hereof and identified on Schedule 5.16 (but shall apply to any extension or renewal of, or any amendment, supplement or modification expanding the scope of, any such restriction or condition), (v) to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted by the terms of this Agreement, (vi) clause (b) shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (vii) clause (b) of the foregoing shall not apply to customary provisions in leases restricting the assignment thereof.

#### **5.17 OFAC; Patriot Act**

. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to fail to comply with the laws, regulations and executive orders referred to in Sections 3.27 and 3.28.

#### **5.18 Sale- Leasebacks**

. Except as in existence on the Closing Date, no Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, engage in a sale leaseback, synthetic lease or similar transaction involving any of its assets.

#### **5.19 Hazardous Materials**

. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, cause or suffer to exist any Release of any Hazardous Material at, to or from any Real Estate that would (a) violate any Environmental Law, except where such failures to comply would not reasonably be expected to result in, either individually or in the aggregate, Material Environmental Liabilities to the Credit Parties and their Subsidiaries or (b) form the basis for any Material Environmental Liabilities.



## **5.20 Prepayments and Amendments with respect to Other Indebtedness and Related Agreements**

. Except as required by this Agreement or the Orders (except with respect to adequate protection payments required in connection with Existing Term Loan Agreement), no Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, (i) directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness (including without limitation, any Subordinated Indebtedness) prior to its scheduled maturity or set aside any funds for such purpose (other than any payments to critical vendors to the extent permitted by the Bankruptcy Court pursuant to any first or second day motion or as expressly set forth in the Budget), (ii) agree to any amendment, restatement, supplement or other modifications to the Existing Term Loan Documents or (iii) make any interest payment in respect of any Indebtedness (including, without limitation, any Subordinated Indebtedness), other than (a) payments of the Obligations, (b) as expressly permitted by the Orders, and (c) prepayment of intercompany Indebtedness owed by Credit Parties.

### **5.21 Limitation on the Creation of Subsidiaries**

. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, establish, create or acquire after the Closing Date any Subsidiary.

### **5.22 Chapter 11 Claims**

. Until payment in full of the Obligations under this Agreement (other than contingent indemnification Obligations to the extent no claim giving rise thereto has been asserted), except for and to the extent permitted under the Carve-Out, the Credit Parties shall not, directly or indirectly, incur, create, assume, suffer to exist or permit any administrative expense claim or Lien which is pari passu with or senior to the claims or Liens, as the case may be, of Agent and the other Secured Parties against the Credit Parties hereunder or under the ~~Orders~~Final Order, or apply to the Bankruptcy Court for authority to do so.

### **5.23 Revision of ~~Orders~~Final Order; Applications to Bankruptcy Court**

. The Credit Parties shall not, directly or indirectly (a) seek, support, consent to or suffer to exist any modification, stay, vacation or amendment of ~~the Interim Order or~~ the Final Order except for any modifications and amendments agreed to in writing by Agent (but solely with respect to any modifications and amendments which directly affects the Agent) and ~~Oaktree~~KPS (in ~~Oaktree's~~KPS's sole discretion), (b) apply to (or support, directly or indirectly, any application by any other party to) the Bankruptcy Court for authority to take any action prohibited by this Article V (except to the extent such application and the taking of such action is conditioned upon receiving the written consent of ~~Oaktree~~KPS and such consent is provided) or (c) seek authorization for or permit the existence of, any claims other than that of the Lenders entitled to a superpriority claim under Section 364(c)(1) of the Bankruptcy Code that is senior or pari passu with the Lenders' Section 364(c)(1) claim.

### **5.24 Prepetition Claims**

. No Credit Party shall make or commit to make payments to holders of “claims” (as defined in section 101(5) of the Bankruptcy Code) against a Credit Party in respect of prepetition amounts in excess of the line item amount for such claim included in the Budget, other than those payment of those claims that are approved in writing by the Required Lenders.

### **5.25 Compliance with Budget**

(a) Except as otherwise provided herein or approved by ~~Oaktree~~KPS, the Credit Parties shall not, and shall not permit any Subsidiary to, directly or indirectly (i) use any cash or the proceeds of any Loans in a manner or for a purpose other than those consistent with this Agreement, the ~~Orders~~-Final Order and the Budget (and Permitted Variances related thereto), (ii) permit a disbursement causing any variance other than Permitted Variances without the prior written consent of ~~Oaktree~~-KPS or (iii) make any payment (as adequate protection or otherwise), or application for authority to pay, on account of any claim or Indebtedness arising prior to the Petition Date other than payments authorized by the Bankruptcy Court. For the avoidance of doubt, the Credit Parties’ compliance with the Budget shall be measured without regard to proceeds realized from the liquidation of Excluded Assets (as defined in the Asset Purchase Agreement).

(b) Prior to the occurrence of an Event of Default, the Credit Parties shall be permitted to pay compensation and reimbursement of fees and expenses solely to the extent that such fees and expenses are in accordance with the Budget and authorized to be paid under Sections 330 and 331 of the Bankruptcy Code pursuant to an order of the Bankruptcy Court, as the same may be due and payable. Upon receipt of the Carve-Out Trigger Notice, the right of the Credit Parties to pay professional fees outside the Carve-Out shall terminate, and the Credit Parties shall provide immediate notice to all professionals informing them that such notice was delivered and further advising them that the Credit Parties’ ability to pay such professionals is subject to and limited by the Carve-Out.

### **5.26 Use of Collateral**

. Without limiting Section 4.10, no Collateral, proceeds of Loans, portion of the Carve-Out or any other amounts may be used directly or indirectly by any of the Credit Parties, the Committee, if any, or any trustee or other estate representative appointed in the Cases (or any successor case) or any other Person (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith):

(a) to seek authorization to obtain Liens or security interests that are senior to, or on a parity with, the Liens granted under the Loan Documents or the DIP Superpriority Claims other than, to the extent the Asset Purchase Agreement has been terminated in accordance with its terms, in connection with any replacement debtor-in-possession financing that will pay the Lenders in “full” in cash; or

(b) to investigate (including by way of examinations or discovery proceedings), prepare, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, against Agent, the Lenders, the other Secured Parties or the Prepetition Parties, and each of their respective officers, directors, controlling persons, employees, agents, attorneys, affiliates, assigns, or successors of each of the foregoing, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) any Avoidance Actions; (ii) any so-called “lender liability” claims and causes of action; (iii) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the Obligations, the DIP Superpriority Claims, the Liens granted under the Loan Documents, the Loan Documents, the Existing Term Loan Document, the Existing Term Loan Obligations, the Existing Term Loan Liens, the ~~Existing-Prepetition~~ ABL Credit Agreement, the ~~Existing-Prepetition~~ ABL Obligations or the ~~Existing-Prepetition~~ ABL Liens; (iv) any action seeking to invalidate, modify, reduce, expunge, disallow, set aside, avoid or subordinate, in whole or in part, the Obligations or the Existing Term Loan Obligations (including, for the avoidance doubt, the “Prepayment Premium” as defined in the Existing Term Loan Documents); (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to either (A) Agent or the Lenders hereunder or under any of the other Loan Documents or (B) the Existing Term Loan Agent, the Existing Term Loan Lenders, the ~~Existing-Prepetition~~ ABL Agent, or the ~~Existing-Prepetition~~ ABL Lenders (in each case, as applicable, including, without limitation, claims, proceedings or actions that might prevent, hinder or delay any of their respective assertions, enforcements, realizations or remedies on or against the Collateral in accordance with the applicable Loan Documents and the ~~Orders~~Final Order); or (vi) objecting to, contesting, or interfering with, in any way, Agent’s and the Lenders’ enforcement or realization upon any of the Collateral once an Event of Default has occurred. Notwithstanding anything to the contrary herein, the Committee may use up to \$50,000.00 in the aggregate amount of the Carve-Out, any cash-collateral, or proceeds of the Loan to investigate the Prepetition Parties (the “Committee Investigation Budget”). Any and all claims incurred by the Committee in excess of the Committee Investigation Budget (the “Unbudgeted Investigation Claims”) shall not constitute any allowed administrative expense claim (including, without limitation, Section 1129(a)(9)(A) of the Bankruptcy Code), and the Unbudgeted Investigation Claims shall not be satisfied by the Carve-Out, any cash collateral or proceeds of the Loan, and shall be satisfied solely from the unencumbered assets of the Credit Parties (if any) (the “Unencumbered Assets”), thereby reducing recoveries to the holders of unsecured claims (other than any deficiency claim held by the Prepetition Parties); provided, however, that to the extent there are no Unencumbered Assets available to satisfy the Unbudgeted Investigation Claims, then such claims shall be automatically disallowed without further action by any party or Court order and shall not receive a recovery in the Cases and any Successor Cases.

**ARTICLE VI  
[INTENTIONALLY OMITTED]**

**ARTICLE VII  
EVENTS OF DEFAULT**

**7.1 Events of Default**

. Any of the following shall constitute an “Event of Default”:

(a) Non-Payment. Any Credit Party fails to pay when and as required to be paid herein, any amount of principal of any Loan, including after maturity of the Loans, or to pay the same shall become due, any interest on any Loan, any fee or any other amount payable hereunder or pursuant to any other Loan Document;

(b) Representation or Warranty. Any representation, warranty or certification by or on behalf of any Credit Party or any of its Subsidiaries made or deemed made herein, in any other Loan Document, or which is contained in any certificate, document or financial or other statement by any such Person, or their respective Responsible Officers, furnished at any time under this Agreement, or in or under any other Loan Document, shall prove to have been incorrect in any material respect (without duplication of other materiality qualifiers contained therein) on or as of the date made or deemed made;

(c) Specific Defaults. Any Credit Party fails to perform or observe any term, covenant or agreement contained in any of Section 4.2, 4.3, 4.4(a) (with respect to any Credit Party) or 9.10(d), Section 4.1, 4.6, 4.9, 4.10, 4.11, 4.16 or 4.17 or Article V;

(d) Other Defaults. Any Credit Party or Subsidiary of any Credit Party fails to perform or observe any other term, covenant or agreement contained in this Agreement or any other Loan Document, and such default shall continue unremedied for a period of thirty (30) days after the earlier to occur of (i) the date upon which a Responsible Officer of any Credit Party becomes aware of such default and (ii) the date upon which written notice thereof is given to the Borrower Representative by any Lender;

(e) Cross Default. Any Credit Party or any Subsidiary of any Credit Party (i) fails to make any payment in respect of any other Indebtedness (other than the Obligations) or Contingent Obligation (other than the Obligations) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$2,500,000 incurred after the Petition Date, in each case, when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such failure continues after the applicable grace or notice period, if any, specified in the document relating thereto (including the Term Loan Agreement) on the date of such failure; or (ii) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Indebtedness or Contingent Obligation (other than the Obligations and Contingent Obligations owing by one Credit Party with respect to the obligations of another Credit

Party permitted hereunder or earnouts permitted hereunder) incurred after the Petition Date, if the effect of such failure, event or condition is to cause, or to permit the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause such Indebtedness to be declared to be due and payable prior to its stated maturity (without regard to any subordination terms with respect thereto), or such Contingent Obligation to become payable or cash collateral in respect thereof to be demanded;

(f) Cases Motions. Any of the following shall occur in any Case:

(i) filing of a Plan by the Credit Parties that does not propose to repay the Obligations and the Existing Term Loan Obligations in full in cash, unless otherwise consented to by ~~Oaktree~~KPS;

(ii) any of the Credit Parties shall file a pleading seeking to vacate or modify ~~any of the Orders~~Final Order, unless otherwise consented to by ~~Oaktree~~KPS;

(iii) entry of an order without the prior consent of ~~Oaktree~~KPS amending, supplementing or otherwise modifying any Order;

(iv) reversal, vacation or stay of the effectiveness of any Order;

(v) any violation of the terms of any Order;

(vi) dismissal of the Cases or conversion of the Cases to a case under Chapter 7 of the Bankruptcy Code;

(vii) appointment of a Chapter 11 trustee or an examiner (other than a fee or other similar examiner);

(viii) the consummation of any sale of all or substantially all assets of the Credit Parties pursuant to Section 363 of the Bankruptcy Code, other than the Bankruptcy Sale ~~or the Lane Sale~~;

(ix) appointment of a responsible officer or examiner with enlarged powers relating to the operation of the business of any Credit Party;

(x) granting of relief from the automatic stay in the Cases to permit foreclosure or enforcement on, or any right or remedy with respect to, assets of any Credit Party in excess of \$500,000 in the aggregate;

(xi) the Credit Parties' filing of (or supporting another party in the filing of) a motion seeking entry of, or the entry of an order, granting any superpriority claim or Lien (except as contemplated herein) which is senior to or pari passu with the Lenders' claims under the Loan Documents and the transactions contemplated thereby;

(xii) payment of or granting adequate protection with respect to prepetition debt, other than as expressly set forth in the Budget;

~~(xiii) except (A) as otherwise provided in the Interim Order or the Final Order, (B) as expressly permitted by the Asset Purchase Agreement or (C) in connection with the Lane Sale (and as contemplated by the Lane Sale Motion and Lane Sale Order), any of the Credit Parties seek or if there is entered, an order under Section 365 of the Bankruptcy Code rejecting a material lease (i) to which any Credit Party is a party, and (ii) that is part of (or whose premises contain any of) the Collateral; and~~

(xiii) [reserved]; and

(xiv) cessation of the Liens or the DIP Superpriority Claims to be valid, perfected and enforceable in all respects;

(g) Financial Matters. Any of the Credit Parties shall (i) use cash collateral or Loans for any item other than those set forth in, and in accordance with, the Budget and as approved by the Bankruptcy Court or prepays any pre-petition debt, (ii) assert any right of subrogation or contribution against any other Credit Party prior to the payment in full of the Obligations and the Existing Term Loan Obligations, or (iii) exceed the Permitted Variances under the Budget for any applicable Testing Period (other than as approved in writing by ~~Oaktree~~KPS);

(h) Monetary Judgments. One or more judgments, non-interlocutory orders, decrees or arbitration awards shall be entered with respect to any post-petition liabilities against any one or more of the Credit Parties or any of their respective Subsidiaries or Properties involving in the aggregate a liability of \$2,500,000 or more (excluding amounts covered by insurance to the extent the relevant independent third party insurer has not denied coverage therefor), and the same shall remain unsatisfied, unvacated and unstayed pending appeal for a period of thirty (30) days after the entry thereof;

(i) Non-Monetary Judgments. One or more non-monetary judgments, orders or decrees shall be rendered with respect to any post-petition liabilities against any one or more of the Credit Parties or any of their respective Subsidiaries which has or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, and there shall be any period of ten (10) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect;

(j) Collateral. Any material provision of any Loan Document shall for any reason cease to be valid and binding on or enforceable against any Credit Party or any Subsidiary of any Credit Party party thereto or any Credit Party or any Subsidiary of any Credit Party shall so state in writing or bring an action to limit its obligations or liabilities thereunder; or any Collateral Document shall for any reason (other than pursuant to the terms thereof or any Order) cease to create a valid security interest in the Collateral



purported to be covered thereby or such security interest shall for any reason cease to be a perfected and first priority security interest subject only to the Carve-Out;

(k) Ownership. A Change in Control shall occur;

(l) Chapter 11 Cases Milestones. The failure to meet any of the following milestones:

~~(i) file the Bankruptcy Sale Motion on the Petition Date;~~

~~(ii) obtain entry of the Interim Order within 2 Business Days of the Petition Date;~~

~~(iii) [reserved];~~

~~(iv) [reserved];~~

~~(v) [reserved];~~

(i) ~~(vi)~~ obtain entry of the Final Order on or before ~~the date that is 35 days after the Petition Date~~ October 4, 2013;

(ii) ~~(vii)~~ obtain entry of the Bidding Procedures Order on or before ~~the date that is 35 days after the Petition Date~~ October 4, 2013;

(iii) ~~(viii)~~ obtain entry of the Bankruptcy Sale Order on or before ~~the date that is 100 days after the Petition Date~~ December 12, 2013; and

(iv) ~~(ix)~~ close the Bankruptcy Sale ~~on or before the date that is 115 days after the Petition Date~~ no later than December 23, 2013;

(m) ERISA Events. (i) An ERISA Event occurs with respect to a Benefit Plan or any Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any ERISA Affiliate under Title IV of ERISA to such Benefit Plan or Multiemployer Plan or the PBGC in an aggregate amount in excess of \$5,000,000 or which could reasonably likely result in a Material Adverse Effect, or (ii) a Credit Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$5,000,000;

(n) Adequate Protection Payments. Failure to pay, when due, any adequate protection payments to the Existing Term Loan Lenders, to the extent approved by the Bankruptcy Court;

(o) Alternate Transaction. Immediately upon the occurrence of the entry of a bidding ~~procedure~~ procedures order or upon consummation of a sale ~~order~~ with respect to all or substantially all of the assets of the Debtors ~~(excluding, for the avoidance of doubt,~~

~~the Lane Assets pursuant to a Lane Sale~~ to a purchaser other than Holdings (as defined in the Asset Purchase Agreement).

(p) Restraintment. If a Credit Party or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of the business affairs of the Credit Parties and their Subsidiaries, taken as a whole; ~~provided, that the Lane Sale, as contemplated by the Lane Sale Order, shall not constitute an enjoinder, restraintment or prevention in contravention of the foregoing;~~

(q) Material Contract Default Event. A Material Contract Default Event shall have occurred and be continuing for 45 days; provided, that, (i) if on the 45th day following such Material Contract Default Event, the Variance from the Budget on a cumulative basis for the period from the Petition Date through the last day covered by the most recent Variance Report delivered to the Agent and Lenders on or prior to such 45th day is not more than 5.0% less than the aggregate amount in the Budget for operating receipts for such period, then the date in this clause (q) shall be automatically extended for an additional 15 days and (ii) if on the 60th day following such Material Contract Default Event, the Variance from the Budget on a cumulative basis for the period from the Petition Date through the last day covered by the most recent Variance Report delivered to the Agent and Lenders on or prior to such 60th day is not more than 5.0% less than the aggregate amount in the Budget for operating receipts for such period, then the date in this clause (q) shall be further automatically extended for an additional 15 days and in each case, no Default or Event of Default shall be deemed to exist as a result of this Section 7.1(q).

After the occurrence of an Event of Default, such Event of Default shall be deemed to exist and be continuing unless waived in writing by ~~Oaktree~~KPS.

## 7.2 Remedies

. Notwithstanding anything in Section 362 of the Bankruptcy Code, but subject to the ~~Orders~~Final Order, upon the occurrence and during the continuance of any Event of Default, Agent shall, at the request of ~~Oaktree~~KPS, take any or all of the following actions, at the same time or different times, in each case without further order of or application to the Bankruptcy Court (*provided*, that with respect to the enforcement of Liens or other remedies with respect to the Collateral under clause (c) below, the Agent shall provide the Borrower Representative with five Business Days' written notice (with a copy to counsel for any Committee and to the United States Trustee for the District of Delaware) prior to taking the action contemplated thereby; in any hearing after the giving of the aforementioned notice, the only issue that may be raised by any party in opposition thereto being whether, in fact, an Event of Default has occurred and is continuing):

(a) declare all or any portion of the Revolving Loan Commitment of each Revolving Lender to make Revolving Loans to be suspended or terminated, whereupon such Revolving Loan Commitments shall forthwith be suspended or terminated;



(b) declare all or any portion of the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable; without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by each Credit Party; and/or

(c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable law;

Neither the Credit Parties, the Committee, nor any other party-in-interest shall have the right to contest the enforcement of remedies set forth in the ~~Orders~~-[Final Order](#) and the Loan Documents on any basis other than an assertion that an Event of Default has not occurred or has been cured within the cure periods expressly set forth in the applicable Loan Documents. The Credit Parties shall cooperate fully with the Agent and the Lenders in their exercise of rights and remedies, whether against the Collateral or otherwise. The Credit Parties hereby waive any right to seek relief under the Bankruptcy Code, including under Section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the Agent and the Lenders set forth in the ~~Orders~~-[Final Order](#) and in the Loan Documents.

In case any one or more of the covenants and/or agreements set forth in this Agreement or any other Loan Document shall have been breached by any Credit Party, then the Agent or any Lender may proceed to protect and enforce the Lenders' rights either by suit in equity and/or by action at law, including an action for damages as a result of any such breach and/or an action for specific performance of any such covenant or agreement contained in this Agreement or such other Loan Document. Without limitation of the foregoing, the Borrowers agree that failure to comply with any of the covenants contained herein will cause irreparable harm and that specific performance shall be available in the event of any breach thereof. The Agent and any Lender acting pursuant to this paragraph shall be indemnified by the Borrowers against all liability, loss or damage, together with all reasonable costs and expenses related thereto (including reasonable legal and accounting fees and expenses) in accordance with [Section 9.6](#).

### **7.3 Rights Not Exclusive**

The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

## **ARTICLE VIII AGENT**

### **8.1 Appointment and Duties**

(a) Appointment of Agent. Each Lender hereby appoints ~~NexBank-SSB-Bank of America, N.A.~~ (together with any successor Agent pursuant to [Section 8.9](#)) as Agent hereunder and authorizes Agent to (i) execute and deliver the Loan Documents and

accept delivery thereof on its behalf from any Credit Party, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Agent under such Loan Documents and (iii) exercise such powers as are incidental thereto.

(b) Duties as Collateral and Disbursing Agent. Without limiting the generality of clause (a) above, Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents, and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Person), (iii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Requirements of Law or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Agent and the Lenders for purposes of the perfection of Liens with respect to any deposit account maintained by a Credit Party with, and cash and Cash Equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) Limited Duties. Under the Loan Documents, Agent (i) is acting solely on behalf of the Secured Parties (except to the limited extent provided in Section 1.4(b)) with respect to the Register), with duties that are entirely administrative in nature, notwithstanding the use of the defined term “Agent”, the terms “agent”, “Agent” and “collateral agent” and similar terms in any Loan Document to refer to Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Person and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Secured Party, by accepting the benefits of the Loan Documents, hereby waives and agrees not to assert any claim against Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above.

## **8.2 Binding Effect**

. Each Secured Party, by accepting the benefits of the Loan Documents, agrees that (i) any action taken by Agent, ~~Oaktree-KPS~~ or the Required Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by Agent in reliance upon the instructions of ~~Oaktree-KPS~~ or Required Lenders (or, where so required, such greater proportion) and (iii) the exercise by Agent, ~~Oaktree-KPS~~ or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are incidental thereto, shall be authorized and binding upon all of the Secured Parties.

### **8.3 Use of Discretion**

(a) Agent 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 Loan Documents that Agent is required to exercise as directed in writing by ~~Oaktree-KPS~~ (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided, that Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Agent to liability or that is contrary to any Loan Document or applicable Requirement of Law; and

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

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against 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, Agent in accordance with the Loan Documents for the benefit of all the Lenders; provided that the foregoing shall not prohibit (i) Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (ii) [reserved], (iii) any Lender from exercising setoff rights in accordance with Section 9.11 or (iv) 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 bankruptcy or other debtor relief law; and provided further that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then (A) ~~Oaktree-KPS~~ shall have the rights otherwise ascribed to Agent pursuant to Section 7.2 and (B) in addition to the matters set forth in clauses (ii), (iii) and (iv) of the preceding proviso and subject to Section 9.11, any Lender may, with the consent of ~~OaktreeKPS~~, enforce any rights and remedies available to it and as authorized by ~~OaktreeKPS~~.

### **8.4 Delegation of Rights and Duties**

. Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). Any such Person shall benefit from this Article VIII to the extent provided by Agent.

## **8.5 Reliance and Liability**

(a) Agent may, without incurring any liability hereunder, (i) treat the payee of any Note as its holder until such Note has been assigned in accordance with Section 9.9, (ii) rely on the Register to the extent set forth in Section 1.4, (iii) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Credit Party) and (iv) rely and act upon any document and information (including those transmitted by Electronic Transmission) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(b) None of Agent and its Related Persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Secured Party, each Borrower and each other Credit Party hereby waive and shall not assert (and each of the Borrowers shall cause each other Credit Party to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of ~~Oaktree~~-KPS or the Required Lenders or for the actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of Agent, when acting on behalf of Agent);

(ii) shall not be responsible to any Lender or other Person for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Lender or other Person for any statement, document, information, representation or warranty made or furnished by or on behalf of any Credit Party or any Related Person of any Credit Party in connection with any Loan Document or any transaction contemplated therein or any other document or information

with respect to any Credit Party, whether or not transmitted or (except for documents expressly required under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by Agent in connection with the Loan Documents; and

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Credit Party or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower Representative or any Lender describing such Default or Event of Default clearly labeled “notice of default” (in which case Agent shall promptly give notice of such receipt to all Lenders); and, for each of the items set forth in clauses (i) through (iv) above, each Lender and each Borrower hereby waives and agrees not to assert (and each Borrower shall cause each other Credit Party to waive and agree not to assert) any right, claim or cause of action it might have against Agent based thereon.

(c) Each Lender (i) acknowledges that it has performed and will continue to perform its own diligence and has made and will continue to make its own independent investigation of the operations, financial conditions and affairs of the Credit Parties and (ii) agrees that it shall not rely on any audit or other report provided by Agent or its Related Persons (an “Agent Report”). Each Lender further acknowledges that any Agent Report (i) is provided to the Lenders solely as a courtesy, without consideration, and based upon the understanding that such Lender will not rely on such Agent Report, (ii) was prepared by Agent or its Related Persons based upon information provided by the Credit Parties solely for Agent’s own internal use, (iii) may not be complete and may not reflect all information and findings obtained by Agent or its Related Persons regarding the operations and condition of the Credit Parties. Neither Agent nor any of its Related Persons makes any representations or warranties of any kind with respect to (i) any existing or proposed financing, (ii) the accuracy or completeness of the information contained in any Agent Report or in any related documentation, (iii) the scope or adequacy of Agent’s and its Related Persons’ due diligence, or the presence or absence of any errors or omissions contained in any Agent Report or in any related documentation, and (iv) any work performed by Agent or Agent’s Related Persons in connection with or using any Agent Report or any related documentation.

(d) Neither Agent nor any of its Related Persons shall have any duties or obligations in connection with or as a result of any Lender receiving a copy of any Agent Report. Without limiting the generality of the forgoing, neither Agent nor any of its Related Persons shall have any responsibility for the accuracy or completeness of any Agent Report, or the appropriateness of any Agent Report for any Lender’s purposes, and shall have no duty or responsibility to correct or update any Agent Report or disclose to any Lender any other information not embodied in any Agent Report, including any supplemental information obtained after the date of any Agent Report. Each Lender

releases, and agrees that it will not assert, any claim against Agent or its Related Persons that in any way relates to any Agent Report or arises out of any Lender having access to any Agent Report or any discussion of its contents, and agrees to indemnify and hold harmless Agent and its Related Persons from all claims, liabilities and expenses relating to a breach by any Lender arising out of such Lender's access to any Agent Report or any discussion of its contents.

#### **8.6 Agent Individually**

. Agent and its Affiliates may make loans and other extensions of credit to, acquire Stock and Stock Equivalents of, engage in any kind of business with, any Credit Party or Affiliate thereof as though it were not acting as Agent and may receive separate fees and other payments therefor. To the extent Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms "Lender", "Required Lender" and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Required Lenders.

#### **8.7 Lender Credit Decision**

(a) Each Lender acknowledges that it shall, independently and without reliance upon Agent, any Lender or any of their Related Persons or upon any document (including any offering and disclosure materials in connection with the syndication of the Loans) solely or in part because such document was transmitted by Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of each Credit Party and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document to be transmitted by Agent to the Lenders, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, Property, financial and other condition or creditworthiness of any Credit Party or any Affiliate of any Credit Party that may come in to the possession of Agent or any of its Related Persons.

(b) If any Lender has elected to abstain from receiving MNPI concerning the Credit Parties or their Affiliates, such Lender acknowledges that, notwithstanding such election, Agent and/or the Credit Parties will, from time to time, make available syndicate- information (which may contain MNPI) as required by the terms of, or in the course of administering the Loans to the credit contact(s) identified for receipt of such information on the Lender's administrative questionnaire who are able to receive and use all syndicate- level information (which may contain MNPI) in accordance with such Lender's compliance policies and contractual obligations and applicable law, including



federal and state securities laws; provided, that if such contact is not so identified in such questionnaire, the relevant Lender hereby agrees to promptly (and in any event within one (1) Business Day) provide such a contact to Agent and the Credit Parties upon request therefor by Agent or the Credit Parties. Notwithstanding such Lender's election to abstain from receiving MNPI, such Lender acknowledges that if such Lender chooses to communicate with Agent, it assumes the risk of receiving MNPI concerning the Credit Parties or their Affiliates.

## **8.8 Expenses; Indemnities; Withholding**

(a) Each Lender agrees to reimburse Agent and each of its Related Persons (to the extent not reimbursed by any Credit Party) promptly upon demand, severally and ratably, for any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Credit Party) that may be incurred by Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement of, or the taking of any other action (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding (including, without limitation, preparation for and/or response to any subpoena or request for document production relating thereto) or otherwise) in respect of, or legal advice with respect to its rights or responsibilities under, any Loan Document; provided, however, that no Lender shall be liable to Agent or any of its Related Persons to the extent such liability has resulted primarily from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

(b) Each Lender further agrees to indemnify Agent and each of its Related Persons (to the extent not reimbursed by any Credit Party), severally and ratably, from and against Liabilities (including, to the extent not indemnified pursuant to Section 8.8(c), taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to or for the account of any Lender) that may be imposed on, incurred by or asserted against Agent or any of its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document, any Related Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by Agent or any of its Related Persons under or with respect to any of the foregoing; provided, however, that no Lender shall be liable to Agent or any of its Related Persons to the extent such liability has resulted primarily from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

(c) To the extent required by any applicable law, Agent may withhold from any payment to any Lender under a Loan Document an amount equal to any applicable withholding tax. If the IRS or any other Governmental Authority asserts a claim that

Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate certification form was not delivered, was not properly executed, or fails to establish an exemption from, or reduction of, withholding tax with respect to a particular type of payment, or because such Lender failed to notify Agent or any other Person of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), or Agent reasonably determines that it was required to withhold taxes from a prior payment but failed to do so, such Lender shall promptly indemnify Agent fully for all amounts paid, directly or indirectly, by such Agent as tax or otherwise, including penalties and interest, and together with all expenses incurred by Agent, including legal expenses, allocated internal costs and out-of-pocket expenses. Agent may offset against any payment to any Lender under a Loan Document, any applicable withholding tax that was required to be withheld from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which Agent is entitled to indemnification from such Lender under this Section 8.8(c).

## **8.9 Resignation and Replacement**

(a) Agent may resign at any time by delivering notice of such resignation to the Lenders and the Borrower Representative, effective on the date set forth in such notice or, if no such date is set forth therein, upon the date such notice shall be effective in accordance with the terms of this Section 8.9. If Agent delivers any such notice, ~~Oaktree-KPS~~ shall have the right to appoint a successor Agent. If, after thirty (30) days after the date of the retiring Agent's notice of resignation, no successor Agent has been appointed by ~~Oaktree-KPS~~ that has accepted such appointment, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent from among the Lenders. Each appointment under this clause (a) shall be subject to the prior consent of the Borrower Representative, which may not be unreasonably withheld but shall not be required during the continuance of an Event of Default.

(b) Effective immediately upon its resignation, (i) the retiring Agent shall be discharged from its duties and obligations under the Loan Documents, (ii) the Lenders shall assume and perform all of the duties of Agent until a successor Agent shall have accepted a valid appointment hereunder, (iii) the retiring Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Agent was, or because such Agent had been, validly acting as Agent under the Loan Documents and (iv) subject to its rights under Section 8.3, the retiring Agent shall take such action as may be reasonably necessary to assign to the successor Agent its rights as Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Agent, a successor Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Agent under the Loan Documents.

(c) ~~Oaktree-KPS~~ shall have the right to replace the Agent and appoint a successor Agent at any time. Effective immediately upon any replacement of the Agent,



(i) the replaced Agent shall be discharged from its duties and obligations under the Loan Documents, (ii) the Lenders shall assume and perform all of the duties of Agent until a successor Agent shall have accepted a valid appointment hereunder, (iii) the replaced Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Agent was, or because such Agent had been, validly acting as Agent under the Loan Documents and (iv) subject to its rights under Section 8.3, the replaced Agent shall take such action as may be reasonably necessary to assign to the successor Agent its rights as Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Agent, a successor Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Agent under the Loan Documents.

#### **8.10 Release of Collateral or Guarantors**

. Each Lender hereby consents to the release and hereby directs Agent to release (or, in the case of clause (b)(ii) below, release or subordinate) the following:

(a) any Subsidiary of a Borrower from its guaranty of any Obligation if all of the Stock and Stock Equivalents of such Subsidiary owned by any Credit Party are sold or transferred in a transaction permitted under the Loan Documents (including pursuant to a waiver or consent); and

(b) any Lien held by Agent for the benefit of the Secured Parties against (i) any Collateral that is sold, transferred, conveyed or otherwise disposed of by a Credit Party in a transaction permitted by the Loan Documents (including pursuant to a waiver or consent), (ii) any Property subject to a Lien permitted hereunder in reliance upon Section 5.1(h) or 5.1(i) and (iii) all of the Collateral and all Credit Parties, upon (A) termination of the Revolving Loan Commitments, (B) payment and satisfaction in full of all Loans, and all other Obligations under the Loan Documents, that Agent has theretofore been notified in writing by the holder of such Obligation are then due and payable, (C) deposit of cash collateral with respect to all contingent Obligations, in amounts and on terms and conditions and with parties satisfactory to Agent and each Indemnitee that is, or may be, owed such Obligations (excluding contingent Obligations as to which no claim has been asserted) and (D) to the extent requested by Agent, receipt by Agent and the Secured Parties of liability releases from the Credit Parties each in form and substance reasonably acceptable to Agent.

Each Lender hereby directs Agent, and Agent hereby agrees, upon receipt of at least five (5) Business Days' advance notice from the Borrower Representative, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guaranties and Liens when and as directed in this Section 8.10.

#### **8.11 Additional Secured Parties**

. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a

Lender party hereto as long as, by accepting such benefits, such Secured Party agrees, as among Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by Agent, shall confirm such agreement in a writing in form and substance acceptable to Agent) this Article VIII and Sections 9.3, 9.9, 9.10, 9.11, 9.17, 9.24 and 10.1 and the decisions and actions of Agent and ~~Oaktree~~-KPS or the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders or other parties hereto as required herein) to the same extent a Lender is bound; provided, however, that, notwithstanding the foregoing, (a) such Secured Party shall be bound by Section 8.8 only to the extent of Liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of pro rata share or similar concept, (b) each of Agent and the Lenders party hereto shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (c) except as otherwise set forth herein, such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

## ARTICLE IX MISCELLANEOUS

### 9.1 Amendments and Waivers

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by any Credit Party therefrom, shall be effective unless the same shall be in writing and signed by Agent, ~~Oaktree~~KPS, the Required Lenders (or by Agent with the consent of ~~Oaktree~~-KPS and/or the Required Lenders), and the Borrowers, and then such waiver shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by all the Lenders directly affected thereby (or by Agent with the consent of all the Lenders directly affected thereby), in addition to Agent and the Required Lenders (or by Agent with the consent of the Required Lenders) and the Borrowers, do any of the following:

(i) increase or extend the Revolving Loan Commitment of any Revolving Lender (or reinstate any Revolving Loan Commitment terminated pursuant to Section 7.2(a));

(ii) postpone or delay any date fixed for, or reduce or waive, any scheduled installment of principal or any payment of interest, fees or other amounts (other than principal) due to the Lenders (or any of them) hereunder or under any other Loan Document (for the avoidance of doubt, (x) the waiver of a Default or Event of Default or the waiver of the imposition of increased interest pursuant to Section 1.3(c) shall not constitute a reduction of interest for purposes

hereof and (y) mandatory prepayments pursuant to Section 1.8 may be postponed, delayed, reduced, waived or modified with the consent of Required Lenders);

(iii) reduce the principal of, or the rate of interest specified herein or the amount of interest payable in cash specified herein on any Loan, or of any fees or other amounts payable hereunder or under any other Loan Document (for the avoidance of doubt, the waiver of a Default or Event of Default or the waiver of the imposition of increased interest pursuant to Section 1.3(c) shall not constitute a reduction of interest for purposes hereof);

(iv) amend or modify Section 1.8 or Section 1.10 in any manner that would alter the order of treatment or the pro rata sharing of payments required thereby;

(v) change the percentage of the Revolving Loan Commitments or of the aggregate unpaid principal amount of the Loans which shall be required for the Lenders or any of them to take any action hereunder;

(vi) amend this Section 9.1 or change (x) the term Required Lenders or Required Revolving Lenders, (y) the percentage of Lenders which shall be required for Lenders to take any action hereunder or (z) any specific right of Required Lenders or Required Revolving Lenders to grant or withhold consent or take or omit to take any action hereunder;

(vii) discharge any Borrower from its respective payment Obligations under the Loan Documents, permit any assignment of such obligations, or release all or substantially all of the Collateral or the value of the guaranty made by the Guarantors, except as otherwise may be provided in this Agreement or the other Loan Documents; or

(viii) subordinate (x) all or substantially all of the Liens granted pursuant to the Loan Documents or (y) the Obligations; it being agreed that all Lenders shall be deemed to be directly affected by an amendment or waiver of the type described in the preceding clauses (v) - (vii).

In addition, no such waiver, amendment, or consent shall, unless in writing and signed by Agent, amend Article VIII, Sections 9.5, 9.6, 9.8, 9.18, 9.19 and 9.24 of this Agreement or Article VII, Sections 8.9 and 8.13 of the Guaranty and Security Agreement.

(b) No amendment, waiver or consent shall, unless in writing and signed by Agent, in addition to the Required Lenders or Required Revolving Lenders or all Lenders directly affected thereby, as the case may be (or by Agent with the consent of the Required Lenders or Required Revolving Lenders or all the Lenders directly affected thereby, as the case may be), affect the rights or duties of Agent under this Agreement or any other Loan Document.

(c) Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Loan

Document or constitute a “Lender” (or be, or have its Loans and Revolving Loan Commitments, included in the determination of “Required Lenders”, “Required Revolving Lenders” or “Lenders directly affected” pursuant to this Section 9.1) for any voting or consent rights under or with respect to any Loan Document, except that a Non-Funding Lender shall be treated as an “affected Lender” for purposes of Sections 9.1(a)(i) and 9.1(a)(iii) solely with respect to an increase in such Non-Funding Lender’s Revolving Loan Commitments, a reduction of the principal amount owed to such Non-Funding Lender or, unless such Non-Funding Lender is treated the same as the other Lenders holding Loans of the same type, a reduction in the interest rates applicable to the Loans held by such Non-Funding Lender. Moreover, for the purposes of determining Required Lenders, the Loans and Revolving Loan Commitments held by Non-Funding Lenders shall be excluded from the total Loans and Aggregate Revolving Loan Commitments outstanding.

## 9.2 Notices

(a) Addresses. All notices and other communications required or expressly authorized to be made by this Agreement shall be given in writing, unless otherwise expressly specified herein, and (i) addressed to the address set forth on the applicable signature page hereto or (ii) addressed to such other address as shall be notified in writing (A) in the case of the Borrowers and Agent, to the other parties hereto and (B) in the case of all other parties, to the Borrower Representative and Agent. Transmissions made by electronic mail or E-Fax to Agent shall be effective only (x) for notices where such transmission is specifically authorized by this Agreement, (y) if such transmission is delivered in compliance with procedures of Agent applicable at the time and previously communicated to Borrower Representative, and (z) if receipt of such transmission is acknowledged by Agent. Notices and other communications shall not be delivered via facsimile.

(b) Effectiveness. (i) All communications described in clause (a) above and all other notices, demands, requests and other communications made in connection with this Agreement shall be effective and be deemed to have been received (i) if delivered by hand, upon personal delivery, (ii) if delivered by overnight courier service, one (1) Business Day after delivery to such courier service, (iii) if delivered by mail, three (3) Business Days after deposit in the mail, (iv) if delivered by facsimile (other than to post to an E- System pursuant to clause (a)(ii) or (a)(iii) above), upon sender’s receipt of confirmation of proper transmission, and (v) if delivered by posting to any E- System, on the later of the Business Day of such posting and the Business Day access to such posting is given to the recipient thereof in accordance with the standard procedures applicable to such E- System; provided, however, that no communications to Agent pursuant to Article I shall be effective until received by Agent.

(i) The posting, completion and/or submission by any Credit Party of any communication pursuant to an E-System shall constitute a representation and warranty by the Credit Parties that any representation, warranty, certification or

other similar statement required by the Loan Documents to be provided, given or made by a Credit Party in connection with any such communication is true, correct and complete except as expressly noted in such communication or E-System.

(c) Each Lender shall notify Agent in writing of any changes in the address to which notices to such Lender should be directed, of addresses of its Lending Office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as Agent shall reasonably request.

### **9.3 Electronic Transmissions**

(a) **Authorization.** Subject to the provisions of Section 9.2(a), each of Agent, Lenders, each Credit Party and each of their Related Persons, is authorized (but not required) to transmit, post or otherwise make or communicate, in its sole discretion, Electronic Transmissions in connection with any Loan Document and the transactions contemplated therein. Each Credit Party and each Secured Party hereto acknowledges and agrees that the use of Electronic Transmissions is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing the transmission of Electronic Transmissions.

(b) **Signatures.** Subject to the provisions of Section 9.2(a), (i)(A) no posting to any E-System shall be denied legal effect merely because it is made electronically, (B) each E-Signature on any such posting shall be deemed sufficient to satisfy any requirement for a “signature” and (C) each such posting shall be deemed sufficient to satisfy any requirement for a “writing”, in each case including pursuant to any Loan Document, any applicable provision of any UCC, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Requirement of Law governing such subject matter, (ii) each such posting that is not readily capable of bearing either a signature or a reproduction of a signature may be signed, and shall be deemed signed, by attaching to, or logically associating with such posting, an E-Signature, upon which Agent, each Secured Party and each Credit Party may rely and assume the authenticity thereof, (iii) each such posting containing a signature, a reproduction of a signature or an E-Signature shall, for all intents and purposes, have the same effect and weight as a signed paper original and (iv) each party hereto or beneficiary hereto agrees not to contest the validity or enforceability of any posting on any E-System or E-Signature on any such posting under the provisions of any applicable Requirement of Law requiring certain documents to be in writing or signed; provided, however, that nothing herein shall limit such party’s or beneficiary’s right to contest whether any posting to any E-System or E-Signature has been altered after transmission.

(c) **Separate Agreements.** All uses of an E-System shall be governed by and subject to, in addition to Section 9.2 and this Section 9.3, the separate terms, conditions

and privacy policy posted or referenced in such E-System (or such terms, conditions and privacy policy as may be updated from time to time, including on such E-System) and related Contractual Obligations executed by Agent and Credit Parties in connection with the use of such E-System.

(d) **LIMITATION OF LIABILITY.** ALL E-SYSTEMS AND ELECTRONIC TRANSMISSIONS SHALL BE PROVIDED “AS IS” AND “AS AVAILABLE”. NONE OF AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS WARRANTS THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY E- SYSTEMS OR ELECTRONIC TRANSMISSION AND DISCLAIMS ALL LIABILITY FOR ERRORS OR OMISSIONS THEREIN. NO WARRANTY OF ANY KIND IS MADE BY AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS IN CONNECTION WITH ANY ESYSTEMS OR ELECTRONIC COMMUNICATION, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON- INFRINGEMENT OF THIRD- PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS. Each of each Borrower, each other Credit Party executing this Agreement and each Secured Party agrees that Agent has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System.

#### **9.4 No Waiver; Cumulative Remedies**

. No failure to exercise and no delay in exercising, on the part of Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. No course of dealing between any Credit Party, any Affiliate of any Credit Party, Agent or any Lender shall be effective to amend, modify or discharge any provision of this Agreement or any of the other Loan Documents.

#### **9.5 Costs and Expenses**

. Any action taken by any Credit Party under or with respect to any Loan Document, even if required under any Loan Document or at the request of Agent or Required Lenders, shall be at the expense of such Credit Party, and neither Agent nor any other Secured Party shall be required under any Loan Document to reimburse any Credit Party or any Subsidiary of any Credit Party therefor except as expressly provided therein. In addition, the Borrowers agree to pay or reimburse within five (5) Business Days of the demand therefor (a) Agent and **Oaktree KPS** (including any Affiliates and Approved Funds of **OaktreeKPS**, the “Initial Lenders”) for all reasonable and documented out-of-pocket costs and expenses incurred by it or any of their Related Persons (including the reasonable fees and out-of-pocket expenses of one primary counsel for Agent and each Initial Lender and of appropriate local (including, for the avoidance of doubt, foreign) counsel for Agent and each Initial Lender in applicable local (including, for the avoidance of doubt, foreign) jurisdictions, but limited to one local (including, for the avoidance of doubt, foreign) counsel for each such Person in each such jurisdiction), in connection with the diligence, syndication (limited to the costs associated with the establishment



and maintenance of a data site such as Syndtrak or Intralinks), preparation, negotiation, execution, interpretation or administration of, any modification of any term of or termination of, any Loan Document, any commitment or proposal letter therefor, any other document prepared in connection therewith (including, without limitation, the Asset Purchase Agreement) or the consummation and administration of any transaction contemplated therein (including, without limitation, the Bankruptcy Sale), the cost of environmental audits, Collateral audits, appraisals and examinations, background checks and similar expenses (subject to any limitations set forth herein) or the engagement and retention of any consultants or advisor and (b) each of Agent, its Related Persons and the Lenders for all documented out-of-pocket expenses incurred in connection with (i) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a “work-out”, (ii) the enforcement or preservation of any right or remedy under any Loan Document, any Obligation, with respect to the Collateral or any other related right or remedy or (iii) the commencement, defense, conduct of, intervention in, or the taking of any other action (including, without limitation, preparation for and/or response to any subpoena or request for document production relating thereto) with respect to, any proceeding (including any bankruptcy or insolvency proceeding) related to any Credit Party, any Subsidiary of any Credit Party, Loan Document, or Obligation.

## **9.6 Indemnity**

(a) Each Credit Party agrees to indemnify, hold harmless and defend Agent, each Lender and each of their respective Related Persons (each such Person being an “Indemnitee”) from and against all Liabilities that may be imposed on, incurred by or asserted against any such Indemnitee in any matter relating to or arising out of, in connection with or as a result of (i) any Loan Document, any Obligation (or the repayment thereof), the use or intended use of the proceeds of any Loan or any securities filing of, or with respect to, any Credit Party, (ii) any commitment letter, proposal letter or term sheet with any Person or any Contractual Obligation, arrangement or understanding with any broker, finder or consultant, in each case entered into by or on behalf of any Credit Party or any Affiliate of any of them in connection with any of the foregoing and any Contractual Obligation entered into in connection with any E- Systems or other Electronic Transmissions, (iii) any actual or prospective investigation, litigation or other proceeding, whether or not brought by any such Indemnitee or any of its Related Persons, any holders of securities or creditors, whether or not any such Indemnitee, Related Person, holder or creditor is a party thereto, and whether or not based on any securities or commercial law or regulation or any other Requirement of Law or theory thereof, including common law, equity, contract, tort or otherwise or (iv) any other act, event or transaction related, contemplated in or attendant to any of the foregoing (provided that in the absence of conflicts, reimbursement of legal fees and expenses shall be limited to the reasonable legal fees and expenses of one counsel to Indemnitees taken as a whole (which shall be designated by Agent) and of one local (including, for the avoidance of doubt, foreign) counsel to the Indemnitees taken as a whole (which shall be designated by Agent) in any relevant jurisdiction) (collectively, the “Indemnified Matters”); provided, however, that no Credit Party shall have any liability under this Section 9.6 to any Indemnitee with respect to (x) any Indemnified Matter, and no

Indemnitee shall have any liability with respect to any Indemnified Matter other than (to the extent otherwise liable), to the extent such liability has resulted from the gross negligence or willful misconduct of such Indemnitee, as determined by a court of competent jurisdiction in a final non-appealable judgment or order and (y) disputes solely among the Indemnitees other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent or any similar role under the Loan Documents and other than any claims arising out of any act or omission of the Credit Parties or their Subsidiaries. Furthermore, each Borrower and each other Credit Party executing this Agreement waives and agrees not to assert against any Indemnitee, and shall cause each other Credit Party to waive and not assert against any Indemnitee, any right of contribution with respect to any Liabilities that may be imposed on, incurred by or asserted against any Related Person.

(b) Without limiting the foregoing, “Indemnified Matters” includes all Environmental Liabilities, including those arising from, or otherwise involving, any Property of any Credit Party or any Related Person of any Credit Party or any actual, alleged or prospective damage to Property or natural resources or harm or injury alleged to have resulted from any Release of Hazardous Materials on, upon or into such Property or natural resource or any Property on or contiguous to any Real Estate of any Credit Party or any Related Person of any Credit Party, whether or not, with respect to any such Environmental Liabilities, any Indemnitee is a mortgagee pursuant to any leasehold mortgage, a mortgagee in possession, the successor- in- interest to any Credit Party or any Related Person of any Credit Party or the owner, lessee or operator of any Property of any Related Person through any foreclosure action, in each case except to the extent such Environmental Liabilities (i) resulting from the gross negligence or willful misconduct of any Indemnitee, as determined by a court of competent jurisdiction in a final non- appealable judgment or order, or (ii)(A) are incurred solely following foreclosure by Agent or following Agent or any Lender having become the successor- in- interest to any Credit Party or any Related Person of any Credit Party and (B) are attributable solely to acts of such Indemnitee.

#### **9.7 Marshaling; Payments Set Aside**

. ~~No~~ Except as specifically set forth in the Final Order, no Secured Party shall be under any obligation to marshal any Property in favor of any Credit Party or any other Person or against or in payment of any Obligation. To the extent that any Secured Party receives a payment from a Borrower, from any other Credit Party, from the proceeds of the Collateral, from the exercise of its rights of setoff, any enforcement action or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

#### **9.8 Successors and Assigns**



. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided that any assignment by any Lender shall be subject to the provisions of Section 9.9, and provided further that no Borrower may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Agent and each Lender.

### **9.9 Assignments and Participations; Binding Effect**

(a) Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrowers, the other Credit Parties signatory hereto and Agent and when Agent shall have been notified by each Lender that such Lender has executed it. Thereafter, it shall be binding upon and inure to the benefit of, but only to the benefit of, the Borrowers, the other Credit Parties hereto (in each case except for Article VIII), Agent and each Lender receiving the benefits of the Loan Documents and, to the extent provided in Section 8.11, each other Secured Party and, in each case, their respective successors and permitted assigns. Except as expressly provided in any Loan Document (including in Section 8.9), none of any Borrower, any other Credit Party or Agent shall have the right to assign any rights or obligations hereunder or any interest herein.

(b) Right to Assign. Each Lender may sell, transfer, negotiate or assign (a “Sale”) all or a portion of its rights and obligations hereunder (including all or a portion of its Revolving Loan Commitments and its rights and obligations with respect to Loans and Letters of Credit) to (i) any existing Lender (other than a Non-Funding Lender or Impacted Lender), (ii) any Affiliate or Approved Fund of any existing Lender (other than a Non-Funding Lender or Impacted Lender), (iii) any Grandfathered Lender or (iv) any other Person acceptable (which acceptance shall not be unreasonably withheld or delayed) to the Required Lenders and, so long as no Event of Default has occurred or is continuing, the Borrower Representative (not to be unreasonably withheld or delayed); provided, however, that (x) such Sales must be ratable among the obligations owing to and owed by such Lender with respect to the Revolving Loans, (y) for each Revolving Loan, the aggregate outstanding principal amount (determined as of the effective date of the applicable Assignment) of the Revolving Loans, Revolving Loan Commitments subject to any such Sale shall be in a minimum amount of \$1,000,000 and increments of \$1,000,000 in excess thereof, unless such Sale is made to an existing Lender or an Affiliate or Approved Fund of any existing Lender, is of the assignor’s (together with its Affiliates and Approved Funds) entire interest in such facility or is made with the prior consent of the Required Lenders and, so long as no Event of Default has occurred or is continuing, the Borrower Representative (not to be unreasonably withheld or delayed), and (z) such Sales by Lenders who are Non-Funding Lenders due to clause (a) of the definition of Non-Funding Lender shall be subject to the Required Lenders’ prior written consent in all instances, unless in connection with such Sale, such Non-Funding Lender cures, or causes the cure of, its Non-Funding Lender status as contemplated in Section 1.11(e)(v). Notwithstanding any of the foregoing, ~~Oaktree~~-KPS shall not consummate any Sale of the Loans prior to the entry of the Final Order, except for Sales to Affiliates

and Approved Funds of ~~Oaktree~~-KPS (it being understood and agreed that such Sales shall not require the consent of any party).

(c) Procedure. The parties to each Sale made in reliance on clause (b) above (other than those described in clause (e) or (f) below) shall execute and deliver to Agent an Assignment via an electronic settlement system designated by Agent (or, if previously agreed with Agent, via a manual execution and delivery of the Assignment) evidencing such Sale, together with any existing Note subject to such Sale (or any affidavit of loss therefor acceptable to Agent), any tax forms required to be delivered pursuant to Section 10.1 and payment of an assignment fee in the amount of \$3,500 to Agent, unless waived or reduced by Agent; provided, that (i) if a Sale by a Lender is made to an Affiliate or an Approved Fund of such assigning Lender, then no assignment fee shall be due in connection with such Sale, and (ii) if a Sale by a Lender is made to an assignee that is not an Affiliate or Approved Fund of such assignor Lender, and concurrently to one or more Affiliates or Approved Funds of such Assignee, then only one assignment fee of \$3,500 shall be due in connection with such Sale (unless waived or reduced by Agent). Upon receipt of all the foregoing, and conditioned upon such receipt and, if such Assignment is made in accordance with clause (iii) of Section 9.9(b), upon the Required Lenders consenting to such Assignment, from and after the effective date specified in such Assignment, Agent shall record or cause to be recorded in the Register the information contained in such Assignment.

(d) Effectiveness. Subject to the recording of an Assignment by Agent in the Register pursuant to Section 1.4(b), (i) the assignee thereunder shall become a party hereto and, to the extent that rights and obligations under the Loan Documents have been assigned to such assignee pursuant to such Assignment, shall have the rights and obligations of a Lender, (ii) any applicable Note shall be transferred to such assignee through such entry and (iii) the assignor thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Assignment, relinquish its rights (except for those surviving the termination of the Aggregate Revolving Loan Commitments and the payment in full of the Obligations) and be released from its obligations under the Loan Documents, other than those relating to events or circumstances occurring prior to such assignment (and, in the case of an Assignment covering all or the remaining portion of an assigning Lender's rights and obligations under the Loan Documents, such Lender shall cease to be a party hereto).

(e) Grant of Security Interests. In addition to the other rights provided in this Section 9.9, each Lender may grant a security interest in, or otherwise assign as collateral, any of its rights under this Agreement, whether now owned or hereafter acquired (including rights to payments of principal or interest on the Loans), to (A) any federal reserve bank (pursuant to Regulation A of the Federal Reserve Board), without notice to Agent or (B) any holder of, or trustee for the benefit of the holders of, such Lender's Indebtedness or equity securities, by notice to Agent; provided, however, that no such holder or trustee, whether because of such grant or assignment or any foreclosure thereon (unless such foreclosure is made through an assignment in accordance with clause (b) above), shall be entitled to any rights of such Lender hereunder and no such Lender shall be relieved of any of its obligations hereunder.

(f) Participants and SPYs. In addition to the other rights provided in this Section 9.9, each Revolving Lender may, (x) with notice to Agent, grant to an SPY the option to make all or any part of any Revolving Loan that such Revolving Lender would otherwise be required to make hereunder (and the exercise of such option by such SPY and the making of Revolving Loans pursuant thereto shall satisfy the obligation of such Revolving Lender to make such Revolving Loans hereunder) and such SPY may assign to such Revolving Lender the right to receive payment with respect to any Obligation and (y) without notice to or consent from Agent or the Borrowers, sell participations to one or more Persons in or to all or a portion of its rights and obligations under the Loan Documents (including all its rights and obligations with respect to the Revolving Loans); provided, however, that, whether as a result of any term of any Loan Document or of such grant or participation, (i) no such SPY or participant shall have a commitment, or be deemed to have made an offer to commit, to make Loans hereunder, and, except as provided in the applicable option agreement, none shall be liable for any obligation of such Revolving Lender hereunder, (ii) such Revolving Lender's rights and obligations, and the rights and obligations of the Credit Parties and the Secured Parties towards such Revolving Lender, under any Loan Document shall remain unchanged and each other party hereto shall continue to deal solely with such Revolving Lender, which shall remain the holder of the Obligations in the Register, except that (A) each such participant and SPY shall be entitled to the benefit of Article X, but, with respect to Section 10.1, only to the extent such participant or SPY delivers the tax forms such Revolving Lender is required to collect pursuant to Section 10.1(f) and then only to the extent of any amount to which such Revolving Lender would be entitled in the absence of any such grant or participation and (B) each such SPY may receive other payments that would otherwise be made to such Revolving Lender with respect to Revolving Loans funded by such SPY to the extent provided in the applicable option agreement and set forth in a notice provided to Agent by such SPY and such Revolving Lender, provided, however, that in no case (including pursuant to clause (A) or (B) above) shall an SPY or participant have the right to enforce any of the terms of any Loan Document, and (iii) the consent of such SPY or participant shall not be required (either directly, as a restraint on such Lender's ability to consent hereunder or otherwise) for any amendments, waivers or consents with respect to any Loan Document or to exercise or refrain from exercising any powers or rights such Revolving Lender may have under or in respect of the Loan Documents (including the right to enforce or direct enforcement of the Obligations), except for those described in clauses (ii) and (iii) of Section 9.1(a) with respect to amounts, or dates fixed for payment of amounts, to which such participant or SPY would otherwise be entitled and, in the case of participants, except for those described in clause (vi) of Section 9.1(a). No party hereto shall institute (and each Borrower shall cause each other Credit Party not to institute) against any SPY grantee of an option pursuant to this clause (f) any bankruptcy, reorganization, insolvency, liquidation or similar proceeding, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper of such SPY; provided, however, that each Revolving Lender having designated an SPY as such agrees to indemnify each Indemnitee against any Liability that may be incurred by, or asserted against, such Indemnitee as a result of failing to institute such proceeding (including a failure to be reimbursed by such SPY for any such Liability). The agreement

in the preceding sentence shall survive the termination of the Aggregate Revolving Loan Commitments and the payment in full of the Obligations.

**9.10 Non- Public Information; Confidentiality**

(a) Non- Public Information. Each of Agent and each Lender acknowledges and agrees that it may receive material non- public information (“MNPI”) hereunder concerning the Credit Parties and their Affiliates and agrees to use such information in compliance with all relevant policies, procedures and applicable Requirements of Laws (including United States federal and state security laws and regulations).

(b) Confidential Information. Each of Agent, each Lender and Agent agrees to use all reasonable efforts to maintain, in accordance with its customary practices, the confidentiality of information obtained by it pursuant to any Loan Document, except that such information may be disclosed (i) with the Borrower Representative’s consent, (ii) to Related Persons of such Lender or Agent, as the case may be, that are advised of the confidential nature of such information and are instructed to keep such information confidential in accordance with the terms hereof, (iii) to the extent such information presently is or hereafter becomes (A) publicly available other than as a result of a breach of this Section 9.10 or (B) available to such Lender or Agent or any of their Related Persons, as the case may be, from a source (other than any Credit Party) not known by them to be subject to disclosure restrictions, (iv) to the extent disclosure is required by applicable Requirements of Law or other legal process or requested or demanded by any Governmental Authority, (v) to the extent necessary or customary for inclusion in league table measurements, (vi) (A) to the National Association of Insurance Commissioners or any similar organization, any examiner or any nationally recognized rating agency or (B) otherwise to the extent consisting of general portfolio information that does not identify Credit Parties, (vii) to current or prospective assignees, SPYs (including the investors or prospective investors therein) or participants, direct or contractual counterparties to any Secured Rate Contracts and to their respective Related Persons, in each case to the extent such assignees, investors, participants, counterparties or Related Persons agree to be bound by provisions substantially similar to the provisions of this Section 9.10 (and such Person may disclose information to their respective Related Persons in accordance with clause (ii) above), (viii) to any other party hereto, and (ix) in connection with the exercise or enforcement of any right or remedy under any Loan Document, in connection with any litigation or other proceeding to which such Lender or Agent or any of their Related Persons is a party or bound, or to the extent necessary to respond to public statements or disclosures by Credit Parties or their Related Persons referring to a Lender or Agent or any of their Related Persons. In the event of any conflict between the terms of this Section 9.10 and those of any other Contractual Obligation entered into with any Credit Party (whether or not a Loan Document), the terms of this Section 9.10 shall govern.

(c) Tombstones. Each Credit Party consents to the publication by Agent or any Lender of any press releases, tombstones, advertising or other promotional materials (including, without limitation, via any Electronic Transmission) relating to the financing

transactions contemplated by this Agreement using such Credit Party's name, product photographs, logo or trademark. Agent or such Lender shall provide a draft of any such press release, advertising or other material to Borrower Representative for review and comment reasonably prior to the publication thereof.

(d) Press Release and Related Matters. No Credit Party shall, and no Credit Party shall permit any of its Affiliates to, issue any press release or other public disclosure (other than any document filed with any Governmental Authority relating to a public offering of securities of any Credit Party) using the name, logo or otherwise referring to ~~Oaktree-KPS~~ or of any of its Affiliates, the Loan Documents or any transaction contemplated herein or therein to which ~~Oaktree-KPS~~ or any of its Affiliates is party without the prior written consent of ~~Oaktree-KPS~~ or such Affiliate except to the extent required to do so under applicable Requirements of Law and then, only after consulting with ~~Oaktree~~KPS.

(e) Distribution of Materials to Lenders. The Credit Parties acknowledge and agree that the Loan Documents and all reports, notices, communications and other information or materials provided or delivered by, or on behalf of, the Credit Parties hereunder (collectively, the "Borrower Materials") may be disseminated by, or on behalf of, Agent, and made available, to the Lenders by posting such Borrower Materials on an E- System. The Credit Parties authorize Agent to download copies of their logos from its website and post copies thereof on an E- System.

(f) Material Non- Public Information. The Credit Parties hereby agree that if either they, any parent company or any Subsidiary of the Credit Parties has publicly traded equity or debt securities in the U.S., they shall (and shall cause such parent company or Subsidiary, as the case may be, to) (i) identify in writing, and (ii) to the extent reasonably practicable, clearly and conspicuously mark such Borrower Materials that contain only information that is publicly available or that is not material for purposes of U.S. federal and state securities laws as "PUBLIC". The Credit Parties agree that by identifying such Borrower Materials as "PUBLIC" or publicly filing such Borrower Materials with the Securities and Exchange Commission, then Agent and the Lenders shall be entitled to treat such Borrower Materials as not containing any MNPI for purposes of U.S. federal and state securities laws. The Credit Parties further represent, warrant, acknowledge and agree that the following documents and materials shall be deemed to be PUBLIC, whether or not so marked, and do not contain any MNPI: (A) the Loan Documents, including the exhibits attached thereto, and (B) administrative materials of a customary nature prepared by the Credit Parties or Agent (including, Notices of Borrowing or notices posted on or through an E-System). Before distribution of any Borrower Materials, the Credit Parties agree to execute and deliver to Agent a letter authorizing distribution of the evaluation materials to prospective Lenders and their employees willing to receive MNPI, and a separate letter authorizing distribution of evaluation materials that do not contain MNPI and represent that no MNPI is contained therein.



**9.11 Set-off; Sharing of Payments**

(a) Right of Setoff. Each of Agent, each Lender and each Affiliate (including each branch office thereof) of any of them is hereby authorized, without notice or demand (each of which is hereby waived by each Credit Party), at any time and from time to time during the continuance of any Event of Default and to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (whether general or special, time or demand, provisional or final) at any time held and other Indebtedness, claims or other obligations at any time owing by Agent, such Lender or any of their respective Affiliates to or for the credit or the account of the Borrowers or any other Credit Party against any Obligation of any Credit Party now or hereafter existing, whether or not any demand was made under any Loan Document with respect to such Obligation and even though such Obligation may be unmatured. No Lender shall exercise any such right of setoff without the prior consent of the Required Lenders. Each of Agent, each Lender agrees promptly to notify the Borrower Representative and Agent after any such setoff and application made by such Lender or its Affiliates; provided, however, that the failure to give such notice shall not affect the validity of such setoff and application. The rights under this Section 9.11 are in addition to any other rights and remedies (including other rights of setoff) that Agent, the Lenders, their Affiliates and the other Secured Parties, may have.

(b) Sharing of Payments, Etc. If any Lender, directly or through an Affiliate or branch office thereof, obtains any payment of any Obligation of any Credit Party (whether voluntary, involuntary or through the exercise of any right of setoff or the receipt of any Collateral or "proceeds" (as defined under the applicable UCC) of Collateral) other than pursuant to Section 9.9 or Article X and such payment exceeds the amount such Lender would have been entitled to receive if all payments had gone to, and been distributed by, Agent in accordance with the provisions of the Loan Documents, such Lender shall purchase for cash from other Lenders such participations in their Obligations as necessary for such Lender to share such excess payment with such Lenders to ensure such payment is applied as though it had been received by Agent and applied in accordance with this Agreement (or, if such application would then be at the discretion of the Borrowers, applied to repay the Obligations in accordance herewith); provided, however, that (i) if such payment is rescinded or otherwise recovered from such Lender in whole or in part, such purchase shall be rescinded and the purchase price therefor shall be returned to such Lender without interest and (ii) such Lender shall, to the fullest extent permitted by applicable Requirements of Law, be able to exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of the applicable Credit Party in the amount of such participation. If a Non-Funding Lender receives any such payment as described in the previous sentence, such Lender shall turn over such payments to Agent in an amount that would satisfy the cash collateral requirements set forth in Section 1.11(e).

**9.12 Counterparts; Facsimile Signature**

. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or Electronic Transmission shall be as effective as delivery of a manually executed counterpart hereof.

### **9.13 Severability**

. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

### **9.14 Captions**

. The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

### **9.15 Independence of Provisions**

. The parties hereto acknowledge that this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, and that such limitations, tests and measurements are cumulative and must each be performed, except as expressly stated to the contrary in this Agreement.

### **9.16 Interpretation**

. This Agreement is the result of negotiations among and has been reviewed by counsel to Credit Parties, Agent, each Lender and other parties hereto, and is the product of all parties hereto. Accordingly, this Agreement and the other Loan Documents shall not be construed against the Lenders or Agent merely because of Agent's or Lenders' involvement in the preparation of such documents and agreements. Without limiting the generality of the foregoing, each of the parties hereto has had the advice of counsel with respect to Sections 9.18 and 9.19.

### **9.17 No Third Parties Benefited**

. This Agreement is made and entered into for the sole protection and legal benefit of the Borrowers, the Lenders, Agent and, subject to the provisions of Section 8.11, each other Secured Party, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. Neither Agent nor any Lender shall have any obligation to any Person not a party to this Agreement or the other Loan Documents.

### **9.18 Governing Law and Jurisdiction**

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(a) Governing Law. The laws of the State of New York shall govern all matters arising out of, in connection with or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance and enforcement (including, without limitation, any claims sounding in contract or tort law arising out of the subject matter hereof and any determinations with respect to post-judgment interest).

(b) Submission to Jurisdiction. Any legal action or proceeding with respect to any Loan Document shall be brought exclusively in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States of America for the Southern District of New York and, by execution and delivery of this Agreement, each party hereto executing this Agreement hereby accepts for itself and in respect of its Property, generally and unconditionally, the jurisdiction of the aforesaid courts: provided that nothing in this Agreement shall limit the right of Agent to commence any proceeding in the federal or state courts of any other jurisdiction to the extent Agent determines that such action is necessary or appropriate to exercise its rights or remedies under the Loan Documents. The parties hereto (and, to the extent set forth in any other Loan Document, each other Credit Party) hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions. Notwithstanding any other provision of this Section 9.18, the Bankruptcy Court shall have exclusive jurisdiction over any action or dispute involving, relating to or arising out of this agreement or the other Loan Documents.

(c) Service of Process. Each party hereto hereby irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States of America with respect to or otherwise arising out of or in connection with any Loan Document by any means permitted by applicable Requirements of Law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of the Borrowers specified herein (and shall be effective when such mailing shall be effective, as provided therein). Each party hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(d) Non- Exclusive Jurisdiction. Nothing contained in this Section 9.18 shall affect the right of Agent or any Lender to serve process in any other manner permitted by applicable Requirements of Law or commence legal proceedings or otherwise proceed against any Credit Party in any other jurisdiction.

#### **9.19 Waiver of Jury Trial**

. THE PARTIES HERETO, TO THE EXTENT PERMITTED BY LAW, WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ANY OTHER TRANSACTION CONTEMPLATED HEREBY



AND THEREBY. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE.

**9.20 Entire Agreement: Release: Survival**

(a) THE LOAN DOCUMENTS EMBODY THE ENTIRE AGREEMENT OF THE PARTIES AND SUPERSEDE ALL PRIOR AGREEMENTS AND UNDERSTANDINGS RELATING TO THE SUBJECT MATTER THEREOF AND ANY PRIOR LETTER OF INTEREST, COMMITMENT LETTER, CONFIDENTIALITY AND SIMILAR AGREEMENTS INVOLVING ANY CREDIT PARTY AND ANY LENDER OR ANY OF THEIR RESPECTIVE AFFILIATES RELATING TO A FINANCING OF SUBSTANTIALLY SIMILAR FORM, PURPOSE OR EFFECT OTHER THAN THE AGENT FEE LETTER AND THE AGENT PROPOSAL LETTER. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS AGREEMENT AND ANY OTHER LOAN DOCUMENT, THE TERMS OF THIS AGREEMENT SHALL GOVERN (UNLESS OTHERWISE EXPRESSLY STATED IN SUCH OTHER LOAN DOCUMENT OR SUCH TERMS OF SUCH OTHER LOAN DOCUMENTS ARE NECESSARY TO COMPLY WITH APPLICABLE REQUIREMENTS OF LAW, IN WHICH CASE SUCH TERMS SHALL GOVERN TO THE EXTENT NECESSARY TO COMPLY THEREWITH).

(b) Execution of this Agreement by the Credit Parties constitutes a full, complete and irrevocable release of any and all claims which each Credit Party may have at law or in equity in respect of all prior discussions and understandings, oral or written, relating to the subject matter of this Agreement and the other Loan Documents. In no event shall any Indemnitee or any Credit Party be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings). Each of each Credit Party, Agent and each Lender hereby waives, releases and agrees not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(c) (i) Any indemnification or other protection provided to any Indemnitee pursuant to this Section 9.20, Sections 9.5 (Costs and Expenses) and 9.6 (Indemnity) and Article VIII (Agent) and Article X (Taxes, Yield Protection and Illegality) and (ii) the provisions of Section 8.1 of the Guaranty and Security Agreement, in each case, shall (x) survive the termination of the Aggregate Revolving Loan Commitments and the payment in full of all other Obligations and (y) with respect to clause (i) above, inure to the benefit of any Person that at any time held a right thereunder (as an Indemnitee or otherwise) and, thereafter, its successors and permitted assigns.

**9.21 Patriot Act**

. Each Lender that is subject to the Patriot Act hereby notifies the Credit Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record

information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender to identify each Credit Party in accordance with the Patriot Act.

### **9.22 Replacement of Lender**

. Within forty-five days after: (i) receipt by the Borrower Representative of written notice and demand from any Lender that is not Agent or an Affiliate of Agent (an “Affected Lender”) for payment of additional costs as provided in Sections 10.1 and/or 10.3 (in amounts in excess of additional costs demanded to be paid by other Lenders with respect to the same matters); (ii) any failure by any Lender (other than Agent or an Affiliate of Agent) to consent to a requested amendment, waiver or modification to any Loan Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender (or each Lender directly affected thereby, as applicable) is required with respect thereto; or (iii) the date any Lender becomes a Non- Funding Lender, the Borrowers may, at their option, notify Agent and such Affected Lender (or such non- consenting Lender or Non- Funding Lender) of the Borrowers’ intention to obtain, at the Borrowers’ expense, a replacement Lender (“Replacement Lender”) for such Affected Lender (or such non- consenting Lender or Non- Funding Lender), which Replacement Lender shall be reasonably satisfactory to Agent. In the event the Borrowers obtain a Replacement Lender within forty- five (45) days following notice of its intention to do so, the Affected Lender (or such non- consenting Lender or Non- Funding Lender) shall sell and assign its Loans and Revolving Loan Commitments to such Replacement Lender, at par, provided that the Borrowers have reimbursed such Affected Lender for its increased costs for which it is entitled to reimbursement under this Agreement through the date of such sale and assignment. In the event that a replaced Lender does not execute an Assignment pursuant to Section 9.9 within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 9.22 and presentation to such replaced Lender of an Assignment evidencing an assignment pursuant to this Section 9.22, the Borrowers shall be entitled (but not obligated) to execute such an Assignment on behalf of such replaced Lender, and any such Assignment so executed by the Borrowers, the Replacement Lender and Agent, shall be effective for purposes of this Section 9.22 and Section 9.9. Notwithstanding the foregoing, with respect to a Lender that is a Non- Funding Lender or an Impacted Lender, Agent may, but shall not be obligated to, obtain a Replacement Lender and execute an Assignment on behalf of such Non- Funding Lender or Impacted Lender at any time with three (3) Business Days’ prior notice to such Lender (unless notice is not practicable under the circumstances) and cause such Lender’s Loans and Revolving Loan Commitments to be sold and assigned, in whole or in part, at par. Upon any such assignment and payment and compliance with the other provisions of Section 9.9, such replaced Lender shall no longer constitute a “Lender” for purposes hereof; provided, any rights of such replaced Lender to indemnification hereunder shall survive.

### **9.23 Joint and Several**

. Each Borrower is part of a group of affiliated Persons, and each Borrower expects to receive substantial direct and indirect benefits from the extension of the credit facility established pursuant to this Agreement. In consideration of the foregoing, each Borrower hereby irrevocably and unconditionally agrees that it is jointly and severally liable for all of the liabilities,

obligations, covenants and agreements of the Borrowers hereunder and under the other Loan Documents, whether now or hereafter existing or due or to become due. The obligations of the Borrowers under the Loan Documents may be enforced by Agent and the Lenders against any Borrower or all Borrowers in any manner or order selected by Agent or the Required Lenders in their sole discretion. Each Borrower hereby irrevocably waives (i) any rights of subrogation and (ii) any rights of contribution, indemnity or reimbursement, in each case, that it may acquire or that may arise against any other Borrower due to any payment or performance made under this Agreement, in each case until all Obligations shall have been fully satisfied. Without limiting the foregoing provisions of this Section 9.23, each Borrower acknowledges and agrees that:

(a) its obligations under this Agreement shall remain enforceable against it even though such obligations may be unenforceable or not allowable against any other Borrower due to the existence of an insolvency proceeding involving any other Borrower;

(b) its obligations under this Agreement are independent of the obligations of any other Borrower, and a separate action or actions may be brought and prosecuted against it in respect of such obligations irrespective of whether any action is brought against any other Borrower or any other Borrower is joined in any such action or actions;

(c) it hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of the following:

(i) any lack of validity or enforceability of this Agreement, any other Loan Document or any agreement or instrument relating hereto or thereto in respect of any other Borrower;

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of any other Borrower under or in respect of this Agreement, the other Loan Documents, or any other amendment or waiver of or any consent to departure from this Agreement or any other Loan Document, in respect of any other Borrower;

(iii) any change, restructuring or termination of the structure or existence of any other Borrower;

(iv) the failure of any other Person to execute or deliver any other agreement or the release or reduction of liability of any other Person with respect to any obligations of the Borrowers under this Agreement or any other Loan Document;

(v) any other circumstance (including any statute of limitations but other than the Obligations having been fully satisfied) or any existence of or reliance on any representation by any other Person that might otherwise constitute a defense available to, or a discharge of, any other Borrower; or

(vi) the application of any Loan proceeds to, or the extension of any other credit for the benefit of, any other Borrower, any other Credit Party, or any of their Subsidiaries;

(d) its obligations under this Agreement and the other Loan Documents shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any such obligations is rescinded or must otherwise be returned by any Person upon the insolvency, bankruptcy or reorganization of any other Borrower, all as though such payment had not been made; and

(e) it hereby unconditionally and irrevocably waives any right to revoke its joint and several liability under the Loan Documents and acknowledges that such liability is continuing in nature and applies to all obligations of the Borrowers under the Loan Documents, whether existing now or in the future.

Without limiting the generality of the foregoing, reference is hereby made to Article II of the Guaranty and Security Agreement, to which the obligations of Borrower and the other Credit Parties are subject.

#### **9.24 Creditor-Debtor Relationship**

. The relationship between Agent and each Lender, on the one hand, and the Credit Parties, on the other hand, is solely that of creditor and debtor. No Secured Party has any fiduciary relationship or duty to any Credit Party arising out of or in connection with, and there is no agency, tenancy or joint venture relationship between the Secured Parties and the Credit Parties by virtue of, any Loan Document or any transaction contemplated therein.

#### **9.25 Actions in Concert**

. Notwithstanding anything contained herein to the contrary, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights against any Credit Party arising out of this Agreement or any other Loan Document (including exercising any rights of setoff) without first obtaining the prior written consent of Agent or Required Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and the other Loan Documents shall be taken in concert and at the direction or with the consent of Agent or Required Lenders.

### **ARTICLE X TAXES, YIELD PROTECTION AND ILLEGALITY**

#### **10.1 Taxes**

(a) Except as otherwise provided in this Section 10.1, each payment by any Credit Party under any Loan Document shall be made free and clear of all present or future taxes, levies, imposts, deductions, charges or withholdings imposed by any Governmental Authority and all interest, penalties and additions to tax with respect thereto (and without deduction for any of them) (collectively, but excluding Excluded Taxes, the "Taxes").

(b) If any Taxes shall be required by any Requirement of Law to be deducted from or in respect of any amount payable under any Loan Document to any Secured Party (i) such amount shall be increased as necessary to ensure that, after all required deductions for Taxes are made (including deductions applicable to any increases to any amount under this Section 10.1), such Secured Party receives the amount it would have received had no such deductions been made, (ii) the relevant Credit Party shall make such deductions, (iii) the relevant Credit Party shall timely pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable Requirements of Law and (iv) within thirty (30) days after such payment is made, the relevant Credit Party shall deliver to Agent an original or certified copy of a receipt evidencing such payment or other evidence of payment reasonably satisfactory to Agent.

(c) In addition, the Borrowers agree to pay, and authorize Agent to pay in their name, any stamp, documentary, excise or property tax, charges or similar levies, or any privilege tax or other tax, charges or similar levies on the amount of indebtedness (including, but not limited to, The Finance Company Privilege Tax Law, Miss. Code Ann. § 27-21-1 to -19, in Section 27-21-3), in each case, imposed by any applicable Requirement of Law or Governmental Authority and all interest, penalties and additions to tax with respect thereto, in each case arising from the execution, delivery or registration of, or otherwise with respect to, any Loan Document or any transaction contemplated therein (collectively, "Other Taxes"). Within thirty (30) days after the date of any payment of Other Taxes by any Credit Party, the Borrowers shall furnish to Agent, at its address referred to in Section 9.2, the original or a certified copy of a receipt evidencing payment thereof or other evidence of payment reasonably satisfactory to Agent.

(d) The Borrowers shall reimburse and indemnify, within 30 days after receipt of demand therefor (with copy to Agent), each Secured Party for all Taxes and Other Taxes (including any Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this Section 10.1) paid by such Secured Party, whether or not such Taxes or Other Taxes were correctly or legally asserted. A certificate of the Secured Party (or of Agent on behalf of such Secured Party) claiming any compensation under this clause (d), setting forth the amounts to be paid thereunder and delivered to the Borrower Representative with copy to Agent, shall be conclusive, binding and final for all purposes, absent manifest error. In determining such amount, Agent and such Secured Party may use any reasonable averaging and attribution methods.

(e) Any Lender claiming any additional amounts payable pursuant to this Section 10.1 shall use its commercially reasonable efforts (consistent with its internal policies and Requirements of Law) to change the jurisdiction of its Lending Office if such a change would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, be otherwise disadvantageous to such Lender.

(f) (i) Each Non-U.S. Lender Party that, at any of the following times, is entitled to an exemption from United States withholding tax or is subject to such withholding tax at a reduced rate under an applicable tax treaty, shall (w) on or prior to

the date such Non- U.S. Lender Party becomes a “Non-U.S. Lender Party” hereunder, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (i) and (z) from time to time if requested by the Borrower Representative or Agent (or, in the case of a participant or SPY, the relevant Lender), provide Agent and the Borrower Representative (or, in the case of a participant or SPY, the relevant Lender) with two completed originals of each of the following, as applicable: (A) Forms W-8ECI (claiming exemption from U.S. withholding tax because the income is effectively connected with a U.S. trade or business), W-8BEN (claiming exemption from, or a reduction of, U.S. withholding tax under an income tax treaty) and/or W-8IMY (together with appropriate forms, certifications and supporting statements) or any successor forms, (B) in the case of a Non-U.S. Lender Party claiming exemption under Sections 871(h) or 881(c) of the Code, Form W-8BEN (claiming exemption from U.S. withholding tax under the portfolio interest exemption) or any successor form and a certificate in form and substance acceptable to Agent that such Non- U.S. Lender Party is not (1) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (2) a “10 percent shareholder” of the Borrowers within the meaning of Section 881(c)(3)(B) of the Code or (3) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code or (C) any other applicable document prescribed by the IRS certifying as to the entitlement of such Non-U.S. Lender Party to such exemption from United States withholding tax or reduced rate with respect to all payments to be made to such Non-U.S. Lender Party under the Loan Documents. Unless the Borrower Representative and Agent have received forms or other documents satisfactory to them indicating that payments under any Loan Document to or for a Non-U.S. Lender Party are not subject to United States withholding tax or are subject to such tax at a rate reduced by an applicable tax treaty, the Credit Parties and Agent shall withhold amounts required to be withheld by applicable Requirements of Law from such payments at the applicable statutory rate.

(i) Each U.S. Lender Party shall (A) on or prior to the date such U.S. Lender Party becomes a “U.S. Lender Party” hereunder, (B) on or prior to the date on which any such form or certification expires or becomes obsolete, (C) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (f) and (D) from time to time if requested by the Borrower Representative or Agent (or, in the case of a participant or SPY, the Revolving Lender), provide Agent and the Borrower Representative (or, in the case of a participant or SPY, the Revolving Lender) with two completed originals of Form W-9 (certifying that such U.S. Lender Party is entitled to an exemption from U.S. backup withholding tax) or any successor form.

(ii) Each Lender having sold a participation in any of its Obligations or identified an SPY as such to Agent shall collect from such participant or SPY the documents described in this clause (f) and provide them to Agent.

(iii) If a payment made to a Non-U.S. Lender Party would be subject to United States federal withholding tax imposed by FATCA if such Non-U.S.



Lender Party fails to comply with the applicable reporting requirements of FATCA, such Non- U.S. Lender Party shall deliver to Agent and Borrower Representative any documentation under any Requirement of Law or reasonably requested by Agent or Borrower Representative sufficient for Agent or Borrowers to comply with their obligations under FATCA and to determine that such Non-U.S. Lender has complied with such applicable reporting requirements.

**10.2 [Reserved]**

**10.3 Increased Costs and Reduction of Return**

(a) [Reserved].

(b) If any Lender shall have determined that:

(i) the introduction of any Capital Adequacy Regulation;

(ii) any change in any Capital Adequacy Regulation;

(iii) any change in the interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof; or

(iv) compliance by such Lender (or its Lending Office) or any entity controlling the Lender, with any Capital Adequacy Regulation; affects the amount of capital required or expected to be maintained by such Lender or any entity controlling such Lender and (taking into consideration such Lender's or such entities' policies with respect to capital adequacy and such Lender's desired return on capital) determines that the amount of such capital is increased as a consequence of its Revolving Loan Commitment(s), loans, credits or obligations under this Agreement, then, within thirty (30) days of demand of such Lender (with a copy to Agent), the Borrowers shall pay to such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender (or the entity controlling the Lender) for such increase; provided, that the Borrowers shall not be required to compensate any Lender pursuant to this Section 10.3(b) for any amounts incurred more than one-hundred-eighty (180) days prior to the date that such Lender notifies the Borrower Representative, in writing of the amounts and of such Lender's intention to claim compensation thereof; provided, further, that if the event giving rise to such increase is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(c) 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 or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in a Requirement of Law under subsection (a) above and/or a change in a Capital Adequacy Regulation under subsection (b) above, as applicable, regardless of the date enacted, adopted or issued.

**10.4 [Reserved]**

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**10.5 [Reserved]**

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**10.6 [Reserved]**

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**10.7 Certificates of Lenders**

. Any Lender claiming reimbursement or compensation pursuant to this Article X shall deliver to the Borrower Representative (with a copy to Agent) a certificate setting forth in reasonable detail the amount payable to such Lender hereunder and such certificate shall be conclusive and binding on the Borrowers in the absence of manifest error.

**ARTICLE XI  
DEFINITIONS**

**11.1 Defined Terms**

. The following terms have the following meanings:

[“A&M” means Alvarez & Marsal North America, LLC.](#)

“Account” means, as at any date of determination, all “accounts” (as such term is defined in the UCC) of the Credit Parties, including, without limitation, the unpaid portion of the obligation of a customer of a Credit Party in respect of Inventory purchased by and shipped to such customer and/or the rendition of services by a Credit Party, as stated on the respective invoice of a Credit Party, net of any credits, rebates or offsets owed to such customer.

“Account Debtor” means the customer of a Credit Party who is obligated on or under an Account.

“Acquisition” means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (b) the acquisition of in excess of fifty percent



(50%) of the Stock and Stock Equivalents of any Person or otherwise causing any Person to become a Subsidiary of a Borrower, or (c) a merger or consolidation or any other combination with another Person.

“Affected Lender” has the meaning set forth in Section 9.22.

“Affiliate” means, with respect to any Person, each officer, director, general partner or joint-venturer of such Person and any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person; provided, however, that no Secured Party shall be an Affiliate of any Credit Party or of any Subsidiary of any Credit Party solely by reason of the provisions of the Loan Documents. For purposes of this definition, “control” means the possession of either (a) the power to vote, or the beneficial ownership of, 10% or more of the voting Stock of such Person (either directly or through the ownership of Stock Equivalents) or (b) the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Agent” means ~~NexBank~~Bank of America, SSB-N.A. in its capacity as administrative agent for the Lenders hereunder, and any successor administrative agent.

“Agent Fee Letter” means the letter agreement, dated as of the Closing Date, between the Borrower Representative and Agent, as amended, restated, supplemented or otherwise modified from time to time.

“Agent Report” has the meaning set forth in Section 8.5(c).

“Aggregate Excess Funding Amount” has the meaning set forth in Section 1.11(e).

“Aggregate Revolving Exposure” means, at any time, the aggregate Revolving Exposure of all the Lenders at such time.

“Aggregate Revolving Loan Commitments” means the combined Revolving Loan Commitments of the Lenders, which ~~(i) during the Interim Order Period, shall be in the amount of 25,000,000 and (ii) after the entry by the Bankruptcy Court, shall be \$50,000,000, in each case,~~ as such amount may be reduced from time to time pursuant to this Agreement.

“Aggregate Term Loan Commitments” means the combined Term Loan Commitments of the Lenders, which shall be \$90,000,000.

“Aircraft” means the 2003 Hawker 800XP owned by Action Transport, Inc.,

~~“Amendment Agreement” shall mean the Amendment Agreement dated as of September 27, 2013 among the Credit Parties, the Agent and each of the Lenders hereunder.~~

“Applicable Rate” means three percent (~~3.00~~3.0%) per annum.

“Approved Fund” means, with respect to any Lender, any Person (other than a natural Person) that (a) (i) 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 Business or (ii)

temporarily warehouses loans for any Lender or any Person described in clause (i) above and (b) is advised or managed by (i) such Lender, (ii) any Affiliate of such Lender or (iii) any Person (other than an individual) or any Affiliate of any Person (other than an individual) that administers or manages such Lender.

“Asset Purchase Agreement” means the asset purchase agreement ~~attached to the Bidding Procedures Order~~ filed on [ \_\_\_\_\_ ], 2013 with respect to the Bankruptcy Sale, in form and substance acceptable to ~~Oaktree~~KPS.

“Assignment” means an assignment agreement entered into by a Lender, as assignor, and any Person, as assignee, pursuant to the terms and provisions of Section 9.9 (with the consent of any party whose consent is required by Section 9.9), accepted by Agent, substantially in the form of Exhibit 11.1(a) or any other form approved by Agent.

“Attorney Costs” means and includes all fees and disbursements of any law firm or other external counsel which is required to be reimbursed by any Credit Party pursuant to the terms of this Agreement or any other Loan Document.

“Avoidance Actions” means any avoidance actions or causes of action under chapter 5 of the Bankruptcy Code.

“Bankruptcy Code” means the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, et seq.), as amended.

“Bankruptcy Court” has the meaning set forth in the recitals to this Agreement.

“Bankruptcy Sale” means a sale pursuant to Section 363 of the Bankruptcy Code of all of the assets and other rights of the Company and its Subsidiaries to the Stalking Horse Purchaser on the terms set forth in the Asset Purchase Agreement or such other terms acceptable to the Required Lenders.

“Bankruptcy Sale Motion” means a motion, in form and substance acceptable to the Required Lenders, seeking entry of the Bidding Procedures Order and the Bankruptcy Sale Order.

“Bankruptcy Sale Order” means an order of the Bankruptcy Court, in form and substance acceptable to ~~Oaktree~~KPS, approving and authorizing the Bankruptcy Sale.

“Benefit Plan” means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) other than a Multiemployer Plan, to which any Credit Party incurs or otherwise has any obligation or liability, contingent or otherwise.

“Bidding Procedures Order” means an order of the Bankruptcy Court, in form and substance acceptable to the Required Lenders, approving (i) bidding procedures relating to the Bankruptcy Sale and procedures for assuming executory contracts and unexpired leases, (ii) appointing the Stalking Horse Purchaser as the purchaser of the “Purchased Assets” as defined in the Asset Purchase Agreement, (iii) authorizing the Borrowers to enter into the Asset

Purchase Agreement, and (iv) approving bid protections for the Stalking Horse Purchaser, in each case on terms acceptable to the Required Lenders and in all respects consistent with those set forth in on Exhibit A to the Asset Purchase Agreement.

“Borrower” and “Borrowers” has the meaning specified in the preamble to this Agreement.

“Borrower Materials” has the meaning specified in Section 9.10(e).

“Borrower Representative” has the meaning specified in Section 1.12.

“Borrowing” means a borrowing hereunder consisting of Loans made by the Lenders to or for the benefit of the Borrowers after the Lenders receive at least one Business Day notice pursuant to Article I.

“Broyhill Transport” means Broyhill Transport, Inc., a North Carolina corporation.

“Budget” means the cash flow forecast attached hereto as Exhibit A<sup>+</sup>, with such adjustments thereto as approved in writing by Oaktree-KPS in its sole discretion; ~~provided, however, that if the Lane Sale is consummated prior to the Termination Date, the Budget shall mean Exhibit A updated to remove the budgeted cash flows of the Lane business from the date of the actual closing date of the Lane Sale through the Termination Date.~~

“Business Day” means any day that is not a Saturday, Sunday or a day on which banks are required or authorized to close in New York City.

“Capital Adequacy Regulation” means any guideline, request or directive of any central bank or other Governmental Authority, or any other law, rule or regulation, whether or not having the force of law, in each case, regarding capital adequacy of any Lender or of any corporation controlling a Lender.

“Capital Expenditures” means, with respect to the Company and its Subsidiaries for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations).

“Capital Lease” means, with respect to any Person, any lease of, or other arrangement conveying the right to use, any Property by such Person as lessee that has been or should be accounted for as a capital lease on a balance sheet of such Person prepared in accordance with GAAP.

“Capital Lease Obligations” means, at any time, with respect to any Capital Lease, any lease entered into as part of any sale leaseback transaction of any Person or any synthetic lease, the amount of all obligations of such Person that is (or that would be, if such synthetic lease or

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<sup>+</sup> ~~NTD: New budget will reflect inclusion of Lane business through the Termination Date~~

other lease were accounted for as a Capital Lease) capitalized on a balance sheet of such Person prepared in accordance with GAAP.

“Carve-Out” means, collectively: (i) all unpaid fees required to be paid by the debtors to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717; (ii) all reasonable and documented fees and expenses incurred by a trustee under Section 726(b) of the Bankruptcy Code in an amount not to exceed \$50,000; (iii) to the extent allowed at any time, all accrued and unpaid reasonable and documented fees, disbursements, costs, and expenses incurred at any time before or on the first business day following delivery by the Agent or the Required Lenders of a Carve-Out Trigger Notice by any professionals or professional firms retained by the Borrowers or the Committee, whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) after the first business day following delivery by the Agent or the Required Lenders of the Carve-Out Trigger Notice, to the extent allowed at any time, all reasonable and documented unpaid fees, disbursements, costs, and expenses incurred by professionals or professional firms retained by the Borrowers or any Committee in an aggregate amount not to exceed the Post-Carve-Out Trigger Notice Cap.

“Carve-Out Estimate” means the projected amount of Committee expenses and professional fees reasonably and in good faith anticipated by the Debtors to be incurred by the Debtors and the Committee for the immediately succeeding 60-day period, as reasonably agreed by ~~Oaktree~~KPS, which amount shall be deposited in an escrow account subject to escrow arrangements satisfactory to ~~Oaktree~~KPS and Borrower Representative.

“Carve-Out Trigger Notice” means a written notice delivered by the Agent or the Required Lenders (which delivery may be made by any electronic method of transmission) to the Borrower Representative and its counsel, the United States Trustee, and lead counsel to any Committee, which notice may be delivered following the occurrence and continuance of an Event of Default, and stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

“Cash Equivalents” means

(a) any readily-marketable securities (i) issued by, or directly, unconditionally and fully guaranteed or insured by the United States federal government or (ii) issued by any agency of the United States federal government the obligations of which are fully backed by the full faith and credit of the United States federal government,

(b) any readily-marketable direct obligations issued by any other agency of the United States federal government, any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case having a rating of at least “A-1” from S&P or at least “P-1” from Moody’s,

(c) any commercial paper rated at least “A-1” by S&P or “P-1” by Moody’s and issued by any Person organized under the laws of any state of the United States, (d) any Dollar- denominated time deposit, insured certificate of deposit, overnight bank deposit or bankers’ acceptance issued or accepted by (i) any Lender or (ii) any commercial bank that is (A) organized under the laws of the United States, any state

thereof or the District of Columbia, (B) “adequately capitalized” (as defined in the regulations of its primary federal banking regulators) and (C) has Tier 1 capital (as defined in such regulations) in excess of \$250,000,000 and (e) shares of any United States money market fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clause (a), (b), (c) or (d) above with maturities as set forth in the proviso below, (ii) has net assets in excess of \$500,000,000 and (iii) has obtained from either S&P or Moody’s the highest rating obtainable for money market funds in the United States; provided, however, that the maturities of all obligations specified in any of clauses (a), (b), (c) or (d) above shall not exceed 365 days.

“Cash Management Order” means an order of the Bankruptcy Court, in form and substance acceptable to ~~Oaktree~~KPS, (i) approving and authorizing the Credit Parties to use existing cash management system, (ii) authorizing and directing banks and financial institutions to honor and process checks and transfers, (iii) authorizing continued use of intercompany transactions, (iv) waiving requirements of Section 345(b) of the Bankruptcy Code and (v) authorizing the Credit Parties to use existing bank accounts and existing business forms.

“Cases” has the meaning set forth in the recitals to this Agreement.

“Change in Control” means the occurrence of any of the following: (a) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Subsidiaries, taken as a whole, to any “person” (as that term is used in Section 13(d)(3) of the Securities Exchange Act of 1934); (b) the adoption by the shareholders of Company of a plan relating to the liquidation or dissolution of the Company; (c) the acquisition by any “person” or “group” (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Securities Exchange Act of 1934, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d- 5(b)(1) under the Securities Exchange Act of 1934, or any successor provision), in a single transaction or in a series of related transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d- 3 under the Securities Exchange Act of 1934, or any successor provision) of 25% or more of the total voting power of the voting Stock and Stock Equivalents of the Company then outstanding; (d) the first day on which a majority of the members of the Board of Directors of the Company are not Continuing Directors; (e) the Company consolidates with, or merges with or into, any Person, or any Person consolidates with, or merges with or into, the Company, in any such event pursuant to a transaction in which any of the outstanding voting Stock and Stock Equivalents of the Company or such other Person is converted into or exchanged for cash, securities or other property or (f) except pursuant to a transaction permitted under Section 5.3, the Company ceases to own, directly or indirectly, one hundred percent (100%) of the issued and outstanding Stock and Stock Equivalents of each of the other Borrowers, the other Credit Parties or any Subsidiary of any of them, in each case, free and clear of all Liens, rights, options, warrants or other similar agreements or understandings, other than Liens in favor of Agent and Liens in favor of Term Loan Agent, for the benefit of the Secured Parties. ~~For the avoidance of doubt, the Lane Sale shall not constitute a Change in Control.~~

“Closing Date” means ~~September 11, 2013~~ the date upon which the conditions set forth in Sections 2.1 and 2.2 have been satisfied or waived by the Required Lenders.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means all Property and interests in Property and proceeds thereof now owned or hereafter acquired by any Credit Party, upon which a Lien in favor of Agent, on behalf of itself, the Lenders and the other Secured Parties, is granted, purported to be granted or otherwise exists, in each case, to secure the Obligations, whether under this Agreement, under any Collateral Document or otherwise. For the avoidance of doubt, “Collateral” shall include all “proceeds” (as such term is defined under the UCC) of Collateral including, without limitation, any equity interests or assets constituting indebtedness received or acquired by any Credit Party in exchange for, or proceeds from the sale of, assets which constituted Collateral prior to such exchange or sale.

“Collateral Documents” means, collectively, the Guaranty and Security Agreement, the IP Security Agreements, the Mortgages, each Control Agreement, and all other security agreements, pledge agreements, patent and trademark security agreements, lease assignments, guaranties and other similar agreements, and all amendments, restatements, modifications or supplements thereof or thereto, by or between any one or more of any Credit Party, and any Lender or Agent for the benefit of Agent, the Lenders and other Secured Parties now or hereafter delivered to the Lenders or Agent pursuant to or in connection with the transactions contemplated hereby, and all financing statements (or comparable documents now or hereafter filed in accordance with the UCC or comparable law) against any such Person as debtor in favor of any Lender or Agent for the benefit of Agent, the Lenders and the other Secured Parties, as secured party, as any of the foregoing may be amended, restated and/or modified from time to time.

“Collection Account” means that certain account of Agent set forth on Schedule C-1, or such other account as may be specified in writing by Agent as the “Collection Account.”

“Commitment Percentage” or “Pro Rata Percentage” means, (a) as to any Revolving Lender, the percentage equivalent of such Revolving Lender’s Revolving Loan Commitment, divided by the Aggregate Revolving Loan Commitments and (b) as to any Term Lender, the percentage equivalent to the outstanding principal amount of the Term Loan held by such Term Lender, divided by the aggregate principal amount of the Term Loan held by all Term Lenders; provided, that, in the case of clauses (a) and (b), following acceleration of the Loans and the termination of the Revolving Loan Commitments, such term means, as to any Lender, the percentage equivalent of the principal amount of the Loans held by such Lender, divided by the aggregate principal amount of the Loans held by all Lenders.

“Committee” means an official committee of unsecured creditors appointed in the Cases pursuant to section 1102 of the Bankruptcy Code.

“Consolidated” means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable)



based upon the consolidation, in accordance with GAAP, of the financial position, cash flows, or operating results of such Person and its Subsidiaries.

“Contingent Obligation” means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person:

(a) with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; (b) with respect to any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (c) under any Rate Contracts; (d) to make take- or- pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (e) for the obligations of another Person through any agreement to purchase, repurchase or otherwise acquire such obligation or any Property constituting security therefor, to provide funds for the payment or discharge of such obligation or to maintain the solvency, financial condition or any balance sheet item or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if not a fixed and determined amount, the maximum amount so guaranteed or supported.

“Continuing Directors” means, as of any date of determination, those members of the board of directors of the Company (the “Board of Directors”), each of whom: (a) was a member of such Board of Directors on the Closing Date; or (b) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board of Directors at the time of such nomination or election (excluding, in the case of clause (b), any individual whose initial nomination for, or assumption of office as, a member of that Board of Directors occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the Board of Directors).

“Contractual Obligations” means, as to any Person, any provision of any security (whether in the nature of Stock, Stock Equivalents or otherwise) issued by such Person or of any agreement, undertaking, contract, indenture, mortgage, deed of trust or other instrument, document or agreement (other than a Loan Document) to which such Person is a party or by which it or any of its Property is bound or to which any of its Property is subject.

“Control Account” means each deposit account, securities account, or commodities account now or hereafter owned by the Credit Parties, other than (a) payroll accounts (so long as each such payroll account does not contain amounts in excess of amounts necessary to pay payroll expenses), trust accounts, accounts used exclusively for withholding tax, goods and services tax, sales tax, payroll tax and other fiduciary accounts and (b) Local Accounts and other accounts (other than (x) lockbox accounts and other accounts into which Account Debtor payments are made or (y) any concentration accounts) with cash or Cash Equivalents and other

entitlements not exceeding \$250,000 at any time in the aggregate for all such accounts excluded pursuant to this clause (b) (the accounts set forth in the clauses (a)-(b) above, collectively, the “Excluded Accounts”).

“Control Agreement” means, with respect to any deposit account, securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance satisfactory to Agent, among Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried and the Credit Party maintaining such account, entitlement or contract, as applicable, effective to grant “control” (within the meaning of Articles 8 and 9 under the applicable UCC) over such account to Agent.

“Copyrights” means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to copyrights and all mask work, database and design rights, whether or not registered or published, all registrations and recordations thereof and all applications in connection therewith.

“Credit Parties” means each Borrower, each Guarantor and each other Person which executes a guaranty of the Obligations, which grants a Lien on all or substantially all of its assets to secure payment of the Obligations.

“Customary Permitted Encumbrances” means:

(a) Liens imposed by law for taxes, assessments or governmental charges or levies that are not yet due and payable or are being contested in compliance with Section 5.1; (b) carriers’, warehousemen’s, landlord’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the Ordinary Course of Business and securing obligations that are not overdue by more than 30 days or which are being contested in good faith and by appropriate proceedings diligently prosecuted, which proceedings have the effect of preventing the forfeiture or sale of the Property subject thereto and for which adequate reserves in accordance with GAAP are being maintained; (c) pledges and deposits made in the Ordinary Course of Business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations; (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the Ordinary Course of Business; (e) judgment liens in respect of judgments (other than for payment of taxes, assessments or other governmental charges) that do not constitute an Event of Default under Section 7.1(h); and (f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the Ordinary Course of Business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the Ordinary Course of Business of the Company or any Subsidiary; provided that the term “Customary Permitted Encumbrances” shall not include any Lien securing Indebtedness.

“Debtors” means the Borrowers, the Guarantors and the Immaterial Subsidiaries..



“Default” means any event or circumstance that, with the passing of time or the giving of notice or both, would (if not cured or otherwise remedied during such time) become an Event of Default.

“Designated Leases” has the meaning set forth in Section 3.29.

“DIP Superpriority Claim” means the allowed superpriority administrative expense claim granted to the Agent and the Lenders in each of the Cases and any Successor Cases pursuant to Section 364(c)(1) of the Bankruptcy Code for all of the Obligations with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of these chapter 11 cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b) (except as set forth in the ~~Orders~~Final Order), 546(c), 546(d), 726 (to the extent permitted by law), 1113, and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative; provided, however, that, subject to entry of the Final Order, the DIP Superpriority Claim shall attach to the proceeds of Avoidance Actions; provided, further, that the DIP Superpriority Claim shall be subject to Permitted Liens and the Carve-Out.

“Disposition” means (a) the sale, lease, conveyance or other disposition of Property, other than sales or other dispositions expressly permitted under Sections 5.2(a), 5.2(b), 5.2(g) and 5.2(h), and (b) the sale or transfer by a Borrower or any Subsidiary of a Borrower of any Stock or Stock Equivalent issued by any Subsidiary of a Borrower and held by such transferor Person.

“Dollars”, “dollars” and “\$” each mean lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary other than a Foreign Subsidiary.

“Electronic Transmission” means each document, instruction, authorization, file, information and any other communication transmitted, posted or otherwise made or communicated by e- mail or E- Fax, or otherwise to or from an E- System.

“Environmental Laws” means all Requirements of Law and Permits imposing liability or standards of conduct for or relating to the regulation and protection of human health, safety, the workplace, the environment and natural resources, and including public notification requirements and environmental transfer of ownership, notification or approval statutes.

“Environmental Liabilities” means all Liabilities (including costs of Remedial Actions, natural resource damages and costs and expenses of investigation and feasibility studies, including the cost of environmental consultants and the cost of attorney’s fees) that may be imposed on, incurred by or asserted against any Credit Party or any Subsidiary of any Credit Party as a result of, or related to, any claim, suit, action, investigation, proceeding or demand by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law or otherwise, arising under any Environmental Law or in connection with any environmental, health or safety condition or with any Release and resulting

from the ownership, lease, sublease or other operation or occupation of property by any Credit Party or any Subsidiary of any Credit Party, whether on, prior or after the date hereof.

“Equipment” means all “equipment,” as such term is defined in the UCC, now owned or hereafter acquired by any Credit Party, wherever located.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means, collectively, any Credit Party and any Person under common control or treated as a single employer with, any Credit Party, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“ERISA Event” means any of the following:

(a) a reportable event described in Section 4043(b) of ERISA (or, unless the 30- day notice requirement has been duly waived under the applicable regulations, Section 4043(c) of ERISA) with respect to a Title IV Plan;

(b) the withdrawal of any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA;

(c) the complete or partial withdrawal within the meaning of Sections 4203 or 4205 of ERISA of any ERISA Affiliate from any Multiemployer Plan;

(d) with respect to any Multiemployer Plan, the filing of a notice of reorganization, insolvency or termination (or treatment of a plan amendment as termination) under Section 4041A of ERISA;

(e) the filing of a notice of intent to terminate a Title IV Plan (or treatment of a plan amendment as termination) under Section 4041 of ERISA;

(f) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC;

(g) the failure to make any required contribution to any Title IV Plan or Multiemployer Plan when due;

(h) the imposition of a lien under Section 412 or 430(k) of the Code or Section 303 or 4068 of ERISA on any property (or rights to property, whether real or personal) of any ERISA Affiliate;

(i) a written determination from the Internal Revenue Service or any other Governmental Authority regarding the failure of a Benefit Plan or any trust thereunder intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirements of Law to qualify thereunder;

(j) a Title IV Plan is in “at risk” status within the meaning of Code Section 430(i);

(k) a Multiemployer Plan is in “endangered status” or “critical status” within the meaning of Section 432(b) of the Code; and

(l) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan; or

(m) the imposition of any material liability upon any ERISA Affiliate under Title IV of ERISA other than for PBGC premiums due but not delinquent.

“Event of Default” has the meaning set forth in Section 7.1.

“Event of Loss” means, with respect to any Property, any of the following: (a) any loss, destruction or damage of such Property; or (b) any actual condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, of such Property, or confiscation of such Property or the requisition of the use of such Property.

“Excluded Accounts” has the meaning set forth in the definition of “Control Account”.

“Excluded Equity Issuance” means Net Issuance Proceeds resulting from the issuance of (a) Stock or Stock Equivalents by the Company to management, consultants or employees of a Credit Party under any employee stock option or stock purchase plan, employee incentive plan or other employee benefits plan in existence from time to time, (b) Stock or Stock Equivalents by a Wholly- Owned Subsidiary of a Borrower to a Borrower or another Wholly- Owned Subsidiary of a Borrower constituting an Investment permitted hereunder, and (c) Stock or Stock Equivalents by a Foreign Subsidiary of such Foreign Subsidiary to qualify directors where required pursuant to a Requirement of Law or to satisfy other requirements of applicable law, in each instance, with respect to the ownership of Stock of Foreign Subsidiaries.

“Excluded Tax” means with respect to any Secured Party

(a) taxes measured by net income (including branch profits taxes) and franchise taxes imposed in lieu of net income taxes, in each case imposed on any Secured Party as a result of a present or former connection between such Secured Party and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than such connection arising solely from any Secured Party having executed, delivered or performed its obligations or received a payment under, or enforced, any Loan Document);

(b) withholding taxes to the extent that the obligation to withhold amounts existed on the date that such Person became a “Secured Party” under this Agreement in the capacity under which such Person makes a claim under Section 10.1(b) or designates a new Lending Office, except in each case to the extent such Person is a direct or indirect assignee (other than pursuant to Section 9.22) of any other Secured Party that was

entitled, at the time the assignment to such Person became effective, to receive additional amounts under Section 10.1(b);

(c) taxes that are directly attributable to the failure (other than as a result of a change in any Requirement of Law) by any Secured Party to deliver the documentation required to be delivered pursuant to Section 10.1(f), and

(d) in the case of a Non- U.S. Lender Party, any United States federal withholding taxes imposed on amounts payable to such Non- U.S. Lender Party as a result of such Non- U.S. Lender Party's failure to comply with FATCA to establish a complete exemption from withholding thereunder.

“Existing ABL-DIP Loan Agent” means ~~General Electric Capital Corporation~~ NexBank, as SSB, as administrative agent and collateral agent under the Existing ABL Credit Agreement, and any successor thereto DIP Loan Documents.

“Existing ABL-Credit-DIP Loan Agreement” means that certain Senior Secured Super-Priority Debtor-in-Possession Credit Agreement, dated as of September ~~25~~ 10, 2012 2013, by and among the Borrowers, ~~the other Credit Parties~~ party thereto, the ~~lenders party thereto, General Electric Capital Corporation, as agent for such lenders, and the Existing DIP Loan Lenders, the Existing DIP Loan Agent and any~~ other Persons party thereto, as amended, or otherwise modified prior to the Closing Date.

“Existing DIP Loan Documents” means “Loan Documents” as defined in the Existing DIP Loan Agreement as in effect on the Closing Date, as such Existing DIP Loan Documents may have been amended or otherwise modified prior to the Closing Date.

“~~Existing ABL~~ “Existing DIP Loan Lenders” means the lenders under the Existing ~~ABL Credit~~ DIP Loan Agreement.

“Existing ABL-DIP Loan Liens” means the Liens granted on the “~~Collateral~~” ~~(as defined in the Existing ABL Credit Agreement)~~ under the Existing ~~ABL Credit Agreement~~ DIP Loan Documents securing the Existing ~~ABL-DIP Loan~~ Obligations.

“Existing ABL-DIP Loan Obligations” means all “Obligations” ~~(as defined in the Existing DIP Loan Agreement)~~ as of the Closing Date, including, without limitation, the outstanding ~~amounts~~ principal amount of the loans provided under the Existing ~~ABL-Credit-DIP Loan Agreement~~ as of the Closing Date plus any interest accumulating from time to time in accordance with the terms of the Existing DIP Loan Agreement in effect on the Closing Date minus any payments or prepayments with respect thereto.

“Existing Term Loan Agent” means NexBank, SSB, as administrative agent and collateral agent under the Existing Term Loan Documents.

“Existing Term Loan Agreement” means that certain Term Loan Agreement, dated as of September 25, 2012, by and among the Borrowers, the other Credit Parties party thereto, the Existing Term Loan Lenders, the Existing Term Loan Agent and any other Persons party thereto,

as amended, or otherwise modified prior to the Closing Date and as further amended or otherwise modified from time to time in accordance with this Agreement.

“Existing Term Loan Documents” means “Loan Documents” as defined in the Existing Term Loan Agreement as in effect on the Closing Date, as such Existing Term Loan Documents may have been amended or otherwise modified prior to the Closing Date and as further amended or otherwise modified from time to time in accordance with this Agreement.

“Existing Term Loan Lenders” means the lenders under the Existing Term Loan Agreement.

“Existing Term Loan Liens” means the Liens granted on the Collateral under the Existing Term Loan Documents securing the Existing Term Loan Obligations.

“Existing Term Loan Obligations” means all “Obligations” (as defined in the Existing Term Loan Agreement) as of the Closing Date, including, without limitation, the outstanding principal amount of the loans provided under the Existing Term Loan Agreement as of the Closing Date *plus* (i) any interest accumulating from time to time in accordance with the terms of the Existing Term Loan Agreement in effect on the Closing Date and (ii) the “Prepayment Premium” (as defined in the Existing Term Loan Agreement) then due and payable under the Existing Term Loan Agreement as of the Closing Date *minus* any payments or prepayments with respect thereto.

“E-Fax” means any system used to receive or transmit faxes electronically.

“E-Signature” means the process of attaching to or logically associating with an Electronic Transmission an electronic symbol, encryption, digital signature or process (including the name or an abbreviation of the name of the party transmitting the Electronic Transmission) with the intent to sign, authenticate or accept such Electronic Transmission.

“E-System” means any electronic system approved by Agent, including Intralinks® and ClearPar® and any other Internet or extranet- based site, whether such electronic system is owned, operated or hosted by Agent, any of its Related Persons or any other Person, providing for access to data protected by passcodes or other security system.

“FATCA” means sections 1471, 1472, 1473 and 1474 of the Code, the United States Treasury Regulations promulgated thereunder and published guidance with respect thereto.

“Federal Flood Insurance” means federally backed Flood Insurance available under the National Flood Insurance Program to owners of real property improvements located in Special Flood Hazard Areas in a community participating in the National Flood Insurance Program.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System, or any entity succeeding to any of its principal functions.

“FEMA” means the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security that administers the National Flood Insurance Program.

“Final Order” means ~~an the~~ order or judgment ~~as entered on the docket~~ of the Bankruptcy Court as entered on the docket of the Bankruptcy Court with respect to the Cases substantially in the form of ~~the Interim Order, with only such modifications as are satisfactory in form and substance to the Required Lenders, which order shall (x) have been entered on such prior notice to such parties as may be satisfactory to the Required Lenders and (y) Exhibit B hereto,~~ approving, inter alia, this Agreement and the other Loan Documents, and (a) authorizing the incurrence by the Credit Parties of secured indebtedness in accordance with this Agreement, (b) approving the indefeasible repayment of the Prior Indebtedness as described herein and (c) approving the payment by the Credit Parties of the fees contemplated by this Agreement and the Agent Fee Letter, which order shall not have been vacated, reversed, modified, amended or stayed.

“FIRREA” means the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

“First Tier Foreign Subsidiary” means a Foreign Subsidiary held directly by a Credit Party or indirectly by a Credit Party through one or more Domestic Subsidiaries.

“Fiscal Quarter” means any of the quarterly fiscal accounting periods of the Credit Parties based on a 13-week (4-4-5) method of accounting.

“Fiscal Year” means any of the annual accounting periods of the Credit Parties ending on the Saturday closest to December 31 of each year.

“Flood Insurance” means, for any Real Estate located in a Special Flood Hazard Area, Federal Flood Insurance or private insurance that (a) meets the requirements set forth by FEMA in its Mandatory Purchase of Flood Insurance Guidelines and (b) shall be in an amount equal to the full, unpaid balance of the Loans and any prior liens on the Real Estate up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Agent, with deductibles not to exceed \$50,000.

“Foreign Subsidiary” means, with respect to any Person, a Subsidiary of such Person that is a “controlled foreign corporation” under Section 957 of the Code.

“GAAP” means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions and comparable stature and authority within the accounting profession) that are applicable to the circumstances as of the date of determination. Subject to Section 11.3, all references to “GAAP” shall be to GAAP applied consistently with the principles used in the preparation of the financial statements described in Section 3.11(a).

“Governmental Authority” means any nation, sovereign or government, any state or other political subdivision thereof, any agency, authority or instrumentality thereof and any entity or authority exercising executive, legislative, taxing, judicial, regulatory or administrative functions of or pertaining to government, including any central bank, stock exchange, regulatory body, arbitrator, public sector entity, supra- national entity (including the European Union and the

European Central Bank) and any self-regulatory organization (including the National Association of Insurance Commissioners).

“Grandfathered Lender” means any Person that is a lender under the Existing Term Loan or the Prior Indebtedness immediately prior to the Closing Date.

“Guarantors” means, collectively, each of the Subsidiaries of the Borrowers listed on Schedule 3.19 and each other Subsidiary of the Borrowers that shall be required to execute and deliver a guaranty or guaranty supplement pursuant to Section 4.13. As of the Closing Date, the Guarantors are Action Transport, Inc., a Delaware corporation, Furniture Brands Holdings, Inc., a Delaware corporation, Furniture Brands Operations, Inc., a Delaware corporation, Furniture Brands Resource Company, Inc., a Delaware corporation, Broyhill Home Furnishings, Inc., a Delaware corporation, Broyhill Retail, Inc., a Delaware corporation, HDM Retail, Inc., a Delaware corporation, Lane Home Furnishings Retail, Inc., a Delaware corporation, Thomasville Retail, Inc., a Virginia corporation, and Thomasville Home Furnishings, Inc., a Delaware corporation.

“Guaranty and Security Agreement” means that certain Guaranty and Security Agreement, dated as of even date herewith, in form and substance reasonably acceptable to Agent and the Borrowers, made by the Credit Parties in favor of Agent, for the benefit of the Secured Parties, as the same may be amended, restated and/or modified from time to time, together with each other guaranty and security agreement executed and delivered by any other Credit Party in favor of Agent, for the benefit of the Secured Parties.

“Hazardous Material” means any substance, material or waste that is classified, regulated or otherwise characterized under any Environmental Law as hazardous, toxic, a contaminant or a pollutant or by other words of similar meaning or regulatory effect, including, without limitation, petroleum or any fraction thereof, asbestos, polychlorinated biphenyls and radioactive substances.

“HDM Transport” means HDM Transport, Inc., a North Carolina corporation.

“Identified Assets” means the assets listed on and specifically identified on Schedule 5.2(d).

“Identified Assets Trust Proceeds” has the meaning set forth in Section 5.2(d).

“Immaterial Subsidiaries” means Broyhill Transport, HDM Transport and Laneventure.

“Impacted Lender” means any Lender that fails to provide Agent, within three (3) Business Days following Agent’s written request, satisfactory assurance that such Lender will not become a Non-Funding Lender.

“Indebtedness” of any Person means, without duplication: (a) all indebtedness for borrowed money; (b) all obligations issued, undertaken or assumed as the deferred purchase price of Property or services (other than trade payables entered into in the Ordinary Course of Business); (c) the face amount of all letters of credit issued for the account of such Person and without duplication, all drafts drawn thereunder and all reimbursement or payment obligations



with respect to letters of credit, surety bonds and other similar instruments issued by such Person; (d) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of Property, assets or businesses; (e) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property); (f) all Capital Lease Obligations; (g) the principal balance outstanding under any synthetic lease, off-balance sheet loan or similar off balance sheet financing product; (h) all obligations, whether or not contingent, to purchase, redeem, retire, defease or otherwise acquire for value any of its own Stock or Stock Equivalents (or any Stock or Stock Equivalent of a direct or indirect parent entity thereof) prior to the date that is 180 days after the final scheduled installment payment date for the date specified in clause (b) of the definition of Termination Date, valued at, in the case of redeemable preferred Stock, the greater of the voluntary liquidation preference and the involuntary liquidation preference of such Stock plus accrued and unpaid dividends; (i) all indebtedness referred to in clauses (a) through (h) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in Property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness; and (j) all Contingent Obligations described in clause (a) of the definition thereof in respect of indebtedness or obligations of others of the kinds referred to in clauses (a) through (i) above.

“Indemnified Matters” has the meaning set forth in Section 9.6.

“Indemnitees” has the meaning set forth in Section 9.6.

“Insolvency Proceeding” means (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in each case in (a) and (b) above, undertaken under U.S. federal, state or foreign law, including the Bankruptcy Code.

“Intellectual Property” means all rights, title and interests in or relating to intellectual property and industrial property arising under any Requirement of Law and all IP Ancillary Rights relating thereto, including all Copyrights, Patents, Trademarks, Internet Domain Names, Trade Secrets and IP Licenses.

“Interest Payment Date” means each monthly anniversary of the Closing Date.

~~“Interim Order” means the order or judgment of the Bankruptcy Court as entered on the docket of the Bankruptcy Court with respect to the Cases substantially in the form of Exhibit B hereto, approving, inter alia, this Agreement and the other Loan Documents, and (a) authorizing the incurrence by the Credit Parties of interim secured indebtedness in accordance with this Agreement, (b) approving the indefeasible repayment of the Prior Indebtedness as described herein, (c) approving the payment by the Credit Parties of the fees contemplated by this~~



~~Agreement and the Agent Fee Letter, and (d) providing adequate protection to the Existing Term Loan Lenders in a manner satisfactory to the Required Lenders, which order shall not have been vacated, reversed, modified, amended or stayed.~~

~~“Interim Order Period” means the period of time after the time the Bankruptcy Court enters the Interim Order until the time the Bankruptcy Court enters the Final Order.~~

“Internet Domain Name” means all right, title and interest (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to internet domain names.

“Inventory” means all of the “inventory” (as such term is defined in the UCC) of the Credit Parties, including, but not limited to, all merchandise, raw materials, parts, supplies, work-in-process and finished goods intended for sale, together with all the containers, packing, packaging, shipping and similar materials related thereto, and including such inventory as is temporarily out of a Credit Party’s custody or possession, including inventory on the premises of others and items in transit.

“Investment Promissory Notes” has the meaning set forth in Section 1.8(c)(ii).

“Investments” has the meaning set forth in Section 5.4.

“IP Ancillary Rights” means, with respect to any Intellectual Property, as applicable, all foreign counterparts to, and all divisionals, reversions, continuations, continuations- in- part, reissues, reexaminations, renewals and extensions of, such Intellectual Property and all income, royalties, proceeds and Liabilities at any time due or payable or asserted under or with respect to any of the foregoing or otherwise with respect to such Intellectual Property, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment thereof, and, in each case, all rights to obtain any other IP Ancillary Right.

“IP License” means all Contractual Obligations (and all related IP Ancillary Rights), whether written or oral, granting any right, title and interest in or relating to any Intellectual Property.

“IRS” means the Internal Revenue Service of the United States and any successor thereto.

~~“Lane Assets” means the assets and other rights (if any) that relate to the “Lane” division or business of the Credit Parties, including, but not limited to, accounts receivable, intellectual property, inventory, PP&E and real estate related to the “Lane” division or business.~~

“KPS” means KPS Capital Partners, LP or one or more Affiliates thereof.

~~“Lane Sale” means a sale of the Lane Assets to a third party liquidator or other person whether as a liquidation or going concern sale; provided, that, with respect to any assets or rights that are not exclusively related to the “Lane” division or business, the inclusion of such assets or rights (and any terms related thereto) in any Lane Sale shall be acceptable to Oaktree in its sole discretion.~~

~~“Lane Sale Motion” means a motion seeking entry of an order by the Bankruptcy Court approving the Lane Sale.~~

~~“Lane Sale Order” means an order of the Bankruptcy Court approving the Lane Sale.~~

~~“Lane Sale Proceeds” means the Net Proceeds from the Lane Sale.~~

“Laneventure” means Laneventure, Inc., a Delaware corporation.

“Lender” has the meaning set forth in the Preamble and shall include, without limitation, the Revolving Lenders and Term Lenders.

“Lending Office” means, with respect to any Lender, the office or offices of such Lender specified as its “Lending Office” from time to time in writing to the Borrower Representative and Agent.

“Liabilities” means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, taxes, commissions (including brokerage commissions, fees and other similar compensation), charges, disbursements and expenses (including, without limitation, those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or otherwise), security interest or other security arrangement and any other preference, priority or preferential arrangement of any kind or nature whatsoever, including those created by, arising under or evidenced by any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

“Loan” means any Revolving Loan, Term Loan or other loan made or deemed made by any Lender hereunder.

“Loan Documents” means this Agreement, the Notes, the Agent Fee Letter, the Collateral Documents, and all documents delivered to Agent and/or any Lender in connection with any of the foregoing.

“Local Deposit Accounts” has the meaning specified in Section 4.11.

“Margin Stock” means “margin stock” as such term is defined in Regulation T, U or X of the Federal Reserve Board.

“Material Adverse Effect” means (i) any event, effect, change, circumstance, condition or matter that, individually or in the aggregate, is or could reasonably be expected to be materially

adverse to, or materially impairs the value of, the Acquired Assets (as defined in the Asset Purchase Agreement), or results in a material adverse effect or change in the operation, results of operations or condition (financial or otherwise) of the Acquired Assets or the Business (as defined in the Asset Purchase Agreement), taken as a whole, without regard to the duration or persistence of such event, effect, change, circumstance, condition or matter, or which materially impairs the ability of the Sellers (as defined in the Asset Purchase Agreement) to perform their obligations under the Asset Purchase Agreement has a material adverse effect on or prevents or materially delays the consummation of the transactions contemplated hereby; provided, that the act of filing the Cases, in and of itself, shall not constitute a Material Adverse Effect or (ii) the occurrence of an event, circumstance or other matter which has resulted in or could reasonably be expected to result in a material adverse change in (1) the legality, validity or enforceability of any Loan Document or the ~~Orders~~Final Order, (2) the ability of the Borrowers or the other Credit Parties to perform their respective obligations under the Loan Documents, (3) the value of the Collateral, (4) the perfection or priority of the Liens granted pursuant to the Loan Documents or the ~~Orders~~Final Order, or (v) the ability of Agent and the other Secured Parties to enforce the Loan Documents.

“Material Contract” means any contract, purchase order or other arrangement having similar effect (whether embodied in a single instrument or related instruments), pursuant to which the Company and its subsidiaries received gross revenues of at least \$50,000,000 in calendar year 2012.

“Material Contract Notice Event” means (i) the termination of any Material Contract or any Material Contract otherwise ceasing to be a legal, valid and binding agreement in full force and effect, (ii) the material breach of any Material Contract by the Company, any of its Subsidiaries or any counterparty to any Material Contract, or (iii) the Company or any of its Subsidiaries receiving any indication (whether written or oral), with respect to any Material Contract, that (x) suggests such Material Contract could be terminated or otherwise cease to be a legal, valid and binding agreement in full force and effect (including, without limitation, as a result of the counterparty to such Material Contract indicating to the Company that it will not agree to a novation and assignment to the Purchasers of such Material Contract in connection with the sale under the Sale Order; provided, however, that nothing herein shall affirmatively require the Company to seek a novation or an assignment of any Material Contract) or (y) gives any Credit Party reason to believe the counterparty to such Material Contract intends to commit a material breach of such Material Contract or seek alteration of the terms of such Material Contract in a manner materially adverse to the Company or any of its Subsidiaries, or intends to materially reduce purchases under, or expenditures in respect of, such Material Contract.

“Material Contract Default Event” means (i) the termination of any Material Contract or any Material Contract otherwise ceasing to be a legal, valid and binding agreement in full force and effect, (ii) the material breach of any Material Contract by the Company, any of its Subsidiaries or any counterparty to any Material Contract, or (iii) the Company or any of its Subsidiaries receiving any indication (whether written or oral), with respect to any Material Contract, that (x) such Material Contract will be terminated or otherwise cease to be a legal, valid and binding agreement in full force and effect (including, without limitation, as a result of the counterparty to such Material Contract indicating to the Company that it will not agree to a novation and assignment to the Purchasers (as defined in the Asset Purchase Agreement) of such

Material Contract in connection with the sale under the Sale Order; provided, however, that nothing herein shall affirmatively require the Company to seek a novation or an assignment of any Material Contract) or (y) the counterparty to such Material Contract intends to commit a material breach of such Material Contract or seek alteration of the terms of such Material Contract in a manner materially adverse to the Company or any of its Subsidiaries, or intends to materially reduce purchases under, or expenditures in respect of, such Material Contract.

“Material Contract Default Event Period” means the period from the date that a Material Contract Default Event occurs through and including the earlier to occur of (x) the cessation or discontinuance of any such Material Contract Default Event as determined by ~~Oaktree~~-KPS in its reasonable discretion and (y) the 45th day following such Material Contract Event; provided, that, (i) if on the 45th day following such Material Contract Event, the Variance from the Budget on a cumulative basis for the period from the Petition Date through the last day covered by the most recent Variance Report delivered to the Agent and Lenders on or prior to such 45th day is not more than 5.0% less than the aggregate amount in the Budget for operating receipts for such period, then the date in the preceding clause (y) shall be automatically extended for an additional 15 days and (ii) if on the 60th day following such Material Contract Event, the Variance from the Budget on a cumulative basis for the period from the Petition Date through the last day covered by the most recent Variance Report delivered to the Agent and Lenders on or prior to such 60th day is not more than 5.0% less than the aggregate amount in the Budget for operating receipts for such period, then the date in the preceding clause (y) shall be further automatically extended for an additional 15 days.

“Material Contract Default Event Period Amount” has the meaning set forth in Section 1.1(a)(i).

“Material Contract Default Event Period Starter Amount” has the meaning set forth in Section 1.1(a)(i).

“Material Contract Default Event Period Revolving Exposure” has the meaning set forth in Section 1.1(a)(i).

“Material Environmental Liabilities” means Environmental Liabilities exceeding \$1,000,000 in the aggregate over the term of this Agreement.

“Maximum Lawful Rate” has the meaning set forth in Section 1.3(d).

“MNPI” has the meaning set forth in Section 9.10(a).

“Mortgage” means any deed of trust, leasehold deed of trust, mortgage, leasehold mortgage, deed to secure debt, leasehold deed to secure debt or other document creating a Lien on Real Estate or any interest in Real Estate in favor of Agent, for the benefit of the Secured Parties.

“Multiemployer Plan” means any multiemployer plan, as defined in Section 3(37) or 4001(a)(3) of ERISA, as to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

“National Flood Insurance Program” means the program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994, that mandates the purchase of flood insurance to cover real property improvements located in Special Flood Hazard Areas in participating communities and provides protection to property owners through a federal insurance program.

“Net Cash Flow” means, with respect to any Testing Period, an amount equal to (a) the aggregate cash receipts of the Borrower and its Subsidiaries during such period (excluding proceeds of any Loans) less (b) the aggregate cash disbursements of the Borrower and its Subsidiaries during such period (other than any repayments of Loans).

“Net Issuance Proceeds” means, in respect of any issuance of debt or equity, cash proceeds (including cash proceeds as and when received in respect of non-cash proceeds received or receivable in connection with such issuance), net of underwriting discounts and reasonable out-of-pocket fees, costs and expenses paid or incurred in connection therewith in favor of any Person not an Affiliate of a Borrower.

“Net Proceeds” means proceeds in cash, checks or other cash equivalent financial instruments (including Cash Equivalents) as and when received by the Person making a Disposition, as well as insurance proceeds and condemnation and similar awards received on account of an Event of Loss, net of: (a) in the event of a Disposition (i) the fees, costs and expenses relating to such Disposition excluding amounts payable to a Borrower or any Affiliate of a Borrower, (ii) sale, use or other transaction taxes paid or payable as a result thereof, and (iii) amounts required to be applied to repay principal, interest and prepayment premiums and penalties on Indebtedness secured by a Lien on the asset which is the subject of such Disposition to the extent so applied and (b) in the event of an Event of Loss, (i) so long as no Default or Event of Default has occurred and is continuing, all money actually applied to repair or reconstruct the damaged Property or Property affected by the condemnation or taking, (ii) all of the costs and expenses reasonably incurred in connection with the settlement or collection of such proceeds, award or other payments, and (iii) any amounts retained by or paid to parties having superior rights to such proceeds, awards or other payments.

“Non-Funding Lender” means any Revolving Lender that has (a) failed to fund any payments required to be made by it under the Loan Documents within two (2) Business Days after any such payment is due (excluding expense and similar reimbursements that are subject to good faith disputes), (b) given written notice (and Agent has not received a revocation in writing), to a Borrower, Agent or any Lender or has otherwise publicly announced (and Agent has not received notice of a public retraction) that such Revolving Lender believes it will fail to fund payments or purchases of participations required to be funded by it under the Loan Documents or one or more other syndicated credit facilities, (c) failed to fund, and not cured, loans, participations, advances, or reimbursement obligations under one or more other syndicated credit facilities, unless subject to a good faith dispute, or (d) (i) become subject to a voluntary or involuntary case under the Bankruptcy Code or any similar bankruptcy laws, (ii) a custodian, conservator, receiver or similar official appointed for it or any substantial part of such Person’s assets, or (iii) made a general assignment for the benefit of creditors, been liquidated, or otherwise been adjudicated as, or determined by any Governmental Authority having regulatory

authority over such Person or its assets to be, insolvent or bankrupt, and for this clause (d), Agent has determined that such Revolving Lender is reasonably likely to fail to fund any payments required to be made by it under the Loan Documents.

“Non-U.S. Lender Party” means each of Agent, each Lender, each SPY and each participant, in each case that is not a United States person as defined in Section 7701(a)(30) of the Code.

“Note” means any Term Note or Revolving Note and “Notes” means all such Notes.

“Notice of Borrowing” means a notice given by the Borrower Representative to Agent pursuant to Section 1.5, in substantially the form of Exhibit 11.1(c) hereto.

~~“Oaktree” means OCM FB Holdings CTB, Ltd.~~

“Obligations” means all Loans (including Letters of Credit) and other Indebtedness, advances, debts, liabilities, obligations, covenants and duties owing by any Credit Party to any Lender, Agent or any other Person required to be indemnified, that arises under any Loan Document, whether or not for the payment of money, whether arising by reason of an extension of credit, loan, guaranty, indemnification or in any other manner, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired (including, without limitation, the interest, fees, expenses and other amounts which accrue after the commencement of any proceeding under the Bankruptcy Code (or other debtor relief law) whether or not such amounts are allowed or allowable in whole or in part in any such proceeding).

“OFAC” has the meaning set forth in Section 3.27.

~~“Orders” means, collectively, the Interim Order and the Final Order.~~

“Ordinary Course of Business” means, in respect of any transaction involving any Person, the ordinary course of such Person’s business, as conducted by any such Person in accordance with past practice and undertaken by such Person in good faith and not for purposes of evading any covenant or restriction in any Loan Document.

“Organization Documents” means, (a) for any corporation, the certificate or articles of incorporation, the bylaws, any certificate of determination or instrument relating to the rights of preferred shareholders of such corporation and any shareholder rights agreement, (b) for any partnership, the partnership agreement and, if applicable, certificate of limited partnership, (c) for any limited liability company, the operating agreement and articles or certificate of formation or (d) any other document setting forth the manner of election or duties of the officers, directors, managers or other similar persons, or the designation, amount or relative rights, limitations and preference of the Stock of a Person.

“Other Taxes” has the meaning set forth in Section 10.1(c).

“Patents” means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to letters patent and applications therefor.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107- 56.

“PBGC” means the United States Pension Benefit Guaranty Corporation any successor thereto.

“Permits” means, with respect to any Person, any permit, approval, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other Contractual Obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Permitted Liens” has the meaning set forth in Section 5.1.

“Permitted Variance” means a Variance from the Budget on a cumulative basis from the Petition Date through and including the last day of the relevant period (the “Testing Period”), which Variance (i) is not more than 17.5% less than the aggregate amount in the Budget for operating receipts for such Testing Period and (ii) is not more than the greater of (A) 15% less than the total aggregate amount in the Budget for Net Cash Flow for such Testing Period and (B) \$3,000,000 less than the total aggregate amount in the Budget for Net Cash Flow for such Testing Period, in the case of each of clauses (i) and (ii), tested weekly; provided, however, that the first such Variance with respect to clauses (i) and (ii) will be tested after the end of the fourth calendar week after the Petition Date.

“Person” means any individual, partnership, corporation (including a business trust and a public benefit corporation), joint stock company, estate, association, firm, enterprise, trust, limited liability company, unincorporated association, joint venture and any other entity or Governmental Authority.

“Petition Date” has the meaning set forth in the recitals to this Agreement.

“Plan” means of a plan of reorganization or plan of liquidation under Chapter 11 of the Bankruptcy Code of the Credit Parties (including all related schedules, supplements, exhibits and orders, as applicable), which shall otherwise be in form and substance satisfactory to the Required Lenders.

“Post-Carve Out Trigger Notice Cap” means \$1,000,000.

“Prepetition ABL Agent” means General Electric Capital Corporation, as agent under the Prepetition ABL Credit Agreement, and any successor thereto.

“Prepetition ABL Credit Agreement” means that certain Credit Agreement dated as of September 25, 2012, by and among the Borrowers party thereto, the lenders party thereto, General Electric Capital Corporation, as agent for such lenders, and the other Persons party thereto.

“Prepetition ABL Lenders” means the lenders under the Prepetition ABL Credit Agreement.



“Prepetition ABL Liens” means the Liens granted on the “Collateral” (as defined in the Prepetition ABL Credit Agreement) under the Prepetition ABL Credit Agreement securing the Prepetition ABL Obligations.

“Prepetition ABL Obligations” means all outstanding amounts of the loans provided under the Prepetition ABL Credit Agreement as of the Closing Date.

“Prepetition Parties” means, collectively, the ~~Existing~~-Prepetition ABL Agent, the ~~Existing~~-Prepetition ABL Lenders, the Existing Term Loan Agent, and the Existing Term Loan Lenders.

“Primed Liens” has the meaning set forth in the recitals to this Agreement.

“Prior Indebtedness” means the Indebtedness and all other obligations outstanding under the Existing ~~ABL Credit~~ DIP Loan Agreement.

“Prior Lenders” means the holders of any Prior Indebtedness and any agent for such holders.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

“Pro Rata Percentage” see the definition of “Commitment Percentage”.

“Purchasers” has the meaning assigned to such term in the Asset Purchase Agreement.

“Rate Contracts” means swap agreements (as such term is defined in Section 101 of the Bankruptcy Code) and any other agreements or arrangements designed to provide protection against fluctuations in interest or currency exchange rates, including, without limitation, 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.

“Real Estate” means any real property owned, leased, subleased or otherwise operated or occupied by any Credit Party or any Subsidiary of any Credit Party.

“Register” has the meaning set forth in Section 1.4(b).

“Related Persons” means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor (including those retained in



connection with the satisfaction or attempted satisfaction of any condition set forth in Article II) and other consultants and agents of or to such Person or any of its Affiliates.

“Releases” means any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material into or through the environment.

“Remedial Action” means all actions under Environmental Laws required to (a) clean up, remove, treat or in any other way address any Hazardous Material in the indoor or outdoor environment, (b) prevent or minimize any Release so that a Hazardous Material does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment or (c) perform pre remedial studies and investigations and post-remedial monitoring and care with respect to any Hazardous Material.

“Required Lenders” means, as of any date of determination, Lenders then holding more than fifty percent (50%) of the sum of the Aggregate Revolving Loan Commitment then in effect and the aggregate unpaid principal amount of Term Loans then outstanding or, if the Aggregate Revolving Loan Commitments have terminated, Lenders then holding more than fifty percent (50%) of the sum of the aggregate unpaid principal amount of Revolving Loans then outstanding and the aggregate unpaid principal amount of Term Loans then outstanding.

“Required Revolving Lenders” means, as of any date of determination, Revolving Lenders then holding more than fifty percent (50%) of the sum of the Aggregate Revolving Loan Commitment then in effect or, if the Aggregate Revolving Loan Commitments have terminated, Revolving Lenders then holding more than fifty percent (50%) of the sum of the aggregate unpaid principal amount of Revolving Loans then outstanding.

“Requirement of Law” means, with respect to any Person, the common law and any federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Replacement Lender” has the meaning set forth in Section 9.22.

“Responsible Officer” means the chief executive officer, chief financial officer, the president or the senior vice president - finance of a Borrower or Borrower Representative, as applicable, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants or delivery of financial information, the chief financial officer, senior vice president - finance or the treasurer of a Borrower or Borrower Representative, as applicable, or any other officer having substantially the same authority and responsibility.

“Restricted Amount” means, at any time, an amount equal to the sum at such time of (a) the aggregate amount of Investments made by Credit Parties after the Closing Date in the Stock

and Stock Equivalents of Subsidiaries that are not Credit Parties made pursuant to Section 5.4(f), and (b) the outstanding principal amount of intercompany loans and advances made by Credit Parties after the Closing Date to Subsidiaries which are not Credit Parties pursuant to Section 5.4(g) (in each case determined without regard to any write-downs or write-offs).

“Restricted Payments” has the meaning set forth in Section 5.11.

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

“Revolving Lender” means a Lender that has a Revolving Loan Commitment or that has an outstanding Revolving Loan.

“Revolving Loan” has the meaning set forth in Section 1.1(a)(i).

“Revolving Loan Commitment” has the meaning set forth in Section 1.1(a)(i).

“Revolving Note” means a promissory note of the Borrowers payable to a Lender in substantially the form of Exhibit 11.1(d) hereto, evidencing Indebtedness of the Borrowers under the Revolving Loan Commitment of such Lender.

“Sale” has the meaning set forth in Section 9.9(b).

“SDN List” has the meaning set forth in Section 3.27.

“Secured Party” means Agent, each Lender, each other Indemnitee and each other holder of any Obligation of a Credit Party.

“Sellers” has the meaning assigned to such term in the Asset Purchase Agreement.

“Software” means (a) all computer programs, including source code and object code versions, (b) all data, databases and compilations of data, whether machine readable or otherwise, and (c) all documentation, training materials and configurations related to any of the foregoing.

“Special Flood Hazard Area” means an area that FEMA’s current flood maps indicate has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100- year flood) in any given year.

“S&P” means Standard & Poor’s Ratings Services LLC and any successor thereto.

“SPY” means any special purpose funding vehicle identified as such in a writing by any Lender to Agent.

“Stalking Horse Purchaser” means one or more newly-formed entities, controlled by investment funds managed ~~Oaktree~~ by KPS and its affiliates, appointed as the stalking horse purchaser with respect to the Bankruptcy Sale.

“Stock” means all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or nonvoting.

“Stock Equivalents” means all securities convertible into or exchangeable for Stock or any other Stock Equivalent and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any Stock or any other Stock Equivalent, whether or not presently convertible, exchangeable or exercisable.

“Subordinated Indebtedness” means Indebtedness of any Credit Party or any Subsidiary of any Credit Party which is subordinated to the Obligations as to right and time of payment and as to other rights and remedies thereunder in accordance with a Subordination Agreement, and having such other terms as are, in each case, reasonably satisfactory to Agent.

“Subordination Agreement” means, collectively, each subordination agreement by and among Agent, the applicable Credit Parties, the applicable Subsidiaries of the Credit Parties and the holders of Subordinated Indebtedness, each in form and substance satisfactory to Agent and each evidencing and setting forth the priority of the Obligations over such Subordinated Indebtedness, as the same may be amended, restated and/or modified from time to time subject to the terms thereof.

“Subsidiary” means, with respect to any Person, any corporation, partnership, joint venture, limited liability company, association or other entity, the management of which is, directly or indirectly, controlled by, or of which an aggregate of more than fifty percent (50%) of the voting Stock is, at the time, owned or controlled directly or indirectly by, such Person or one or more Subsidiaries of such Person; provided, that notwithstanding the foregoing, for purposes of compliance with the covenants in this Agreement and the other Loan Documents, Furniture Brands Canada, ULC shall not be deemed to be a Subsidiary of any Credit Party.

“Successor Cases” means any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of these Cases, or in any other proceedings superseding or related to any of the foregoing.

“Tax Affiliate” means, (a) each Borrower and its Subsidiaries and (b) any Affiliate of a Borrower with which such Borrower files or is eligible to file consolidated, combined or unitary tax returns.

“Tax Returns” has the meaning set forth in Section 3.10.

“Taxes” has the meaning set forth in Section 10.1(a).

“Termination Date” means the earliest of (a) the date of the closing or consummation of a Bankruptcy Sale, (b) the date that is 150 days after the Petition Date, and (c) the occurrence of any Event of Default.

“Term Loan Commitment” has the meaning set forth in Section 1.1(b).

“Term Loan” means the term loan made by the Term Lenders to the Borrowers on the Closing Date pursuant to Section 1.1(b) hereof in the original principal amount of \$90,000,000 ~~(it being understood that as a result of the original issued discount applied to the Term Loan, the funded amount of the Term shall only be \$88,000,000).~~

“Term Lender” means a Lender that has a Term Loan Commitment or a portion of the outstanding and unpaid Term Loan.

“Term Note” means a promissory note of the Borrowers payable to a Term Lender in substantially the form of Exhibit 11.1(e) hereto, evidencing Indebtedness of the Borrowers under the portion of the Term Loan owing to such Term Lender.

“Testing Period” has the meaning set forth in the definition of “Permitted Variance”.

“Title IV Plan” means a pension plan subject to Title IV of ERISA, other than a Multiemployer Plan, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

“Trade Secrets” means all right, title and interest (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to trade secrets.

“Trademark” means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers and, in each case, all goodwill associated therewith, all registrations and recordings thereof and all applications in connection therewith.

“UCC” means the Uniform Commercial Code of any applicable jurisdiction and, if the applicable jurisdiction shall not have any Uniform Commercial Code, the Uniform Commercial Code as in effect from time to time in the State of New York.

“United States” and “U.S.” each means the United States of America.

“U.S. Lender Party” means each of Agent, each Lender, each SPY and each participant, in each case that is a United States person as defined in Section 770 1(a)(30) of the Code.

“Variance” means a difference in the amount contained in the Budget with respect to sales receipts and Net Cash Flow, in each case compared to the actual aggregate sales receipts and/or actual aggregate Net Cash Flow, as applicable, on a cumulative basis.

“Variance Report” has the meaning set forth in Section 4.2(d).

“Wholly-Owned Subsidiary” of a Person means any Subsidiary of such Person, all of the Stock and Stock Equivalents of which (other than directors’ qualifying shares required by law) are owned by such Person, either directly or through one or more Wholly-Owned Subsidiaries of such Person.

## **11.2 Other Interpretive Provisions**

(a) **Defined Terms.** Unless otherwise specified herein or therein, all terms defined in this Agreement or in any other Loan Document shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meanings of defined terms shall be equally applicable to the singular and plural forms of the defined terms. Terms (including uncapitalized terms) not otherwise defined herein and that are defined in the UCC shall have the meanings therein described.

(b) **The Agreement.** The words “hereof”, “herein”, “hereunder” and words of similar import when used in this Agreement or any other Loan Document shall refer to this Agreement or such other Loan Document as a whole and not to any particular provision of this Agreement or such other Loan Document; and subsection, section, schedule and exhibit references are to this Agreement or such other Loan Documents unless otherwise specified.

(c) **Certain Common Terms.** The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The term “including” is not limiting and means “including without limitation.”

(d) **Performance; Time.** Whenever any performance obligation hereunder or under any other Loan Document (other than a payment obligation) shall be stated to be due or required to be satisfied on a day other than a Business Day, such performance shall be made or satisfied on the next succeeding Business Day. For the avoidance of doubt, the initial payments of interest and fees relating to the Obligations (other than amounts due on the Closing Date) shall be due and paid on the first day of the first month or quarter, as applicable, following the entry of the Obligations onto the operations systems of Agent, but in no event later than the first day of the second month or quarter, as applicable, following the Closing Date. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including.” If any provision of this Agreement or any other Loan Document refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision shall be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(e) **Contracts.** Unless otherwise expressly provided herein or in any other Loan Document, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, shall be deemed to include all subsequent amendments, thereto, restatements and substitutions thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(f) Laws. References to any statute or regulation may be made by using either the common or public name thereof or a specific cite reference and are to be construed as including all statutory and regulatory provisions related thereto or consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

### **11.3 Accounting Terms and Principles**

. All accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in accordance with GAAP. No change in the accounting principles used in the preparation of any financial statement hereafter adopted by the Company shall be given effect for purposes of measuring compliance with any provision of Article V unless the Borrowers, Agent and the Required Lenders agree to modify such provisions to reflect such changes in GAAP (and the Borrowers, the Agent and the Lenders agree to negotiate in good faith with respect thereto) and, unless such provisions are modified, all financial statements and similar documents provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to in Article V shall be made, without giving effect to any election under Accounting Standards Codification 825-10 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Credit Party or any Subsidiary of any Credit Party at "fair value."

### **11.4 Payments**

. Agent may set up standards and procedures to determine or redetermine the equivalent in Dollars of any amount expressed in any currency other than Dollars and otherwise may, but shall not be obligated to, rely on any determination made by any Credit Party. Any such determination or redetermination by Agent shall be conclusive and binding for all purposes, absent manifest error. No determination or redetermination by any Secured Party or any Credit Party and no other currency conversion shall change or release any obligation of any Credit Party or of any Secured Party (other than Agent and its Related Persons) under any Loan Document, each of which agrees to pay separately for any shortfall remaining after any conversion and payment of the amount as converted. Agent may round up or down, and may set up appropriate mechanisms to round up or down, any amount hereunder to nearest higher or lower amounts and may determine reasonable de minimus payment thresholds.

### **11.5 Existing Term Loan Agreement**

. Notwithstanding anything to the contrary contained herein or any other Loan Documents, neither any Credit Party nor any Subsidiary or Affiliate of any Credit Party shall be required to comply with any term or provision of the Existing Term Loan Agreement or any other Loan Document (as such term is defined in the Existing Term Loan Agreement) and such non-compliance shall not be a Default or an Event of Default under the terms of this Agreement or any other Loan Document. In addition, the Lenders shall seek and obtain the consent of the Lenders (as such term is defined in the Existing Term Loan Agreement) under the Existing Term

Loan Agreement of the transactions contemplated by this Agreement, the Bankruptcy Sale, the Lane Sale and the Orders.

**11.6 Required Lender**

. In the event that no affiliate of Initial Lender is a Lender, then references to “~~Oaktree~~KPS” with respect to discretionary matters or matters requiring the approval or satisfaction of ~~Oaktree~~KPS shall mean the Required Lenders.

**[Signature Pages Follow.]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written.

**BORROWERS:**

**FURNITURE BRANDS  
INTERNATIONAL, INC.**

By: \_\_\_\_\_  
Name: Vance C. Johnston  
Title: Chief Financial Officer

BROYHILL FURNITURE INDUSTRIES,  
INC.

HDM FURNITURE INDUSTRIES, INC.  
LANE FURNITURE INDUSTRIES, INC.  
MAITLAND- SMITH FURNITURE  
INDUSTRIES, INC.  
THOMAS VILLE FURNITURE  
INDUSTRIES, INC.

By: /s/ Vance C. Johnston  
Name: Vance C. Johnston  
Title: Senior Vice President – Finance

**BORROWER REPRESENTATIVE:**

**FURNITURE BRANDS  
INTERNATIONAL, INC.**

By: /s/ Vance C. Johnston  
Name: Vance C. Johnston  
Title: Chief Financial Officer

Address for notices:

1 N. Brentwood Blvd., Ste 1500  
St. Louis, MO 63105

Attn: General Counsel  
Facsimile:

Address for wire transfers:

Wire Routing ABA Number: 121000248  
Bank Name: Wells Fargo Bank  
City, State: San Francisco, CA  
Account Number: 412-0550124  
Title of Account: Furniture Brands  
International



**CREDIT PARTIES:**

**ACTION TRANSPORT, INC.  
BROYHILL HOME FURNISHINGS,  
INC.  
BROYHILL RETAIL, INC.  
FURNITURE BRANDS RESOURCE  
COMPANY, INC.  
FURNITURE BRANDS HOLDINGS,  
INC.  
FURNITURE BRANDS OPERATIONS,  
INC.  
HDM RETAIL, INC.  
LANE HOME FURNISHINGS RETAIL,  
INC.  
THOMAS VILLE HOME  
FURNISHINGS, INC.  
THOMAS VILLE RETAIL, INC.**

By: \_\_\_\_\_  
Name: Vance C. Johnston  
Title: Senior Vice President - Finance

With a copy to:

Paul Hastings LLP  
75 East 55th Street  
New York, NY 10022

Attention;

Leslie Plaskon  
Phone: (212) 318-6421  
Fax: (212) 230-5137  
Email: [leslieplaskon@paulhastings.com](mailto:leslieplaskon@paulhastings.com)

~~NEXBANK SSB~~ BANK OF AMERICA,  
N.A., as Agent

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

Name:

Title:

~~Address~~ Addresses for Notices:

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

~~NexBank, SSB~~

~~2515 McKinney Avenue~~ 135 South LaSalle  
Street, Suite 1100 943  
Chicago, Illinois 60603

~~Dallas, TX 75201~~

Attention: ~~Jeff Scott~~ Mark E. Blankstein,  
Senior Vice President

Phone: (~~972~~312) ~~934-4741~~ 234-4662

~~Fax: (972) 934-4785~~

With a copy to:

~~King Winston & Spalding~~ Strawn LLP  
~~1180 Peachtree Street, N.E.~~  
~~Atlanta, Georgia 30309~~

~~Attention:~~

35 West Wacker Drive  
Chicago, Illinois 60601-9703

Attention: Timothy J. Dable

~~Jesse H. Austin, III, Partner~~

Phone: (~~404~~312) ~~572-2882~~ 558-6369

Fax: (~~404~~312) ~~572-5100~~ 558-5700

Email:

~~jaustin@kslaw.com~~ tdable@winston.com

KPS SPECIAL SITUATIONS FUND III, LP, as Lender

By: KPS Investors III, LP  
its general partner

By: KPS Capital Partners, LLC  
its general partner

By:  
Name: Raquel Palmer  
Title: Authorized Signatory

~~OCM FB HOLDINGS CTB, LTD~~ KPS SPECIAL SITUATIONS FUND III (A), L.P., as Lender

~~BY: OAKTREE CAPITAL MANAGEMENT, L.P.,~~  
By: KPS Investors III, Ltd.  
its general partner

~~as Sole Director~~

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

By:  
Name: Raquel Palmer  
Title: Vice President

KPS SPECIAL SITUATIONS FUND III (SUPPLEMENTAL), LP, as Lender

By: KPS Investors III (AIV), LP  
its general partner

~~Address for notices:~~

~~OCM FB Holdings CTB, Ltd.~~  
~~C/O: Oaktree Capital Management, L.P.~~  
~~333 S. Grand Avenue, 28th Fl.~~  
~~Los Angeles, CA 90071~~

~~Attention:~~

~~Terence Kim~~  
By: KPS Investors III (AIV), Ltd.  
its general partner

By:  
Name: Raquel Palmer  
Title: Vice President

**KPS SPECIAL SITUATIONS FUND III  
(SUPPLEMENTAL – AIV), LP, as Lender**

By: KPS Investors III (AIV), LP  
*its general partner*

By: KPS Investors III (AIV), Ltd.  
*its general partner*

By: \_\_\_\_\_  
Name: Raquel Palmer  
Title: Vice President

Addresses for notices:

KPS Special Situations Fund III, LP; KPS Special Situations Fund III(A), LP; KPS Special Situations Fund III (Supplemental), LP; KPS Special Situations Fund III (Supplemental - AIV), LP

c/o: KPS Capital Partners, LP  
485 Lexington Avenue  
New York, NY 10017

Attention:

Raquel Palmer

Phone: ~~(213) 212-830-6804~~ 338-5115

Email:

~~tekim@oaktreecapital.com~~ rpalmer@kpsfund.com

Evan LePatner

~~David Quick~~

Phone: ~~(213) 212-830-6374~~ 338-5153

Email:

~~dquick@oaktreecapital.com~~ elepater@kpsfund.com

Adam Fuchs

~~Kaj Vazales~~

Phone: ~~(213) 212-830-6450~~ 338-5136

Email:

~~kvazales@oaktreecapital.com~~ afuchs@kpsfund.com

Spencer Ross

~~Jordon Kruse~~

Phone: ~~213-830-6369~~ (212) 338-5146

Email: ~~jkruse@oaktreecap.com~~ sross@kpsfund.com

~~David DesPrez~~

Email: ~~ddesprez@oaktreecapital.com~~

~~David Orkin~~

Email: ~~dorkin@oaktreecapital.com~~

~~Mel Carlisle~~

Email: ~~mearlisle@oaktreecapital.com~~

With a copy to:

~~Kirkland & Ellis~~ Proskauer Rose LLP  
333 S. Hope St.  
Los Angeles, CA 90071

~~Attention: David Nemecek~~

70 West Madison Street, Suite 3800

[Attention: Mark Thomas](#)

Phone: ~~(213) 312-680-8111~~ [962-3560](#)

Email:

~~[david.nemecek@kirkland.com](mailto:david.nemecek@kirkland.com)~~ [mthomas@proskauer.com](mailto:mthomas@proskauer.com)

[Proskauer Rose LLP](#)

[Eleven Times Square](#)

[New York, NY 10036](#)

[Attention: Ron Franklin](#)

Phone: [\(212\) 969-3195](#)

Email: [rfranklin@proskauer.com](mailto:rfranklin@proskauer.com)

[Exhibit A](#)

[\[Budget\]](#)



Comparison Details	
Title	pdfDocs compareDocs Comparison Results
Date & Time	9/30/2013 9:00:53 PM
Comparison Time	6.78 seconds
compareDocs version	v3.4.14.14

Sources	
Original Document	[#4361442] [v1] FB - Oaktree DIP Credit Agreement (Lane Retention Version)_(28015147_2).docDMS Information
Modified Document	[#4361441] [v1] KPS Clean DIP Credit Agreement.docDMS information

Comparison Statistics	
Insertions	205
Deletions	221
Changes	208
Moves	4
TOTAL CHANGES	638

Word Rendering Set Markup Options	
Name	Standard
<u>Insertions</u>	
<del>Deletions</del>	
<u>Moves</u> / Moves	
Inserted cells	
Deleted cells	
Merged cells	
Formatting	Color only.
Changed lines	Mark left border.
Comments color	ByAuthorcolor options]
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	True
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False