IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	**Chapter 11**
BUILDING MATERIALS HOLDING CORPORATION, *et al.*,[1]	)	**Case No. 09-12074 (KJC)**
Debtors.	)	**Jointly Administered**

NOTICE OF FILING OF AMENDED AND RESTATED PLAN SUPPLEMENT PURSUANT TO THE JOINT PLAN OF REORGANIZATION FOR THE DEBTORS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE AMENDED DECEMBER 7, 2009 (WITH TECHNICAL MODIFICATIONS)

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the "Debtors") have filed the Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended December 7, 2009 [D.I. 1066] (as may be amended from time to time, the "Plan").

PLEASE TAKE FURTHER NOTICE that, pursuant to section 12.1 of the Plan, on November 15, 2009, the Debtors filed certain Plan Supplement documents with the United States Bankruptcy Court for the District of Delaware.

PLEASE TAKE FURTHER NOTICE that the Debtors hereby file the following amended and restated Plan Supplement documents:

A. Biographical Information Regarding Proposed Officers and Directors

1. Jay B. Hunt, Chairman

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1 The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

2. Carl Vertuca, Audit Committee Head

3. Peter Alexander, Compensation Committee Head

4. Michael Maidy, Vice Chairman, Audit Committee

5. Dennis Downer, Director

6. Marc Chasman, Director

7. Paul S. Street, Director and Chief Executive Officer

8. Stan Wilson, President and Chief Operating Officer

9. Danny McQuarry, Vice President and Chief Financial Officer

10. Lesa D. Thomas, Secretary

B. Disclosure of Annual Compensation of Proposed Officers and Directors

C. Exit Revolving Credit Agreement/Exit Term Loan Credit Agreement

D. Term Loan Credit Agreement

E. Intercreditor Agreement

F. Restructuring Transactions Memorandum

G. New Certificates of Incorporation/Certificates of Formation

1. Building Materials Holding Corporation

2. BMC West Corporation

3. SelectBuild Construction, Inc.

4. SelectBuild Northern California, Inc.

5. Illinois Framing, Inc.

6. C Construction, Inc.

7. TWF Construction, Inc.

8. H.N.R. Framing Systems, Inc.

9. SelectBuild Southern California, Inc.

10. SelectBuild Nevada, Inc.

11. SelectBuild Arizona, LLC

12. SelectBuild Illinois, LLC

H. New Bylaws

1. Building Materials Holding Corporation

2. BMC West Corporation

3. SelectBuild Construction, Inc.

4. SelectBuild Northern California, Inc.

5. Illinois Framing, Inc.

6. C Construction, Inc.

7. TWF Construction, Inc.

8. H.N.R. Framing Systems, Inc.

9. SelectBuild Southern California, Inc.

10. SelectBuild Nevada, Inc.

I. Amended and Restated Limited Liability Company Operating Agreements

1. SelectBuild Arizona, LLC

2. SelectBuild Illinois, LLC

J. Shareholder Agreement

K. Registration Rights Agreement

L. Causes of Action

1. BMC West Corporation

2. SelectBuild Northern California, Inc.

3. TWF Construction, Inc.

4. SelectBuild Southern California, Inc.

5. SelectBuild Nevada, Inc.

PLEASE TAKE FURTHER NOTICE that the amended and restated Plan Supplement documents are available for viewing, downloading and/or printing by accessing the Debtor's website at http://www.bmhcrestructuring.com or by sending a written request to Debtors' counsel listed below.

PLEASE TAKE FURTHER NOTICE that the Debtors reserve the right to supplement, amend, revise or otherwise modify the amended and restated Plan Supplement documents.

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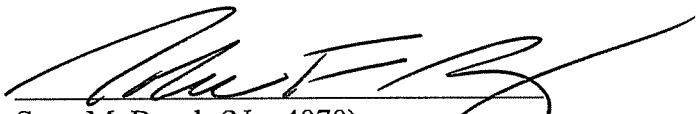
Dated: Wilmington, Delaware
December 7, 2009

YOUNG CONAWAY STARGATT &
TAYLOR, LLP



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ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

[Biographical Information Regarding Proposed Officers and Directors]

1. Jay B. Hunt, Chairman

Jay B. Hunt
www.thedevelopmentgroup.com

Jay is an expert at working with companies facing a business crisis. He has successfully helped many such businesses work through issues ranging from management conflict to operating problems arising from underperformance and lack of planning. Jay is also an expert at identifying core competencies and marketing leverage to reposition a company and its products and services.

Jay founded The Development Group in 1991 to concentrate on providing advisory services to companies in crisis or wrestling with difficult issues. He has been involved in development activities and turnarounds of a wide range of companies, some controlled by wealthy families.

Corporate Governance

Jay has over 30 years of governance experience including service as Non-Executive Chair of DDi Corp., Inc. (NASDAQ:DDIC, www.ddiglobal.com) since 2003 and a member of its Audit and Compensation Committees. DDi is a leading provider of time-critical, technologically advanced electronics manufacturing services for the electronics industry. Under his leadership, DDi has completely realigned its management team, refinanced its balance sheet, sharpened its strategic focus, disposed of unproductive operating assets and done an accretive acquisition. Since 1996, he has also been a Member of the Advisory Board for Joie de Vivre Hospitality (JDV). JDV (www.jdvhospitality.com) owns and/or manages 40 businesses including hotels, spas and restaurants and has revenues of $250 million. The Advisory Board has been involved in advising the CEO and Founder on every important decision during that time. These have included: capital and organizational structure and focus to responding to the events of September 11 and the telecom implosion in 2001-2002 to the most recent economic crisis as well as the development of a strategic plan that has moved the company to a dominant position in its market. He was also a Director of Gentiae Clinical Research, Inc., a venture capital backed global specialty clinical research organization for cardiac safety monitoring, imaging and cardiovascular clinical research in drug and device development.

Jay was also a Director of Electronic Medical Management, Inc. (EMMI). EMMI, prior to his involvement, had entered into a reverse merger with a public shell company which was found to be tainted resulting in an SEC enforcement action requiring the establishment of a rescission fund for shareholders. Under Jay's guidance, the company retained counsel and went private. Jay was a Director Nominee on a slate for F. Hoffman-La Roche (Roche Pharmaceuticals) in connection with Roche's hostile tender offer for Ventana Medical Systems, Inc. (VMA). Roche commenced an unsolicited all-cash tender offer for all of VMA's outstanding shares of common stock for approximately $3 billion in June 2007. The parties entered into a friendly acquisition agreement for approximately $3.5 billion cash in early 2008, and Roche subsequently completed its acquisition of VMA.

Management Experience

Jay served FM Productions as Executive Vice President and a member of its Executive Management Committee and Board of Directors. He was responsible for all functions except manufacturing and creative services for this premier entertainment services company. Prior to that, Jay formed a joint venture with First Nationwide Bank to purchase a subsidiary of Wells Fargo & Co. that provided asset management and administrative services to developers throughout the United States and Mexico and to over 100 financial institutions in the U. S; he served the company as Chairman & CEO. Immediately prior to this acquisition, Jay was a Vice President of The Bank of California where he had marketing and sales responsibility for five operating units.

Jay also served in several sales, product development, marketing and division management capacities for the Simmons Company over a nine year period including general management responsibility for a division headquartered in San Francisco with accountability for sales in thirteen western states. He directed sales relationships with most of the major hotel and resort chains, cruise ship operators based on the Atlantic seaboard and federally funded Model City housing projects. Jay's professional career began with Caterpillar Tractor Co. where he managed accounts representing over $125 million of revenue annually.

Consulting Engagements

Jay has experience in these industries: Basic and Specialty Manufacturing, Real Estate and Real Estate Services, Contract Furnishings, Financial Services, Healthcare, Entertainment Production and Services, Private Trusts, Food Processing and Packaging, Transportation, Professional Service Firms, Wine and Spirits Distribution, Paper Products, Hospitality (hotels, vacation ownership and restaurants), Specialty Distribution, Retail, Venture Capital, Technology, and Mediating Family "Fights".

Specific assignments have included: a specialty distribution company with $225 million of revenue which was in violation of its loan covenants and experiencing a liquidity crisis. With Jay's guidance, the company reduced its working capital line to zero for the first time in 20 years and recorded record profit; a company in the leisure and hospitality services business with an immediate need to restructure and to help it deal with its lender; a testamentary trust which found itself in an impaired collateral position with illiquid assets and a position in a public company which went bankrupt. Other assignments have included a company controlled by two families with much different perspectives on value creation which resulted in the liquidation of the company; a conflict between siblings over the performance of various real estate assets bequeathed to them by their parents; another family with significant differences about managing a variety of commercial property; a company (private) with over a billion dollars of revenue with a "disconnect" within the family and between the family and management over the acquisition strategy then in place and the family's needs, and, a private company with substantial unencumbered real estate assets but a specialty retail business in trouble with its bank.

Community Involvement and Education

He is a Director of the Indiana University Foundation and former Chair of the Ischemia Research & Education Foundation. Jay is a former Director and Treasurer of the San Francisco General Hospital Foundation, a former Director and President of the Phi Gamma Delta Educational Foundation, a former Director of the American Resort Development Association and a member of the Connecticut and American Bar Associations. Jay received his BA in Political Science from Indiana University and his Juris Doctor degree from the University of Michigan Law School. He has attended Harvard Business School's program, "Making Corporate Boards More Effective".

2. Carl Vertuca, Audit Committee Head

Carl R. Vertuca, Jr.

Summary

Mr. Vertuca is President of The Vertuca Group, a venture capital and real estate investment company. Prior to the formation of The Vertuca Group in 2000, he was Executive Vice President and a Director of The Dii Group, a publicly held contract manufacturing company. Prior to the Dii Group, Mr. Vertuca held various management positions in manufacturing, engineering, and finance at IBM Corporation and at StorageTek Corporation.

Employment History

March, 1993 – April, 2000 DiiG Corporation

In 1993 Mr. Vertuca was appointed Chief Financial Officer and a Director of Dovatron International, Inc. (later the DiiG Group) and helped to facilitate its public spin-out from Dover Corporation. From 1993 to 1999, he was responsible for several debt & equity offerings. In 1996, he became Executive Vice President of Finance & Administration responsible for: Human Resources, CIO, Legal and Insurance, CFO and Corporate Development as well as preparing the Audit Committee and Compensation Committee presentations. He was also Board Secretary.

As head of Corporate Development, Mr. Vertuca implemented an acquisition strategy that included the purchase of all of the company's printed circuit board shops: Multek in Irvine, Roseville from Unysis, Zhuhai China PCM Facility, IBM Austin Facility, Hewlett-Packard's Germany facility, Guadalajra, Mexico facility along with several smaller design shops. In total, Mr. Vertuca was directly responsible for completing over 30 acquisitions and divestitures during this seven year period.

The PCB business alone was valued at $800 million when it was sold to Flextronics. Overall, the enterprise value grew from a spin-out cap value of $70 million in May, 1993 to $4.0 Billion in April, 2000, increasing shareholder value 57 times in 7 years.

July, 1982 – March, 1993 StorageTek Corporation

Mr. Vertuca was instrumental in putting StorageTek into and bringing it out of Chapter 11 bankruptcy proceedings as one of the four key managers who were involved with the creditors' committee. He became Corporate Treasurer after the bankruptcy filing and was responsible for all of the new bank relationships and leasing agreements. From 1984 to 1990, he grew the bank revolver significantly and implemented several public debt and equity offerings. In 1990, he began reporting to the Chairman & CEO as CVP of Corporate Development. In all, Mr. Vertuca, managed 27 acquisitions while at StorageTek, most of which were product companies in the mid-range computer space, the rest were software and networking companies.

June, 1966 – June, 1982 I.B.M. Corporation

From 1966 to 1973, Mr. Vertuca completed a 3-1/2 year apprenticeship to become a journeyman Tool & Die Maker and worked in tool design and mechanical engineering. From 1973 to 1977, he held various accounting positions including cost, labor and planning. From 1979 to 1982, he did product pricing and then became the plant controller at the IBM facility in Endicott, NY. About half the output ($1.2 billion) at this plant was multilayer boards for the Mainframe 370 as well as the 4300 mid-range computers.

Education

Mr. Vertuca received his Associate degree in Mechanical Engineering, a Bachelor's degree in Business and a Masters in Business Administration from the University of Kentucky.

3. Peter Alexander, Compensation Committee Head

PETER C. ALEXANDER

Proven record of international growth of large global firms, including technology, retail/distribution and service firms, focused on improvement of underperforming companies, brand development, clear and measurable metric management, focused strategy and leadership for sustainable profitability and ethical corporate performance. Have lead businesses in over 25 countries and successfully completed and integrated 41 acquisitions across the globe

PROFESSIONAL ACCOMPLISHMENTS

ORCO Construction Distribution – Livermore, CA May 2005 – present
President and Chief Executive Officer

Hired by Board of Directors to grow and manage the largest independent building materials distributor in the Western United States ($318MM in annual revenues). Managed over 700 employees in three states, implemented entire new systems platform with industry leading metric management, led all branding, financial and operational categories of building distribution companies nationally. Grew market share by almost double in four years, in an industry market which decreased in size during the same period by almost two thirds. Implemented ORCO Bulldog brand, which was awarded Best Brand by ProDealer Magazine. Reduced debt from $52MM to $10MM, grew margins by 400 basis points, reduced headcount by nearly 70 percent and maintained 98.5 percent service level to customers. Personally involved in recruitment of entirely new and independent board of directors, and implemented all compliance and governance standards consistent with Sarbanes-Oxley.

Consistently reviewed as excellent performer by independent board and shareholders, and exceeded performance metrics in 44 of 48 months. Featured as cover story in leading trade publication, Construction Distribution, and ranked as fastest growing and among most successful distributors by that magazine. Sold to largest national competitor on June 2009.

KinderOaks Business Services – Atlanta, GA 2002-May 2005
Managing Partner - Turnaround/Interim CEO Practice

Managing Partner of turnaround/interim CEO management firm engaged by asset based lenders, board of directors, and private equity groups to improve underperforming investments. Focused on global firms with revenues of $110MM - $4 billion in annual revenues, and lead each to significant profitability and growth improvements.

Engaged by banking syndications on $280MM Colorado-based bus manufacturer, $35MM Georgia-based payer/provider health care business process outsourcing firm, and $200MM New York-based middle tier call center/CRM operation. Also engaged directly by Board of Management of an Amsterdam based $4B public managed service firm to devise and execute integration plan of over 16 countries with an immediate annual improvement of $28MM to bottom line profitability. Completed two separate equity raises, and offshore acquisition in India.

Successfully executed operational turnaround of four mid to large cap companies, resulting in multiple options for shareholders for liquidity, public offering or long term company independence.

ZVOLVE

Zvolve Systems, Inc. – Atlanta, GA – 2001 to 2002
President and Chief Executive Officer

Recruited by majority investor to commercialize and lead startup telecom software firm to profitability and to eventual liquidity event. Completed general acceptance and subsequent software product version releases in less than half the average timeframe and one third of the average development cost. Flawlessly passed technology validations at two of the largest US data carriers, and positioned company for near term sale to a larger telecom services firm. Secured profitable partnerships with IBM Global Services, Cisco, Sun and Hewlett-Packard. Led branding efforts from ground up utilizing brand positioning, market image, destination branding and brand association. Product received Best New Product Award at SuperComm in 2002 (beating Lucent, Hitachi and Nortel) and Best Global Innovation Award by OSS TeleStrategies in 2003. 3 Direct reports; 21 employees in total. Negotiated sale to major French telecom firm in 2002 for 4 times return to shareholders.

TELSCAPE communications

Telscape International Inc. - Atlanta, GA - 1999 to 2001
President and Chief Operating Officer

Responsible for all operations, P&L, and balance sheet matters of this public firm. Executed reverse merger between Pointe Communications and Telscape International, completed restructuring and focus on key value product sets and led successful startup of a Hispanic based Competitive Local Exchange Company, now the largest Hispanic CLEC in the US. Completed construction and lighting of 4100 km fiber network, the 3rd largest and most cost effective fiber optic network in Mexico today.

Successfully eliminated seven product lines, created two distinct and measurable business units and set metric management in place from top to bottom. Completed overhaul of entire product branding from benefits to regulatory to management to products to reporting. Created strategic vision for long-term viability and early exit of burdensome corporate debt structure.

Reduced SG&A by 43 percent while maintaining 400 percent sales growth, centralized all corporate shared services with an annualized savings of $6.7 million, increased margins from 10.2 percent to 43 sustainable percent. Recruited and hired entirely new, considerably smaller corporate management team. Personally negotiated $81 million GE Capital equipment financing instrument during one of the tightest possible financial markets, superceding smaller and costlier facilities by Lucent Technologies, Nortel Finance Corporation, Newbridge and Ascend. 6 direct reports; 600 employees in 11 countries, $140MM in annual revenues. Negotiated sale of company to leading European telecom company.

Premiere Technologies, Inc. [NASDAQ] - Atlanta, GA – 1998 to 1999
President and Chief Operating Officer

Senior executive for technology service provider. Successfully integrated and branded four major acquisitions, boosting revenue growth above industry standards, boosting margins by 4.3 percent, lowering SG&A by 8.2 percent, and beating operational EBIT target by 13 percent. Consolidated disparate sales force into one, Rebranded dated and ineffective services campaign, implemented cross sales initiatives and quickly migrated every product line into Internet utility and Internet enabled access. Also grew non-US revenue from 23 percent of sales to 40 percent of global revenue. 8 direct reports; over 2900 employees in 24 countries, revenues of $500MM. Stock price, based on exceeding analysts expectations, rose from $3 to $28, increasing market cap by nearly $800MM. Resigned due to ethical conduct of Chairman and CEO.

General Electric Company [NYSE] - Atlanta, GA 1994 to 1998
Senior Vice President - Global Operations - GE Capital Information Technology Solutions

Senior operations officer for the non-U.S. managed services/BPO business of this GE Capital Services Company. Responsible for all P&L, balance sheet, regional acquisition integration and operations accounting. Total non-U.S. revenues exceeded $3.5 billion in 1997. Successfully integrated 12 international businesses with increased revenue and no profit disruption. Led divisional and industry financial benchmarks in revenue/contribution per employee, SG&A expenses, and pre-tax profitability. Rebranded services group into globally recognized leader in IT services, gaining almost 28 percent share in non-US markets in four years.

Senior executive responsible for worldwide negotiations and relations with primary vendors such as IBM, Hewlett-Packard, Compaq, Cisco, Microsoft and Sun Microsystems. Achieved President's Club award for all fiscal years [Note: GE Capital Services purchased AmeriData Technologies in September 1996, for which I was President]. 6 direct reports; 5,500 employees in 13 countries, $3.5 billion in annual revenues.

Vanstar Corporation [NASDAQ] - Pleasanton, CA 1990 to 1994
Vice President - International Operations

Responsible for operational turnaround of international division [ComputerLand International] with annual retail sales in excess of $1 billion. Managed all balance sheet, P/L, operations accounting and franchise relations. Led all other operating divisions in sales growth, expense reduction and EBIT per employee. 20 direct reports; over 3,500 employees worldwide, annual revenues of $1.5 billion.

Directly responsible for expansion in 16 new countries, including Pakistan, India, Korea, Philippines, Sri Lanka, Thailand, Singapore, Malaysia, Indonesia, Saipan, Brazil, Argentina, Belorussia, Poland and Vietnam.

Negotiated successful sales of two corporate international divisions in New Zealand and Australia. Restructured European corporate subsidiary managed government and bank negotiations associated with downsizing of European distribution function and subsequent sale of European distribution center.

Coast to Coast

CoastAmerica Corporation [NYSE] - Denver, CO 1987 to 1990
Assistant to the Chairman of the Board - Finance

Active in merger and acquisition activity and strategic planning, contributing to company's $600 million growth in two years. Actively participated in successful 1987 NYSE public offering and subsequent effort to take company private in late 1988. Restructured unprofitable retail division with multimillion losses to profitability in less than six months, leading all other corporate divisions' sales growth and expense reduction. Managed 160 across the country.

Directed all banking relationships for parent company, including day-to-day cash, debt and investment management and restructuring of corporate debt. Also managed daily swaps and foreign exchange exposure. Reorganized multidivisional receipts and disbursements reporting and controls, reducing daily cash requirements and increased investment income.

U.S. House of Representatives - Washington, DC 1981 - 1985
Chief of Staff – Congressman Michael G. Oxley

Managed congressional staff and business relations for two Ohio House Commerce Committee Members of Congress. Directed congressional strategy for privatization of Conrail. Orchestrated successful public and private effort to acquire $70 million Honda Motor Company engine assembly plant in Central Ohio. Managed four concurrent 1980 congressional races and directed strategy for 1982 Ohio gubernatorial campaign. (by profession, the ultimate branding/positioning profession, asking people to fund candidates on the premise of intangible promise)

EDUCATION

The Pennsylvania State University - University Park, PA
Master of Business Administration - 1987

- MBA Class President
- Norman F. Blankman Scholar
- Graduate Assistant

The Ohio State University - Columbus, OH
Bachelor of Arts Degree - 1980

- Honors College
- Battelle Endowment Scholar

The University of Stockholm - Stockholm, Sweden
Attended 1975 to 1977

OTHER

White House Appointment to Conference on Productivity
Top Security Q Clearance - Departments of Defense and Energy
Eagle Scout
Board Member – City of Hope Hospital – Los Angeles, CA

PERSONAL

Married; two daughters. Hobbies: Running (Finisher: New York City Marathon), Squash
Passion for Excellence, Quality, High Ethics Standards and Leadership

4. Michael Maidy, Vice Chairman, Audit Committee

Michael A. Maidy

Co-Managing Director

Michael A. Maidy, one of the co-founders of Sherwood Partners, LLC, comes from a highly successful accounting background. He is a respected authority on innovative financial services and crisis management, with more than 36 years of experience in all facets of credit, lending, and finance.

Before founding Sherwood in 1992, Mr. Maidy was managing partner of a prestigious national CPA firm with offices in Los Angeles, Honolulu and New York. In his capacity as a CPA and financial advisor he was responsible for numerous real estate, apparel/textile, broadcasting/communications, oil and gas, and healthcare clients. His responsibilities included financial structuring and private placement memorandums, as well as corporate restructuring. His expertise is in locating, negotiating and structuring all forms of financing, debt placement, senior debt placement, and mezzanine/equity placements. In addition, he is well known for working creatively with lenders and creditors to enable companies facing financial crises to survive and prosper.

As managing partner for Sherwood's US-Mexico practice, Mr. Maidy helps companies profit by creating strategic operational and financial relationships across the border. In the era of NAFTA, Mexico's proximity to the United States and its large market, abundance of raw goods, and quality labor force make US-Mexico relationships uniquely valuable.

Mr. Maidy has extensive relationships in the venture capital, commercial finance and investment banking communities. He is one of the leading authorities regarding corporate restructuring, finance and Assignments for the Benefit of Creditors (ABCs). His approach is to be completely involved from the start to completion of each transaction. He is experienced in a wide range of industries including technology, bio/life science, broadcasting/communications, telecommunications, apparel/textile, real estate/real estate construction, distribution, manufacturing and import/export.

A graduate of the University of Southern California, Mr. Maidy is the author of numerous articles regarding commercial lending.

Sherwood Partners, LLC

Business consulting and advisory services to the industry since 1992

1100 La Avenida Street, Building A
Mountain View, CA 94043

Phone: 650-454-8001
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E-mail: info@shrwood.com

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5. Dennis Downer, Director

Dennis Downer
Career Summary

Dennis has devoted his entire 35 year career to sales and marketing in the forest products industry. An innovator with an ability to identify the existence of opportunities created by marketplace voids, he started six companies to serve different segments of the industry:

Intermountain Orient, Inc.	Boise, Idaho
The Rocky Mountain Company	Boise, Idaho
Idaho Pacific Lumber Co	Boise, Idaho
Specialty Millwork	Boise, Idaho
Sandlin Lumber Company	Las Vegas, Nevada
Rainforest Lumber Company	Lake Oswego, Oregon
Claymark USA	Boise, Idaho

While he has maintained financial interest in only Claymark USA (a partnership with a New Zealand sawmilling operation) and Intermountain Orient, of which he remains CEO and Chairman of the Board, all others continue as successful operations today; a testament to his ability to identify and retain talented personnel.

His interests in the continued well being of the industry transcend the commercial side. In 1989, he was a co-founder of the Temperate Forest Foundation (TFF); an organization dedicated to delivering scientifically credible information about the forest products industry to the nations public schools.

During his tenure as president of the North American Wholesale Lumber Association (NAWLA), he coordinated the efforts of both TFF and NAWLA to develop the *Teachers Tours Program* in Idaho. Additionally, he was instrumental in establishing the Wood Marketing Seminar at the University of Idaho…a program designed to educate young, career minded individuals about the components of and opportunities in the wood products industry.

Dennis is otherwise active in Boise and the intermountain business and philanthropic communities. He is currently serving as a member of the Board's of Directors of Mountain West Bank and the Idaho Youth Ranch.

6. Marc Chasman, Director

Marc Chasman Bio

Education –

University of Pennsylvania, 1985, BA in International Relations, Magna Cum Laude
Anderson Graduate School of Management at UCLA, 1990, MBA – International Business, Entrepreneurial Studies and Finance, graduated near top of class

Professional Career -
Internships –
1983 Credit Lyonnais, Paris
1985 Credit Agricole, Paris
1989 Windsor Capital Management Venture Capital, LA
1989 Citicorp, Singapore

Full Time -
1986-1988 – Chase Investment Bank, New York, financial analyst

1990 – 1995 – KB Home, LA

- 1990-1991 analyst – financial and marketing
- 1991-1995 – Corporate Treasurer
  - Lines of Credit
  - Issuance of Public Debt and Equity
  - Insurance
  - Currency and Interest Rate Hedging
  - Board of Director presentations
  - Relationship Manager with Lenders and Rating Agencies
  - Joint Venture relationships

1996 – 2008 – Lennar Homes, Orange County

- 1996 – 2002 – CFO for Western Region
  - Joint venture origination
  - Project financing (> $500 million)
  - Company acquisition analysis, due diligence and integration (13 companies)
  - Business Planning and budgeting, ultimately 3,000 employees in CA, AZ and NV

- 2002 – 2008 – President Northern California Region (Sac, Reno, SF and Fresno)
  - 8 divisions, peaking at 1200 employees in 2005 generating $2.0 billion in revenue
  - Responsible for all aspects of operations, including customer service, marketing, community involvement, product, overhead management, inventory management, jv relationships, corporate reporting
  - 2005- 2008 reduced overhead by 800 employees, right sizing operations/consolidating functions
  - When left Lennar, my region was #1 region at Lennar for JD Powers Customer Satisfaction, Overhead efficiency and lack of litigation

June 2008 – Present - President Picerne Capital West, San Juan Capistrano (www.picernegroup.com) a boutique real estate investment group.

- Evaluating distressed residential investment opportunities
- Evaluating apartment and other commercial real estate distressed investment opportunities

Personal/Other

- Married for 20 years, 3 children, ages 16,14 and 5

- Serve on Board of Directors of New Alternatives, largest provider of social and mental health services to youths and families in San Diego and Orange County
- Major participant in Fund Raising for Pediatric Research Foundation of Orange County
- Chairman of Board of Bridges Country Club, Rancho Santa Fe, CA

7. Paul S. Street, Director and Chief Executive Officer

Paul S. Street
Building Materials Holding Corporation

Paul S. Street is Senior Vice President, Chief Administrative Officer, General Counsel, and Corporate Secretary of Building Materials Holding Corporation, a leading provider of building materials and construction services to professional residential builders and contractors, serving the homebuilding industry through two subsidiaries: SelectBuild and BMC West. He is responsible for the legal affairs of the Company and administrative functions at its corporate office in Boise, Idaho. He served as general counsel and corporate secretary of the Company in private practice prior to joining the Company in 1999.

Mr. Street is a member of the Idaho State Bar and the American Bar Association. He serves as a member, and formerly the Chairman, of the Governing Council of the Business and Corporate Law Section of the Idaho State Bar. He received several awards of distinguished service as a member of the Section. He served as secretary to the Committee on Corporate Law of the Business Law Section of the American Bar Association from 1996 to 2001. He served in 1996, 1997 and 2003 as Co-Chairman of the Committee to Revise the Idaho Business Corporation Act. Mr. Street also holds memberships in the American College of Real Estate Attorneys and the Society of Corporate Secretaries and Governance Professionals. He is past-Chairman of the Board of United Way of Treasure Valley, and past-Chairman of the Boise Metro Chamber of Commerce.

Mr. Street received his undergraduate degree from College of Idaho (1970) and received his law degree from the University of Washington (1973). He clerked for Justice Henry McQuade of the Idaho Supreme Court (1973 – 1974) and was a member of the law firm of Moffatt Thomas Barrett Rock & Fields (1974 – 1999).

8. Stan Wilson, President and Chief Operating Officer

Stanley M. Wilson
Information Bio

COMPANY INFORMATION:

Company Name: HQ	Building Materials Holding Corporation
Street Address:	720 Park Blvd, Suite 200
City, State, Zip:	Boise, Idaho 83712
Phone Number:	208-331-4300
Current Title	President and Chief Operating officer

PERSONAL INFORMATION:

EDUCATION:

School	Dates Attended	Degree Earned
Meridian, Idaho HS	1959-1963	High School Diploma
Boise State University	1963-1968	Bachelors in Bus. Administration

EMPLOYMENT HISTORY:

Company	Location	Dates	Position
Boise Cascade Corp-Building Materials Division: Supervised accounting dept of BMD Division	Boise, ID	1968-1972	Chief Accountant
Boise Cascade Corp-Bldg Mat Div: Responsible for all accounting records and operating statements preparation for the Northern California Region of BMD Division	Healdsburg, CA	1972-1976	District Controller
Boise Cascade Corp-Bldg Mat Div: Responsible for overseeing all accounting controls for operations in Washington, Oregon and Montana	Boise, ID	1976-1980	NW Area Controller
Boise Cascade Corp-Bldg Mat Div: Responsible for all accounting records and operating statement preparation for operations in California, Oregon and Washington	Seattle, WA	1980-1985	West Coast Region Controller
Boise Cascade Corp-Bldg Mat Div: Took over operation management of the company's largest volume operation	Seattle, WA	1986-1987	Facility Manager, Bellevue
BMC West Corporation-BMHC: Part of Management group that formed BMC West. Direct management responsibility of all operations Washington and Oregon	Seattle, WA	1987-1991	Northwest GM
BMC West Corporation-BMHC: Direct Management responsibility of all operations in California, Oregon and Washington	Seattle, WA	1992-1996	West Coast GM
BMC West Corporation –BMHC: Assumed the position of President for all West Coast Operations reporting directly to company CEO	Seattle, WA	1997-2003	President-West Coast Division-BMC West
BMC West Corporation –BMHC: Added responsibilities as Vice President of BMHC	Seattle, WA	2000-2003	Vice President-BMHC
BMC West Corporation –BMHC:	Seattle, WA	2003-2004	Senior Vice

Added responsibilities as Senior Vice President of BMHC			President/BMHC
BMC West Corporation –BMHC; Assumed President/CEO title and responsibility for all operations of BMC West	Seattle, WA	2004-2007	Pres/CEO- BMC West
BMHC: Assumed President/Chief Operating Officer of BMHC. Direct responsibility for all operations of BMHC	Seattle, WA	2008-Present	Pres./COO-BMHC Pres/CEO-BMC West Pres/CEO SelectBuild

9. Danny McQuarry, Vice President and Chief Financial Officer

Daniel (Danny) McQuary

Danny McQuary has held management positions in the building materials distribution industry for the past 15 years and has been involved in various jobs related to the homebuilding industry for most of his business career. Currently, Danny serves as Vice President - Director of Finance for Building Materials Holding Corporation's operating brands, BMC West and SelectBuild. In addition to financial planning, analysis and control duties, Danny has led BMC West's acquisition team for a number of acquisitions including Buell Supply, Royal Door Corporation, Castleberry Mill & Lumber, Marvin Windows Planning Center, Home Lumber, and Williams Window and Door Supply. Danny chairs the Company's Millwork Management Steering Committee and Millwork Purchasing Council. Danny previously served as Chief Financial Officer for Lone Star Plywood & Door Corporation from 1994 until its acquisition by BMC West in November 1997.

Prior to Lone Star, Danny served as Executive Vice President and Chief Financial Officer for a Dallas-based homebuilder and real estate developer as well as Chairman of the Board and Chief Executive Officer of a Central Texas savings and loan association which specialized in single family construction lending. After graduation from the University of North Texas, he spent five years with an international public accounting firm. He is a member of the American Institute of CPAs and a past recipient of the Accounting Excellence Award from the Texas Society of CPAs.

Danny is currently serving on the Finance Committee of the Association of Millwork Distributors as well as President of the North Texas Chapter of the Leukemia & Lymphoma Society.

9. Lesa D. Thomas, Secretary

Lesa D. Thomas
Building Materials Holding Corporation

Lesa D. Thomas is Assistant Corporate Secretary of Building Materials Holding Corporation, a leading provider of building materials and construction services to professional residential builders and contractors, serving the homebuilding industry through two subsidiaries: SelectBuild and BMC West. She assists in areas of transactional law and securities law compliance. She has been with the Company since its inception in 1987 and has worked in various areas including investor relations and as public company coordinator. Ms. Thomas received a BA in general business management and a paralegal certification from Boise State University.

EXHIBIT B

[Disclosure of Annual Compensation of Proposed Officers and Directors]

Compensation for Board Members

Annual retainer fee: $60,000

Additional fee for Chair and Chair of Audit: $15,000

Additional fee for Chair of Compensation Committee: $10,000

Board meeting fees:

- $1,000 for in person meetings
- $500 for telephone conference calls in excess of 60 minutes

Compensation for Officers

Officers shall be entitled to receive customary health and other benefits, participation in the Long Term Incentive Plan and the following annual compensation:

- Paul S. Street, Chief Executive Officer: $600,000
- Stan Wilson, President and Chief Operating Officer: $600,000
- Danny McQuarry, Vice President and Chief Financial Officer: $215,000
- Lesa D. Thomas, Secretary: $75,000

EXHIBIT C

[Exit Revolving Credit Agreement/Exit Term Loan Credit Agreement]

SENIOR SECURED CREDIT AGREEMENT

Dated as of [_____], 2009

among

BUILDING MATERIALS HOLDING CORPORATION,
as Borrower,

CERTAIN SUBSIDIARIES OF BORROWER,
as Guarantors,

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent and L/C Issuer,

and

THE FINANCIAL INSTITUTIONS PARTY HERETO,
as Lenders

SENIOR SECURED CREDIT AGREEMENT

This SENIOR SECURED CREDIT AGREEMENT (this "Agreement"), dated as of [_____], 2009, is made and entered into by and among (i) BUILDING MATERIALS HOLDING CORPORATION, a Delaware corporation, as borrower ("Holdings"), (ii) certain subsidiaries of Holdings, as Guarantors (as defined herein), (iii) WELLS FARGO BANK, NATIONAL ASSOCIATION ("Wells Fargo"), as administrative agent for the Lenders (in such capacity, the "Administrative Agent"), and (iv) the various financial institutions from time to time party to this Agreement (collectively, the "Lenders").

RECITALS

A. WHEREAS, Holdings and its subsidiaries (collectively, the "Debtors") are debtors and debtors-in-possession in jointly administered cases, Case No. 09-12074 (collectively, the "Cases"), pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") in In re: Building Materials Holding Corporation, et al. under Chapter 11 of the Bankruptcy Code (as defined herein). The Debtors will be reorganized pursuant to the Reorganization Plan (as defined herein) and subject to the Confirmation Order (as defined herein).

B. WHEREAS, the Debtors are party to that certain Senior Secured Super-Priority Debtor-in-Possession Credit Agreement dated as of June 16, 2009 (the "DIP Credit Agreement"), by and among Holdings, as borrower, the other Debtors, as guarantors, the various financial institutions party thereto, as lenders, and Wells Fargo, as administrative agent.

C. WHEREAS, in order to finance in part the distributions to be made under the Reorganization Plan, to pay the fees and expenses associated therewith, to repay in full the Debtors' obligations under the DIP Credit Agreement, to replace letters of credit issued and outstanding under the DIP Credit Agreement, and for working capital and general corporate purposes of Holdings and its Subsidiaries (as defined herein), Holdings has requested that simultaneously with the consummation of the Reorganization Plan, the Lenders extend credit to Holdings under senior secured first-lien asset-based revolving and term loan credit facilities in an aggregate principal amount outstanding at any one time not to exceed $103,500,000.

D. WHEREAS, the parties hereto are willing to enter into this Agreement upon the terms and subject to the conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the above Recitals and the mutual agreements, provisions and covenants contained herein, the parties hereto hereby agree as follows:

ARTICLE I.

DEFINITIONS

1.01 Certain Defined Terms. The following terms have the following meanings when used herein (including in the Recitals hereof):

"Account" means an account (as that term is defined in the UCC).

"Account Debtor" means any Person who is obligated on an Account.

"Acquisition" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (i) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (ii) the acquisition of in excess of 50% of the capital stock, partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary, or (iii) a merger or consolidation or any other combination with another Person (other than a Person that is a Subsidiary).

"Additional Guarantor Accession Date" has the meaning specified in Section 7.13.

"Additional Guarantor Assumption Agreement" has the meaning specified in Section 7.13.

"Administrative Agent" has the meaning specified in the preamble, and any successor Administrative Agent arising under Section 10.06.

"Administrative Agent Related Persons" means Wells Fargo and any successor Administrative Agent arising under Section 10.06 and any L/C Issuer hereunder, together with their respective Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

"Administrative Agent's Payment Office" means the address for payments set forth on Schedule 11.02 or such other address as the Administrative Agent may from time to time specify in the manner provided by Section 11.02.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, however, that no Lender or Affiliate thereof shall constitute an Affiliate of Holdings or any of its Subsidiaries.

"Aggregate Commitment" means $103,500,000.

"Aggregate Revolving Commitment" means the combined Revolving Commitments of the Revolving Lenders, which combined Revolving Commitments shall not exceed $50,000,000 as of the Effective Date, which amount includes the L/C Commitment.

"Aggregate Term Commitment" means the combined Term Commitments of the Term Lenders, which Term Commitments shall be equal to $53,500,000 as of the Effective Date.

"Agreement" means this Senior Secured Credit Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the Intercreditor Agreement and the terms hereof.

"Alternative Base Rate" means, for any day, a fluctuating rate equal to the highest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Rate plus 0.50%, and (iii) 3.00%.

"Applicable Fee Amount" means, for any day, (i) with respect to the Commitment Fees, 0.50% per annum, and (ii) with respect to the Letter of Credit fees, at Holdings' election pursuant to Section 3.08(e), (a) cash pay fees equal to 6.00% per annum or (b) cash pay fees equal to 3.00% per annum plus payment-in-kind fees equal to 5.00% per annum.

"Applicable Margin" means, for any day, at Holdings' election pursuant to Section 2.08(e), (i) cash pay interest equal to 12.00% per annum or (ii) cash pay interest equal to 6.00% per annum plus payment-in-kind interest equal to 8.00% per annum.

"Appraised Value of Real Estate Collateral" means the appraised Dollar value of the Mortgaged Property (excluding any Excess Real Estate) that is subject to a valid and perfected first priority Lien in favor of the Administrative Agent (subject only to Permitted Liens), such Dollar value to be as determined from time to time by an appraisal company selected by the Administrative Agent.

"Approved Fund" means any Fund that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers or manages a Lender.

"Assignee Group" means two (2) or more Eligible Assignees that are Affiliates of one another or two (2) or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06), and accepted by the Administrative Agent, in substantially the form of Exhibit C or any other form approved by the Administrative Agent.

"Attorney Costs" means and includes all fees and disbursements of any law firm or other external counsel, the allocated cost of internal legal services and all disbursements of internal counsel.

"Available Commitment" has the meaning specified in Section 2.09(c).

"Bank Product" means any financial accommodation extended to Holdings or any Guarantor by a Bank Product Provider (other than pursuant to this Agreement) including: (i) credit cards, (ii) credit card processing services, (iii) debit cards, (iv) purchase cards, (v) ACH transactions, or (vi) cash management, including controlled disbursement, accounts or services.

"Bank Product Agreements" means those agreements entered into from time to time by Holdings or any other Guarantor with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

"Bank Product Provider" means Wells Fargo or any of its Affiliates.

"Bankruptcy Code" means the Bankruptcy Code of the United States (11 U.S.C. §101, et seq.).

"Bankruptcy Court" has the meaning specified in Recital A.

"Borrowing" means a borrowing hereunder consisting of (i) Loans made to Holdings on the same day by the Lenders under Article II or (ii) an L/C Borrowing.

"Borrowing Base" means, as of any date of determination, the result of:

(i) 70% of the (a) amount of Eligible Accounts less the (b) Warranty Reserve, plus

(ii) 50% of (a) the value of Eligible Inventory (other than Truss and Millwork Inventory) less (b) the Inventory Vendor Discount Reserve less (c) the Inventory Volume Rebate Reserve, plus

(iii) 25% of (a) the value of Eligible Truss and Millwork Inventory less (b) the Truss and Millwork Vendor Discount Reserve less (c) the Truss and Millwork Volume Rebate Reserve, plus

(iv) 75% of the Fixed Assets Orderly Liquidation Value, plus

(v) 50% of the Appraised Value of Real Estate Collateral, minus

(vi) the Rent Reserve plus the aggregate amount of other reserves, if any, established by the Administrative Agent in the exercise of its Permitted Discretion.

"Borrowing Base Certificate" means a certificate, in substantially the form of Exhibit H, by which Holdings certifies calculation of the Borrowing Base.

"Borrowing Date" means any date on which a Borrowing occurs.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in New York City or San Francisco are authorized or required by law to close.

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

"Capital Lease" means, for any Person, any lease of property (whether real, personal or mixed) which, in accordance with GAAP, would, at the time a determination is made, be required to be recorded as a capital lease in respect of which such Person is liable as lessee.

"Cases" has the meaning specified in Recital A.

"Cash Balance" means, at any time, the aggregate Dollar amount of all cash and cash equivalents, as determined in accordance with GAAP, of Holdings and its Subsidiaries held in deposit accounts, securities accounts or otherwise, including any cash or cash equivalents held in a Cash Collateral Account without regard to how the account balance is accounted for on Holdings' financial statements.

"Cash Collateral Account" means that certain deposit account with account number [_____] held at Wells Fargo (or such other interest-bearing deposit accounts held at Wells Fargo or its Affiliates satisfactory to the Administrative Agent) in the name of Holdings, in which cash shall from time to time be deposited pursuant to the Loan Documents as additional collateral for the Obligations, on which the Administrative Agent shall have a first priority Lien, on behalf of the Lenders and the other Secured Parties, and over which the Administrative Agent shall have dominion and control.

"Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, as additional collateral for the L/C Obligations or the Obligations, as the case may be, pursuant to the Loan Documents, cash or deposit account balances. Derivatives of such term shall have corresponding meaning.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty, (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"Change of Control" means:

(i) The consummation of a merger or consolidation of Holdings with or into another entity or any other corporate reorganization, if more than 50% of the combined voting power of the continuing or surviving entity's securities outstanding immediately after such merger, consolidation or other reorganization is owned by Persons who were not stockholders of Holdings holding more than 50% of the combined voting power of Holdings immediately prior to such merger, consolidation or other reorganization;

(ii) The sale, transfer or other disposition of 50% or more of Holdings' or any Guarantor's consolidated assets in a single transaction or series of related transactions, except as permitted under Section 8.02 or Section 8.03;

(iii) During any period of 12 consecutive calendar months, individuals who at the beginning of such period constituted the board of directors of Holdings (together with any new directors whose election by the board of directors of Holdings or whose nomination for election by the stockholders of Holdings was approved by a vote of the directors then still in office who

either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors then in office;

(iv) A transaction or series of transactions following which Holdings ceases to beneficially own, directly or indirectly, all of the combined voting power of the capital stock of each Guarantor, except as permitted under Section 8.02 or Section 8.03; or

(v) Any Person or two or more Persons acting together after the Effective Date as a "group" as such term is used in Section 13(d) of the Securities Exchange Act of 1934 and the rules promulgated thereunder, together with their respective Affiliates, become the beneficial owner, directly or indirectly, of more than 50% of the combined voting power of Holdings' capital stock.

The foregoing notwithstanding, a transaction shall not constitute a Change of Control if its sole purpose is to change the state of Holdings' incorporation or to create a holding company that will be owned in substantially the same proportions by the Persons who held Holdings' securities immediately prior to such transaction.

"Closing Fee" has the meaning specified in Section 2.09(a).

"Code" means the Internal Revenue Code of 1986.

"Collateral" means all tangible and intangible property and interests in property and proceeds thereof now owned or hereafter acquired by Holdings or any Guarantor in or upon which a Lien now or hereafter exists in favor of the Lenders, or the Administrative Agent on behalf of the Lenders and the other Secured Parties, on and after the Effective Date, whether under this Agreement or under any other Collateral Document.

"Collateral Access Agreement" means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in Holdings' or its Subsidiaries' books and records, Inventory or equipment, in each case, in form and substance reasonably satisfactory to Administrative Agent.

"Collateral Documents" mean, collectively, (i) the Security Agreement, the Intellectual Property Security Agreements, the Mortgages and all other mortgages, deeds of trust, security agreements, patent and trademark assignments, lease assignments, control agreements and other similar agreements between Holdings or any Guarantor and the Lenders, or the Administrative Agent for the benefit of the Lenders and the other Secured Parties, now or hereafter delivered to the Lenders or the Administrative 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 Uniform Commercial Code or comparable law) against Holdings or any Guarantor as debtor in favor of the Lenders, or the Administrative Agent for the benefit of the Lenders and the other Secured Parties, as secured party, and (ii) any amendments, supplements, modifications, renewals, replacements, consolidations, substitutions and extensions of any of the foregoing.

"Collected and Available Cash" means, at any time, the aggregate Dollar amount of all cash and cash equivalents constituting good and available funds of Holdings and its Subsidiaries at such time deposited into deposit accounts and securities accounts of Holdings and its Subsidiaries.

"Commercial Letter of Credit" means a commercial Letter of Credit Issued for the account of Holdings in respect of the purchase of inventory or other goods and services by Holdings or any of its Subsidiaries in the Ordinary Course of Business.

"Commitment" means, as to each Lender, the sum of its Revolving Commitment and Term Commitment.

"Commitment Fees" has the meaning specified in Section 2.09(c).

"Compliance Certificate" means a certificate substantially in the form of Exhibit B.

"Confirmation Order" means a final non-appealable (other than with respect to any appeals reasonably consented to by the Lenders and the Administrative Agent) order entered by the Bankruptcy Court confirming the Reorganization Plan in accordance with Section 1129 of the Bankruptcy Code, in the form of the Confirmation Order approved by the Lenders and the Administrative Agent prior to the Effective Date, with any amendments, supplements and modifications to such approved form of Confirmation Order that are not materially adverse to the rights or interests of the Lenders or the Administrative Agent in their reasonable discretion.

"Contingent Obligation" means (without duplication), as to any Person, any direct or indirect liability of that Person, whether or not contingent, with or without recourse, (i) with respect to any Indebtedness, lease, dividend, letter of credit or other obligation (the "primary obligations") of another Person (the "primary obligor"), including any obligation of that Person (a) to purchase, repurchase or otherwise acquire such primary obligations or any security therefor, (b) to advance or provide funds for the payment or discharge of any such primary obligation, or to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (d) in connection with any synthetic lease or other similar off balance sheet lease transaction, or (e) otherwise to assure or hold harmless the holder of any such primary obligation against loss in respect thereof (each a "Guaranty Obligation"); (ii) with respect to any Surety Instrument issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings or payments; (iii) to purchase any materials, supplies or other property from, or to obtain the services of, another Person if the relevant contract or other related document or obligation requires that payment for such materials, supplies or other property, or for such services, shall be made regardless of whether delivery of such materials, supplies or other property is ever made or tendered, or such services are ever performed or tendered; (iv) in respect of Earn-Out Obligations; and (v) in respect of any Swap Contract. The amount of any Contingent Obligation shall, in the case of Guaranty Obligations, be deemed equal to the stated or determinable amount of the primary obligation in respect of which such Guaranty Obligation is made or, if not stated or if

indeterminable, the maximum reasonably anticipated liability in respect thereof, and in the case of other Contingent Obligations other than in respect of Swap Contracts, shall be equal to the maximum reasonably anticipated liability in respect thereof and, in the case of Contingent Obligations in respect of Swap Contracts, shall be equal to the Swap Termination Value.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, undertaking, contract, indenture, mortgage, deed of trust or other instrument, document or agreement to which such Person is a party or by which it or any of its property is bound.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Costs of Goods Sold" means, for any period, costs of goods sold of Holdings and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but exclusive of the costs of goods sold of the Wind-Down Business Units.

"Credit Extension" means and includes (i) the making of any Revolving Loans or Term Loans hereunder (other than Revolving Loans or Term Loans that constitute capitalized payment-in-kind interest or payment-in-kind fees pursuant to Section 2.08(b) or Section 3.08(a)), and (ii) the Issuance of any Letters of Credit hereunder.

"Daily One Month LIBOR" means, for any day, the rate of interest equal to LIBOR then in effect for delivery for a one (1) month period.

"Debtors" has the meaning specified in Recital A.

"Default" means any Event of Default and any event or circumstance which, with the giving of notice, the lapse of time, or both, would constitute an Event of Default.

"Defaulting Lender" means a Lender that has failed to fund its portion of any Borrowing that it is required to fund under this Agreement and has continued in such failure for three (3) Business Days after written notice from the Administrative Agent.

"DIP Credit Agreement" has the meaning specified in Recital B.

"Disposition" means the sale, lease, conveyance or other disposition of property, including the sale, spinoff or other disposition of any division, business unit, business line, captive insurer or cell captive insurer, other than sales or other dispositions expressly permitted under Sections 8.02(a) through 8.02(e); provided, however, that "Disposition" shall not include the issuance and sale of Equity Securities by Holdings.

"Disposition Value" means the aggregate net book value of all assets sold, transferred, leased or otherwise disposed of in any transaction, determined as of the date of such disposition or proposed disposition thereof.

"Dollars," "dollars" and "$" each mean lawful money of the United States.

"Earn-out Obligations" means any obligations, whether contingent or matured, to pay additional consideration in connection with the Acquisition by Holdings or any Subsidiary of any capital stock or assets of any Person.

"EBITDA" means, for any period, the sum of (a) Gross Profit for such period minus (b) Selling, General and Administrative Expenses for such period minus (c) Other Cash Expenses for such period minus (d) (to the extent included in determining Gross Profit pursuant to clause (i) of the definition thereof) the gain realized on the disposition of real estate or equipment for such period plus (e) (to the extent deducted in determining Gross Profit pursuant to clause (ii) of the definition thereof or to the extent included in Selling, General and Administrative Expenses or Other Cash Expenses, and without duplication) (i) depreciation expense and amortization expense for such period; (ii) the loss realized on the disposition of real estate or equipment for such period; (iii) non-cash expenses or charges for such period (excluding any such non-cash expense or charge to the extent that it represents an accrual of or reserve for cash expenditures in any future period); (iv) non-recurring costs, expenses and charges for such period incurred in connection with the restructuring of Holdings' consolidated operations, with the consent of the Majority Lenders (such consent not to be unreasonably withheld or delayed); (v) costs, expenses and charges for such period associated with Permitted Acquisitions (in an aggregate amount consented to by the Majority Lenders, such consent not to be unreasonably withheld or delayed); and (vi) fees and costs of attorneys and other advisors and consultants for such period attributable to (A) the restructuring of Holdings' consolidated operations, with the consent of the Majority Lenders (such consent not to be unreasonably withheld or delayed), and (B) the negotiation, documentation, implementation and closing of the Reorganization Plan, the Loan Documents in existence as of the Effective Date and the Second Lien Term Loan Documents in existence as of the Effective Date. Elements of EBITDA will be calculated for Holdings and its Subsidiaries on a consolidated basis for such period in accordance with GAAP, without any duplication or double-counting of amounts. For purposes of clarification, the parties agree that "EBITDA" shall in no event include any non-cash income (other than accruals of revenue in the Ordinary Course of Business).

"Effective Amount" means (i) with respect to any Revolving Loans and Term Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and prepayments or repayments of Revolving Loans and Term Loans occurring on such date, and including all capitalized payment-in-kind interest and payment-in-kind fees pursuant to Section 2.08(b) and Section 3.08(a); and (ii) with respect to any outstanding L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any Issuances of Letters of Credit occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date; provided that for purposes of determining if any mandatory prepayments are required to be made under Section 2.06, the Effective Amount shall be determined without giving effect to any such mandatory prepayments.

"Effective Date" means the date on which all conditions precedent set forth in Section 5.01 are satisfied or waived by all of the Lenders (or, in the case of Section 5.01(f), waived by the Person entitled to receive such payment) which date shall not be later than December 31, 2009.

"Eligible Accounts" means those Accounts created by Holdings or any Guarantor in the ordinary course of its business, that arise out of such Person's sale of goods or rendition of services, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Administrative Agent (with the consent of the Majority Lenders, such consent not to be unreasonably withheld or delayed) in Administrative Agent's Permitted Discretion to address the results of any audit performed by Administrative Agent from time to time after the Effective Date. Eligible Accounts shall not include the following (unless the Administrative Agent has imposed a reserve in the respect of the relevant Accounts), without duplication:

(i) Accounts that the Account Debtor has failed to pay within 60 days of original due date or Accounts with selling terms of more than 30 days,

(ii) Accounts owed by an Account Debtor (or its Affiliates) where 20% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (i) above,

(iii) Accounts with respect to which the Account Debtor is owed a credit by Holdings or any Guarantor, to the extent of such credit,

(iv) Accounts consisting of late fees or similar finance charges with respect to Accounts deemed ineligible under clause (i) above,

(v) Accounts subject to a contra account or with respect to which the Account Debtor is otherwise a creditor of Holdings or any Guarantor, has or has asserted a right of setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such contra account, claim, right of setoff, or dispute,

(vi) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which Holdings or any Guarantor has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(vii) Accounts with respect to which the Account Debtor has made a deposit or other advance payment, to the extent of such deposit or advance payment,

(viii) Accounts with respect to which the Account Debtor is owed premiums by Holdings or any Guarantor for WRAP insurance, to the extent of such premiums,

(ix) Accounts arising from services subject to a performance bond or other Surety Instrument,

(x) Accounts with respect to which the Account Debtor is an Affiliate of Holdings or an employee or agent of Holdings or any Affiliate of Holdings,

(xi) Accounts with cash-on-delivery, cash-in-advance or similar selling terms,

(xii)Accounts with respect to which the Account Debtor is a school, school district or other similar payor,

(xiii) Accounts with respect to which the Account Debtor is either (a) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which Holdings has complied, to the reasonable satisfaction of Administrative Agent, with the Assignment of Claims Act, 31 USC §3727), or (b) any state of the United States,

(xiv) Accounts with respect to which the Account Debtor has earned an allowance or rebate, to the extent of such allowance or rebate,

(xv) Accounts evidenced by a promissory note or other instrument,

(xvi) Accounts evidencing billings in excess of costs, to the extent of such excess,

(xvii) Accounts arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional,

(xviii) Accounts that are not payable in Dollars,

(xix) Accounts with respect to which the Account Debtor either (a) does not maintain its chief executive office in the United States, or (b) is not organized under the laws of the United States or any state thereof, or (c) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (y) the Account is supported by an irrevocable letter of credit reasonably satisfactory to Administrative Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Administrative Agent and is directly drawable by Administrative Agent, or (z) the Account is covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to Administrative Agent,

(xx) Accounts with respect to an Account Debtor whose total obligations owing to Holdings and the Guarantors exceed 20% (such percentage, as applied to a particular Account Debtor, being subject to reduction by Administrative Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, however, that, in each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined by Administrative Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,

(xxi) Accounts, the collection of which Administrative Agent, in its Permitted Discretion, believes to be doubtful by reason of the Account Debtor's financial condition,

(xxii) Accounts that are not subject to a valid and perfected first priority Lien in favor of the Administrative Agent on behalf of the Lenders and the other Secured Parties,

(xxiii) Accounts with respect to which (a) the goods giving rise to such Account have not been shipped and billed to the Account Debtor, or (b) the services giving rise to such Account have not been performed and billed to the Account Debtor, or

(xxiv) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity.

"Eligible Assignee" means (i) a Lender; (ii) an Affiliate of a Lender; (iii) an Approved Fund; and (iv) any other Person (other than a natural person) approved by (a) the Administrative Agent, (b) in the case of any assignment of a Revolving Commitment, the L/C Issuer, and (c) unless an Event of Default has occurred and is continuing, Holdings (each such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, "Eligible Assignee" shall not include (x) Holdings or any of Holdings' Affiliates or Subsidiaries or (y) a Defaulting Lender.

"Eligible Fixed Assets" means the fixed assets (other than real estate) of Holdings and the Guarantors that comply with each of the representations and warranties respecting Eligible Fixed Assets made in the Loan Documents and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Administrative Agent (with the consent of the Majority Lenders, such consent not to be unreasonably withheld or delayed) in Administrative Agent's Permitted Discretion to address the results of any audit or appraisal performed by Administrative Agent from time to time after the Effective Date. An item of fixed assets shall not be included in Eligible Fixed Assets (unless the Administrative Agent has imposed a reserve in the respect of the relevant fixed assets), without duplication, if:

(i) Holdings or any Guarantor does not have good, valid, and marketable title thereto,

(ii) it is not located at one of the locations in the continental United States set forth on Schedule 1.01A, as such Schedule may be amended from time to time (or in-transit from one such location to another such location),

(iii) it is located on real property leased by Holdings or any Guarantor or in a contract warehouse, in each case, unless either (a) it is subject to a Collateral Access Agreement executed by the lessor or warehouseman, as the case may be, and unless it is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises, or (b) a Rent Reserve has been imposed in respect of the Fixed Assets located at such location, or

(iv) it is not subject to a valid and perfected first priority Lien in favor of the Administrative Agent on behalf of the Lenders and the other Secured Parties.

"Eligible Inventory" means Inventory consisting of first quality finished goods held for sale in the ordinary course of Holdings' or any Guarantor's business, that complies with each of the representations and warranties respecting Eligible Inventory made in the Loan Documents, and that is not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Administrative Agent (with the consent of the Majority Lenders, such consent not to be unreasonably withheld or delayed) in Administrative Agent's Permitted Discretion to address the results of any audit or appraisal performed by Administrative Agent from time to time after the Effective Date. In determining the amount to be so included, Inventory shall be valued at the lower of average cost or market in accordance with GAAP. An item of Inventory shall not be included in Eligible Inventory if (unless the Administrative Agent has imposed a reserve in the respect of the relevant Inventory), without duplication:

(i) Holdings or any Guarantor does not have good, valid, and marketable title thereto,

(ii) it is not located at one of the locations in the continental United States set forth on Schedule 1.01A, as such Schedule may be amended from time to time (or in-transit from one such location to another such location),

(iii) it is located on real property leased by Holdings or any Guarantor or in a contract warehouse, in each case, unless (a) it is subject to a Collateral Access Agreement executed by the lessor or warehouseman, as the case may be, and unless it is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises, or (b) a Rent Reserve has been imposed in respect of the Inventory located at such location,

(iv) it is not subject to a valid and perfected first priority Lien in favor of the Administrative Agent on behalf of the Lenders and the other Secured Parties,

(v) it consists of goods returned or rejected by Holdings' or any Guarantor's customers,

(vi) it consists of goods that are obsolete or slow moving, restrictive or custom items, work-in-process (other than Truss and Millwork Inventory), raw materials, or goods that constitute spare parts, packaging and shipping materials, supplies used or consumed in Holdings' or any Guarantor's business, bill and hold goods, defective goods, "seconds," or Inventory acquired on consignment,

(vii) it consists of non-perpetual Inventory,

(viii) it consists of special order Inventory, or

(ix) it consists of racks and pallets Inventory.

"Eligible Truss and Millwork Inventory" means Eligible Inventory consisting of Truss and Millwork Inventory.

"Environmental Claims" means all claims, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any

Environmental Law, or for release or injury to the environment or threat to public health, personal injury (including sickness, disease or death), property damage, natural resources damage, or otherwise alleging liability or responsibility for damages (punitive or otherwise), cleanup, removal, remedial or response costs, restitution, civil or criminal penalties, injunctive relief, or other type of relief, resulting from or based upon the presence, placement, discharge, emission or release (including intentional and unintentional, negligent and non-negligent, sudden or non-sudden, accidental or non-accidental, placement, spills, leaks, discharges, emissions or releases) of any Hazardous Material at, in, or from any property, whether or not owned by Holdings or any Subsidiary.

"Environmental Laws" means all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authorities, in each case relating to environmental, health, safety and land use matters; including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Solid Waste Disposal Act, the Federal Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Emergency Planning and Community Right-to-Know Act, the California Hazardous Waste Control Law, the California Solid Waste Management, Resource, Recovery and Recycling Act, the California Water Code and the California Health and Safety Code.

"Equity Securities" of any Person shall mean (i) all common stock, preferred stock, participations, shares, partnership interests, limited liability company interests or other equity interests in and of such Person (regardless of how designated and whether or not voting or non-voting) and (ii) all warrants, options and other rights to acquire any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with Holdings within the meaning of section 414(b) or (c) of the Code (and sections 414(m) and (o) of the Code for purposes of provisions relating to section 412 of the Code).

"ERISA Event" means (i) a Reportable Event with respect to a Pension Plan; (ii) a withdrawal by Holdings or any ERISA Affiliate from a Pension 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) or a cessation of operations which is treated as such a withdrawal under section 4062(e) of ERISA; (iii) a complete or partial withdrawal by Holdings or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (iv) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (v) an event or condition which 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 Pension Plan or Multiemployer Plan; or (vi) the imposition of any liability under Title IV of ERISA, other than PBGC premiums due but not delinquent under section 4007 of ERISA, upon Holdings or any ERISA Affiliate.

"Event of Default" means any of the events or circumstances specified in Section 9.01.

"Event of Loss" means, with respect to any property, any of the following: (i) any loss, destruction or damage of such property; (ii) any pending or threatened institution of any proceedings for the condemnation or seizure of such property or for the exercise of any right of eminent domain; or (iii) 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.

"Excess Cash Flow" means, for any period, (i) EBITDA for such period minus (ii) the sum of (A) Capital Expenditures for such period to the extent permitted under Section 8.21, except to the extent attributable to the incurrence of obligations under a Capital Lease, (B) taxes paid in cash during such period, (C) payments of interest and principal paid in cash during such period in respect of Indebtedness permitted under Section 8.05, excluding (1) Loans prepaid pursuant to Sections 2.06(a)(iv) through 2.06(a)(viii) and (2) repayments or prepayments of Indebtedness financed by incurring other Indebtedness, (D) the amount, if any, by which net working capital increased during such period, and (E) other extraordinary, unusual or non-recurring cash expenditures (i.e., cash expenditures occurring outside of the Ordinary Course of Business) for such period, in each case, for Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP; provided, however, that each of (A) through (E) shall be as set forth in the financial statements supplied to the Administrative Agent pursuant to Section 7.01(a) if the applicable date range is a fiscal year of Holdings.

"Excess Real Estate" means, as of the Effective Date, the real property assets set forth on Schedule 1.01B.

"Exchange Act" means the Securities Exchange Act of 1934.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of Holdings hereunder, (i) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (ii) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which Holdings is located and (iii) in the case of a Foreign Lender (other than an assignee pursuant to a request by Holdings under Section 4.07), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 4.01(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from Holdings with respect to such withholding tax pursuant to Section 4.01(a).

"Existing Letters of Credit" means those letters of credit issued under the DIP Credit Agreement and set forth on Schedule 1.01C.

"Fair Market Value" means, in respect of any asset, the price at which the asset would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers for the immediately preceding day, as published by the Federal Reserve Bank of New York; provided that if no such rate is so published on any day, then the Federal Funds Rate for such day shall be the rate most recently published.

"Fee Letter" has the meaning specified in Section 2.09(b).

"Fixed Assets Orderly Liquidation Value" means the Dollar amount that is estimated to be recoverable in an orderly liquidation of the Eligible Fixed Assets net of all associated costs and expenses of such liquidation, such Dollar amount to be as determined from time to time by an appraisal company selected by the Administrative Agent.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which Holdings is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"FRB" means the Board of Governors of the Federal Reserve System, and any Governmental Authority succeeding to any of its principal functions.

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

"GAAP" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination, subject to Section 1.03.

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

"Gross Profit" means, for any period, (i) Total Sales for such period minus (ii) Costs of Goods Sold for such period.

"Guarantor" means each direct or indirect Subsidiary of Holdings that currently exists or is hereafter acquired or created and which is a party to a Guaranty in its capacity as a guarantor

of any of the Obligations, and shall include each Subsidiary of Holdings party hereto; provided, however, that in no event shall any Guarantor be released of its obligations under any Guaranty in the event such Guarantor ceases to be a Subsidiary, by operation of any disposition of the equity thereof or otherwise, except as permitted under this Agreement.

"Guaranty" means the guaranty of each Guarantor made pursuant to Section 11.10 and any other guaranty under any separate agreement executed by any Guarantor pursuant to which it guarantees any of the Obligations.

"Guaranty Obligation" has the meaning specified in the definition of "Contingent Obligation."

"Hazardous Materials" means all those substances that are regulated by, or which may form the basis of liability under, any Environmental Law, including any substance identified under any Environmental Law as a pollutant, contaminant, hazardous waste, hazardous constituent, special waste, hazardous substance, hazardous material, or toxic substance, or petroleum or petroleum derived substance or waste.

"Holdings" has the meaning specified in the preamble.

"Honor Date" has the meaning specified in Section 3.02(b).

"Indebtedness" of any Person means, without duplication, (i) all indebtedness for borrowed money; (ii) 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 on ordinary terms and (a) not past due for more than 120 days or (b) if past due for more than 120 days, are being contested in good faith with any reserves as may be required by GAAP made therefor, but including all non-contingent Earn-Out Obligations); (iii) all reimbursement or payment obligations with respect to Surety Instruments (contingent or otherwise); (iv) 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; (v) 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 the 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); (vi) all obligations with respect to Capital Leases; (vii) all indebtedness referred to in clauses (i) through (vi) 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 contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness; and (viii) all Guaranty Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (i) through (vii) above. For all purposes of this Agreement, the Indebtedness of any Person shall include all recourse Indebtedness of any partnership or joint venture or limited liability company in which such Person is a general partner or a joint venturer or a member.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Independent Auditor" has the meaning specified in Section 7.01(a).

"Insolvency Proceeding" means, with respect to any Person, (i) any case, action or proceeding with respect to such Person before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in either case undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

"Intellectual Property Security Agreement" has the meaning specified in the Security Agreement.

"Intercreditor Agreement" means that certain Intercreditor Agreement dated evenly herewith by and between Wells Fargo, in its capacity as First Lien Agent (as defined therein) with respect to the Loan Documents, and Wells Fargo, in its capacity as Second Lien Agent (as defined therein) with respect to the Second Lien Term Loan Documents, as such Intercreditor Agreement may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and this Agreement.

"Interest Payment Date" means the last Business Day of each calendar month and (i) the Revolving Loan Maturity Date (in the case of Revolving Loans) and (ii) the Term Loan Maturity Date (in the case of Term Loans).

"Internal Control Event" means a material weakness in, or material fraud that involves management or other employees who have a significant role in, Holdings' internal controls over financial reporting, in each case relating to such financial reporting and as described in the Securities Laws.

"Inventory" means inventory (as that term is defined in the UCC).

"Inventory Vendor Discount Reserve" means, as of any date of determination, (i) 100% minus the Truss and Millwork Inventory Percentage multiplied by (ii) the amount of reserves that Holdings has recorded in its books as of such date, in accordance with GAAP, in respect of vendor discounts earned on Holdings' and its Subsidiaries' Inventory.

"Inventory Volume Rebate Reserve" means, as of any date of determination, (i) 100% minus the Truss and Millwork Inventory Percentage multiplied by (ii) the amount of reserves that Holdings has recorded in its books as of such date, in accordance with GAAP, in respect of rebates earned by vendors relating to volume purchases of Holdings' and its Subsidiaries' Inventory.

"Investment" has the meaning specified in Section 8.04.

"IRS" means the Internal Revenue Service, and any Governmental Authority succeeding to any of its principal functions under the Code.

"Issuance Date" has the meaning specified in Section 3.01(a).

"Issue" means, with respect to any Letter of Credit, to issue or to extend the expiry of, or to renew or increase the amount of or otherwise amend, such Letter of Credit; and the terms "Issued," "Issuing" and "Issuance" have corresponding meanings.

"L/C Advance" means each Revolving Lender's participation in any L/C Borrowing in accordance with its Proportionate Share.

"L/C Amendment Application" means an application form for amendment of outstanding Letters of Credit as shall at any time be in use at the L/C Issuer, as the L/C Issuer shall request.

"L/C Application" means an application form for issuances of Letters of Credit as shall at any time be in use at the L/C Issuer, as the L/C Issuer shall request.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which shall not have been reimbursed on the date when made nor converted into a Borrowing of Revolving Loans under Section 3.03(c).

"L/C Cash Collateral Account" means that certain deposit account with account number [_____] held at Wells Fargo (or such other interest-bearing deposit accounts held at Wells Fargo or its Affiliates satisfactory to the Administrative Agent) in the name of Holdings, in which cash shall from time to time be deposited pursuant to the Loan Documents as additional collateral for the L/C Obligations, on which the Administrative Agent shall have a first priority Lien on behalf of the Lenders and the other Secured Parties, and over which the Administrative Agent shall have dominion and control.

"L/C Commitment" means the commitment of the L/C Issuer to Issue, and the commitment of the Revolving Lenders severally to participate in, Letters of Credit from time to time Issued or outstanding under Article III, in an aggregate amount not to exceed on any date the amount of $50,000,000, as the same shall be reduced as a result of a reduction in the L/C Commitment pursuant to Section 2.04 or Section 2.06; provided that the L/C Commitment is a part of the Aggregate Revolving Commitment rather than a separate, independent commitment; and provided further that if as a result of any Commitment reductions hereunder the L/C Commitment shall exceed the Aggregate Revolving Commitment, the L/C Commitment shall automatically reduce by the amount of such excess.

"L/C Issuer" means Wells Fargo (or Trade Bank, as agent for Wells Fargo) in its capacity as issuer of one or more Letters of Credit hereunder, together with any replacement letter of credit issuer arising under Section 10.06 or Section 11.06.

"L/C Obligations" means at any time the sum of (i) the aggregate undrawn amount of all Letters of Credit then outstanding, plus (ii) the amount of all unreimbursed drawings under all Letters of Credit, including all outstanding L/C Borrowings.

"L/C-Related Documents" means the Letters of Credit, the L/C Applications, the L/C Amendment Applications and any other documents relating to any Letter of Credit, including any of the L/C Issuer's standard form documents for letter of credit issuances.

"Lender" has the meaning specified in the preamble, and includes Revolving Lenders and Term Lenders. References to the "Lenders" shall include Wells Fargo, including in its capacity as L/C Issuer; for purposes of clarification only, to the extent that Wells Fargo may have any rights or obligations in addition to those of the Lenders due to its status as L/C Issuer, its status as such will be specifically referenced. Unless the context otherwise clearly requires, "Lender" includes any such institution in its capacity as Swap Provider. Unless the context otherwise clearly requires, references to any such institution as a "Lender" shall also include any of such institution's Affiliates that may at any time of determination be Swap Providers.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify Holdings and the Administrative Agent in the manner provided by Section 11.02.

"Letters of Credit" means any letters of credit Issued by the L/C Issuer pursuant to Article III (which may be Commercial Letters of Credit or Standby Letters of Credit), and shall include the Existing Letters of Credit.

"LIBOR" means the rate per annum (rounded upward, if necessary, to the nearest whole 1/8 of 1%) and determined pursuant to the following formula:

$$\text{LIBOR} = \frac{\text{Base LIBOR}}{100\% - \text{LIBOR Reserve Percentage}}$$

"Base LIBOR" means the rate per annum for United States dollar deposits quoted by Wells Fargo, for the purpose of calculating effective rates of interest for loans making reference to Daily One Month LIBOR, as the interbank market offered rate in effect from time to time for delivery of funds for one (1) month in amounts approximately equal to the principal amount of such loans. Holdings understands and agrees that Wells Fargo may base its quotation of the interbank market offered rate upon such offers or other market indicators of the interbank market as Wells Fargo in its discretion deems appropriate including, but not limited to, the rate offered for U.S. dollar deposits on the London interbank market.

"LIBOR Reserve Percentage" means the reserve percentage prescribed by the FRB (or any successor) for "Eurocurrency Liabilities" (as defined in "Regulation D", as amended, of the FRB), adjusted by Wells Fargo for expected changes in such reserve percentage during the applicable term of this Agreement.

"LIBOR Rate" means, for any day, a fluctuating rate equal to the higher of (i) Daily One Month LIBOR in effect on such day and (ii) 3.00%.

"Lien" means any security interest, mortgage, deed of trust, pledge, hypothecation, assignment, charge or deposit arrangement, encumbrance, lien (statutory or other) or preferential

arrangement of any kind or nature whatsoever in respect of any property (including those created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a Capital Lease, any financing lease having substantially the same economic effect as any of the foregoing, or the authorized filing of any financing statement naming the owner of the asset to which such lien relates as debtor, under the Uniform Commercial Code or any comparable law) and any contingent or other agreement to provide any of the foregoing.

"Liquidity" means, at any time, a Dollar amount equal to the sum of:

(i) the Cash Balance at such time; plus

(ii) the maximum additional Revolving Loan amount that Holdings may borrow at such time pursuant to Section 2.01(b); plus

(iii) the aggregate amount at such time of (without duplication) the net proceeds that Holdings reasonably anticipates that Holdings and its Subsidiaries will receive from pending sales, or the remaining surrender value, of those certain life insurance policies related to the supplemental employee retirement plans of Holdings and its Subsidiaries in existence on the Petition Date (provided, however, that the add-back in this clause (iii) shall not exceed $16,300,000 in the aggregate for all periods and shall be zero from and after the date that is 180 days after the Plan Effective Date); plus

(iv) the aggregate amount at such time of (without duplication) the net proceeds that Holdings reasonably anticipates that Holdings and its Subsidiaries will receive from the liquidation of those certain deferred compensation accounts of Holdings and its Subsidiaries in existence on the Petition Date (provided, however, that the add-back in this clause (iv) shall not exceed $1,300,000 in the aggregate for all periods and shall be zero from and after the date that is 180 days after the Plan Effective Date); plus

(v) the aggregate amount at such time of (without duplication) those portions (if any) of the Prepetition Tax Liabilities that have been paid (as required by the Bankruptcy Court) by Holdings and its Subsidiaries, to the extent such payments were anticipated to have been made after such time based on a five (5) year level payment schedule commencing on the Plan Effective Date (provided, however, that the add-back in this clause (v) shall not exceed $7,100,000 in the aggregate for all periods); plus

(vi) the aggregate amount at such time of all professional fees and costs of counsel and other advisors and consultants that have been paid by Holdings and its Subsidiaries from and after the Plan Effective Date (in an aggregate amount consented to by the Majority Lenders, such consent not to be unreasonably withheld or delayed).

"Loan" means an extension of credit by a Lender to Holdings (i) under Article II and includes a Revolving Loan or Term Loan, or (ii) under Article III in the form of an L/C Advance.

"Loan Documents" means this Agreement, the Notes, each Guaranty, the Collateral Documents, the Fee Letter, the L/C Related Documents, any documents evidencing or relating to

Specified Swap Contracts, the Intercreditor Agreement and all other documents delivered to the Administrative Agent or any Lender in connection herewith.

"Loan Party" means Holdings and each Guarantor.

"Majority Lenders" means (i) the Majority Revolving Lenders, for so long as any Revolving Lender has a Revolving Commitment or any Obligation owing to any Revolving Lender remains unpaid or unsatisfied or any Letter of Credit remains outstanding, together with (ii) the Majority Term Lenders, for so long as any Obligation owing to any Term Lender remains unpaid or unsatisfied, in each case other than inchoate indemnity obligations.

"Majority Revolving Lenders" means one or more Revolving Lenders whose aggregate Revolving Proportionate Shares then exceed 50%; provided, however, that at any time any Revolving Lender is a Defaulting Lender, all Defaulting Lenders shall be excluded in determining "Majority Revolving Lenders", and "Majority Revolving Lenders" shall mean one or more non-Defaulting Lenders whose aggregate Revolving Proportionate Shares then exceed 50% of the aggregate Revolving Proportionate Shares of all non-Defaulting Lenders.

"Majority Term Lenders" means one or more Term Lenders whose aggregate Term Proportionate Shares then exceed 50%; provided, however, that at any time any Term Lender is a Defaulting Lender, all Defaulting Lenders shall be excluded in determining "Majority Term Lenders", and "Majority Term Lenders" shall mean one or more non-Defaulting Lenders whose aggregate Term Proportionate Shares then exceed 50% of the aggregate Term Proportionate Shares of all non-Defaulting Lenders.

"Mandatory Prepayment Priority" has the meaning specified in Section 2.06(a)(iii).

"Margin Stock" means "margin stock" as such term is defined in Regulation T, U or X of the FRB.

"Material Adverse Effect" means (i) a material adverse change in, or a material adverse effect upon, the operations, business, properties or condition (financial or otherwise) of Holdings or Holdings and its Subsidiaries taken as a whole; (ii) a material impairment of the ability of the Loan Parties to perform under the Loan Documents; or (iii) a material adverse effect upon (a) the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document or (b) the perfection or priority of any Lien granted under the Collateral Documents.

"Minimum Amount" means (i) in respect of any Borrowing of Loans, an aggregate minimum amount of $250,000 or any integral multiple of $100,000 in excess thereof, (ii) in the case of any reduction of the Commitments under Section 2.04, $250,000 or any multiple of $100,000 in excess thereof, and (iii) in the case of any optional prepayment of Loans under Section 2.05, $250,000 or any multiple of $100,000 in excess thereof.

"Mortgage" means any deed of trust, mortgage, assignment of rents or other document, in each case as amended, creating a Lien on real property or any interest in real property owned by any Loan Party.

"Mortgaged Property" means all real property set forth on Schedule 6.21 hereto, as such Schedule may be amended from time to time in accordance with Section 7.15.

"Multiemployer Plan" means a "multiemployer plan," within the meaning of section 4001(a)(3) of ERISA, to which Holdings or any ERISA Affiliate makes, is making, or is obligated to make contributions or, during the preceding three (3) calendar years, has made, or been obligated to make, contributions.

"Net Proceeds" means, as to any Disposition by a Person, proceeds in cash, checks or other cash equivalent financial instruments as and when received by such Person, net of: (i) the direct costs relating to such Disposition excluding amounts payable to such Person or any Affiliate of such Person, (ii) sale, use or other transaction taxes and capital gains taxes paid or payable by such Person as a direct result thereof, and (iii) amounts required to be applied to repay principal, interest and prepayment premiums and penalties on Indebtedness secured by a purchase money security interest on any asset which is the subject of such Disposition. "Net Proceeds" shall also include proceeds paid on account of any Event of Loss, net of (a) all money actually applied to repair or reconstruct the damaged property or property affected by the condemnation or taking, (b) all of the direct costs and expenses incurred in connection with the collection of such proceeds, award or other payments, and (c) any amounts retained by or paid to parties having superior rights to such proceeds, awards or other payments.

"NOL Carry-back Tax Refund" means any federal tax refund received by Holdings or any Subsidiary as a result of the expanded, five (5) year carry-back of net operating losses for tax year 2008 or 2009, as the case may be, in accordance with the Worker, Homeownership and Business Assistance Act of 2009 (HR 3548).

"Non-Excess Real Estate Disposition" means a Disposition other than a Disposition of Excess Real Estate.

"Non-Wholly-Owned Subsidiaries" means all direct and indirect Subsidiaries of Holdings which are not Wholly-Owned Subsidiaries.

"Notes" means, collectively, the Revolving Notes and the Term Notes.

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

"Obligations" means all advances to, and debts and liabilities of, any Loan Party arising under any Loan Document, or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party of any Insolvency Proceeding naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"OFAC" means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Operating Lease" means, for any Person, any lease of property (whether real, personal or mixed) which, in accordance with GAAP, would, at the time a determination is made, be required to be recorded as an operating lease in respect of which such Person is liable as lessee.

"Ordinary Course of Business" means, in respect of any transaction involving a Loan Party, the ordinary course of such Loan Party's business, and undertaken by such Loan Party in good faith and not for purposes of evading any covenant or restriction in any Loan Document.

"Organization Documents" means, (i) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (ii) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (iii) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Other Cash Expenses" means, for any period, cash expenses not otherwise included in Costs of Goods Sold or Selling, General and Administrative Expenses of Holdings and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but exclusive of (i) such cash expenses of the Wind-Down Business Units, (ii) tax expense and (iii) interest expense.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Participant" has the meaning specified in Section 11.06(d).

"PBGC" means the Pension Benefit Guaranty Corporation, or any Governmental Authority succeeding to any of its principal functions under ERISA.

"PCAOB" means the Public Company Accounting Oversight Board.

"Pension Plan" means a pension plan (as defined in section 3(2) of ERISA) subject to Title IV of ERISA which Holdings sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, or in the case of a multiple employer plan (as described in section 4064(a) of ERISA) has made contributions at any time during the immediately preceding five (5) plan years.

"Permitted Acquisition" means any Acquisition approved by the Majority Lenders in writing prior to the consummation of such Acquisition.

"Permitted Discretion" means a determination made in the exercise of reasonable (from the perspective of a secured lender) business judgment.

"Permitted Liens" has the meaning specified in Section 8.01.

"Permitted Refinancing Indebtedness" means, in respect of any Indebtedness, any refinancings, refundings, renewals or extensions thereof; provided that (i) the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a premium or other amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any capitalized interest paid in kind and any existing commitments unutilized and available for borrowing thereunder and (ii) the direct or any contingent obligor with respect thereto is not changed, as a result of or in connection with such refinancing, refunding, renewal or extension; and provided further that (i) such refinancing, refunding, renewing or extending Indebtedness has a final maturity that is no sooner than the final maturity of, and a weighted average life to maturity that is no shorter than the remaining weighted average life of, such Indebtedness, (ii) if such Indebtedness or any guaranties thereof are subordinated to the Obligations, such refinancing, refunding, renewing or extending Indebtedness and any guaranties thereof remain so subordinated on terms no less favorable to the Lenders, (iii) the material terms taken as a whole of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Loan Parties or the Lenders than the terms, taken as a whole, of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended, and (iv) the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate.

"Permitted Subordinated Debt" has the meaning specified in Section 8.05(i).

"Permitted Swap Obligations" means all obligations (contingent or otherwise) of Holdings or any Subsidiary existing or arising under Swap Contracts, provided that each of the following criteria is satisfied: (i) such obligations are (or were) entered into by such Person in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments or assets held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person in conjunction with a securities repurchase program not otherwise prohibited hereunder, and not for purposes of speculation or taking a "market view; and (ii) such Swap Contracts do not contain (a) any provision ("walk-away" provision) exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party, or (b) any provision creating or permitting the declaration of an event of default, termination event or similar event upon the occurrence of an Event of Default hereunder (other than an Event of Default under Section 9.01(a)).

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Petition Date" means June 16, 2009.

"Plan" means an employee benefit plan (as defined in section 3(3) of ERISA) which Holdings sponsors or maintains or to which Holdings makes, is making, or is obligated to make contributions and includes any Pension Plan.

"Plan Effective Date" means the "Effective Date" under and as defined in the Reorganization Plan.

"Pledged Collateral" means the "Pledged Collateral" as defined in the Security Agreement and shall include all products and Proceeds (as defined in the Security Agreement) of the Pledged Collateral.

"Prepetition Credit Agreement" means that certain Second Amended and Restated Credit Agreement dated as of November 10, 2006, by and among Holdings, as borrower, the Prepetition Lenders, as lenders, and Wells Fargo, as administrative agent, as amended by that certain First Amendment to Second Amended and Restated Credit Agreement dated as of February 29, 2008 and that certain Second Amendment to Second Amended and Restated Credit Agreement dated as of September 30, 2008.

"Prepetition Lenders" means the lenders party to the Prepetition Credit Agreement.

"Prepetition Tax Liabilities" means those certain outstanding federal and state tax liabilities of Holdings and its Subsidiaries relating to periods prior to the Petition Date, which liabilities are approximately equal to $7,100,000 in the aggregate as of the date of this Agreement.

"Prime Rate" means at any time the rate of interest most recently announced within Wells Fargo at its principal office as its Prime Rate, with the understanding that the Prime Rate is one of Wells Fargo's base rates and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto, and is evidenced by the recording thereof after its announcement in such internal publication or publications as Wells Fargo may designate.

"Proportionate Share" means, as to any Lender at any time, the percentage equivalent (expressed as a decimal, rounded to the ninth decimal place) at such time of:

(i) in the case of the Revolving Commitments, the Revolving Loans or the L/C Obligations, such Lender's Revolving Commitment divided by the Aggregate Revolving Commitment (or, if all Revolving Commitments have been terminated, (a) the sum of (I) the Effective Amount of such Lender's Revolving Loans and (II) such Lender's pro rata share, if any, of the Effective Amount of all L/C Obligations, divided by (b) the sum of (I) the Effective Amount of all Revolving Loans and (II) the Effective Amount of all L/C Obligations) (the "Revolving Proportionate Share");

(ii) in the case of the Term Commitments or the Term Loans, such Lender's Term Commitment divided by the Aggregate Term Commitment (or, if all Term Commitments have been terminated, the Effective Amount of such Lender's Term Loans divided by the Effective Amount of all Term Loans) (the "Term Proportionate Share"); and

(iii) in all other cases, (a) the sum of (I) such Lender's Revolving Commitment and (II) such Lender's Term Commitment divided by (b) the sum of (I) the Aggregate Revolving Commitment and (II) the Aggregate Term Commitment (or, if all Term Commitments have been terminated, (a) the sum of (I) such Lender's Revolving Commitment and (II) the Effective Amount of such Lender's Term Loans divided by (b) the sum of (I) the Aggregate Revolving

Commitment and (II) the Effective Amount of all Term Loans; or, if all Revolving Commitments and Term Commitments have been terminated, (a) the sum of (I) the Effective Amount of such Lender's Revolving Loans and Term Loans and (II) such Lender's pro rata share, if any, of the Effective Amount of all L/C Obligations, divided by (b) the sum of (I) the Effective Amount of all Revolving Loans and Term Loans and (II) the Effective Amount of all L/C Obligations).

"Reimbursement Date" has the meaning specified in Section 3.03(b).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

"Rent Reserve" means, as of any date of determination and without duplication for multiple classes of eligible assets held at any particular location, a Dollar amount equal to (i) three (3) multiplied by (ii) the aggregate monthly rent payable by Holdings and its Subsidiaries in respect of all real property leased by Holdings and its Subsidiaries and all contract warehouses, in each case, where Eligible Inventory or Eligible Fixed Assets are located.

"Reorganization Plan" means the Chapter 11 plan of reorganization in respect of the Cases, in the form of the Reorganization Plan approved by the Lenders and the Administrative Agent prior to the Effective Date, with any amendments, supplements and modifications to such approved form of Reorganization Plan that are not materially adverse to the rights or interests of the Lenders or the Administrative Agent in their reasonable discretion or otherwise reasonably satisfactory to the Lenders and the Administrative Agent.

"Reportable Event" means any of the events set forth in section 4043(c) of ERISA or the regulations thereunder, other than any such event for which the 30-day notice requirement under ERISA has been waived in regulations issued by the PBGC.

"Requirement of Law" means, as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

"Responsible Officer" means as to any Person, the chief executive officer or the president of such Person, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants, the chief financial officer or the treasurer of such Person, or any other officer having substantially the same authority and responsibility.

"Restricted Payments" has the meaning specified in Section 8.11.

"Revolving Commitment" means, as to each Revolving Lender, its obligation to (i) make Revolving Loans to Holdings pursuant to Section 2.01(b) and (ii) purchase participations in L/C Obligations, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Revolving Lender's name on Schedule 2.01(b) or in the Assignment and Assumption pursuant to which such Revolving Lender becomes a party hereto,

as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Revolving Lender" means any Lender that has a Revolving Commitment as set forth on Schedule 2.01(b) (or, if the Revolving Commitments are terminated, any Lender having outstanding Revolving Loans or a pro rata share of L/C Obligations as provided herein).

"Revolving Loan" has the meaning specified in Section 2.01(b).

"Revolving Loan Maturity Date" means the earlier to occur of: (i) December 31, 2012; and (ii) the date on which the Revolving Commitments terminate in accordance with the provisions of this Agreement.

"Revolving Note" means a promissory note executed by Holdings in favor of a Revolving Lender pursuant to Section 2.02(b), in substantially the form of Exhibit D-1.

"Revolving Proportionate Share" has the meaning specified in the definition of "Proportionate Share."

"Sanctioned Entity" means (i) a country or a government of a country, (ii) an agency of the government of a country, (iii) an organization directly or indirectly controlled by a country or its government, (iv) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OFAC.

"Sanctioned Person" means a person named on the list of Specially Designated Nationals maintained by OFAC.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Second Lien Term Loan Credit Agreement" means that certain Term Loan Credit Agreement dated evenly herewith by and among Holdings, as borrower, the Prepetition Lenders, as lenders, and Wells Fargo, as administrative agent.

"Second Lien Term Loan Documents" means the Second Lien Term Loan Credit Agreement and related documentation evidencing that certain subordinate secured second-lien term loan facility described in the Reorganization Plan, as such documents may be amended, restated, supplemented or otherwise modified from time to time in accordance with the Intercreditor Agreement and the terms of this Agreement.

"Secured Parties" has the meaning specified in the Security Agreement.

"Securities Laws" means the Securities Act of 1933, the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002, and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the PCAOB.

"Security Agreement" means that certain Security Agreement, dated as of the Effective Date, among Holdings, the Guarantors and the Administrative Agent for the benefit of the Lenders and the other Secured Parties in substantially the form of Exhibit F.

"Selling, General and Administrative Expenses" means, for any period, selling, general and administrative expenses of Holdings and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but exclusive of selling, general and administrative expenses of the Wind-Down Business Units.

"Solvent" means, with respect to any Person on a particular date, that, at fair valuations, the sum of such Person's assets is greater than all of such Person's debts.

"Specified Swap Contract" means any Swap Contract made or entered into at any time, or in effect at any time (whether heretofore or hereafter), whether directly or indirectly, and whether as a result of assignment or transfer or otherwise, between Holdings and any Swap Provider which Swap Contract is or was intended by Holdings to have been entered into for purposes of mitigating interest rate or currency exchange risk relating to any Loan (which intent shall conclusively be deemed to exist if Holdings so represents to the Swap Provider in writing), and as to which the final scheduled payment by Holdings is not later than the Term Loan Maturity Date.

"Standby Letter of Credit" means a standby Letter of Credit issued for the account of Holdings to support obligations of Holdings or any Subsidiary, contingent or otherwise (and excluding all Commercial Letters of Credit).

"Subordinated Debt Documents" means any documents and instruments evidencing any Permitted Subordinated Debt.

"Subsidiary" of a Person means any corporation, association, partnership, limited liability company, joint venture or other business entity of which more than 50% of the voting stock, membership interests or other equity interests, is owned or controlled directly or indirectly by the Person, or one or more of the Subsidiaries of the Person, or a combination thereof. Unless the context otherwise clearly requires, references herein to a "Subsidiary" refer to a Subsidiary of Holdings.

"Surety Instruments" means all letters of credit (including standby and commercial), banker's acceptances, bank guaranties, shipside bonds, surety bonds and similar instruments.

"Swap Contract" means any agreement, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, swaption, currency option or any other, similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any master agreement relating to or governing any or all of the foregoing.

"Swap Provider" means any Person that at the time such Person entered into a Specified Swap Contract with Holdings was a Lender or any Affiliate of any Lender.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (i) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (ii) for any date prior to the date referenced in clause (i) the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined by Holdings based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include any Lender).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Commitment," as to each Term Lender, means such Term Lender's obligation to make or otherwise hold Term Loans hereunder in the amount set forth opposite such Term Lender's name on Schedule 2.01(b) or in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable.

"Term Lender" means any Lender that either has a Term Commitment or a Term Loan.

"Term Loan" shall mean each term loan made under Section 2.01.

"Term Loan Maturity Date" means December 31, 2012.

"Term Note" means a promissory note executed by Holdings in favor of a Lender pursuant to Section 2.02(b), in substantially the form of Exhibit D-2.

"Term Proportionate Share" has the meaning specified in the definition of "Proportionate Share".

"Total Sales" means, for any period, total sales of Holdings and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but exclusive of total sales of the Wind-Down Business Units.

"Trade Bank" means Wells Fargo HSBC Trade Bank, N.A.

"Truss and Millwork Inventory" means Inventory consisting of trusses and millwork.

"Truss and Millwork Inventory Percentage" means, as of any date of determination, the percentage of Holdings' and its Subsidiaries' total Inventory consisting of Truss and Millwork Inventory as of such date.

"Truss and Millwork Vendor Discount Reserve" means, as of any date of determination, (i) the Truss and Millwork Inventory Percentage multiplied by (ii) the amount of reserves that Holdings has recorded in its books as of such date, in accordance with GAAP, in respect of vendor discounts earned on Holdings' and its Subsidiaries' Inventory.

"Truss and Millwork Volume Rebate Reserve" means, as of any date of determination, (i) the Truss and Millwork Inventory Percentage multiplied by (ii) the amount of reserves that Holdings has recorded in its books as of such date, in accordance with GAAP, in respect of rebates earned by vendors relating to volume purchases of Holdings' and its Subsidiaries' Inventory.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of California.

"Unfunded Pension Liability" means the excess of a Plan's benefit liabilities under section 4001(a)(16) of ERISA, over the current value of that Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to section 412 of the Code for the applicable plan year.

"United States" and "U.S." each means the United States of America.

"Update Certificate" means a certificate in substantially the form of Exhibit G.

"U.S. Subsidiary" means a Subsidiary that is located in and a resident of the United States.

"Warranty Reserve" means, as of any date of determination, the amount of reserves that Holdings has recorded in its books as of such date, in accordance with GAAP, in respect of actual or estimated warranty claims relating to products or services provided by Holdings and its Subsidiaries.

"Wells Fargo" has the meaning specified in the preamble, or any successor thereto by merger.

"Wholly-Owned Subsidiary" means any Person in which (other than directors' qualifying shares required by law) 100% of the capital stock or similar equity interest of each class having ordinary voting power, and 100% of the capital stock or similar equity interest of every other class, in each case, at the time as of which any determination is being made, is owned, beneficially and of record, by Holdings, or by one or more of the other Wholly-Owned Subsidiaries, or both.

"Wind-Down Business Units" means those business units designated as such (i) on Schedule 1.01D and (ii) by Holdings from time to time after the Effective Date with the consent of the Majority Lenders (such consent not to be unreasonably withheld or delayed).

1.02 Other Interpretive Provisions.

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other

document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, and (vii) the term "documents" includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.

(b) 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."

(c) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(d) This Agreement and other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms. Unless otherwise expressly provided, any reference to any action of the Administrative Agent or the Lenders by way of consent, approval or waiver shall be deemed modified by the phrase "in its/their sole discretion."

(e) This Agreement and the other Loan Documents are the result of negotiations among the Administrative Agent, Holdings and the other parties, have been reviewed by counsel to the Administrative Agent, Holdings and such other parties, and are the products of all parties. Accordingly, they shall not be construed against the Lenders or the Administrative Agent merely because of the Administrative Agent's or Lenders' involvement in their preparation.

1.03 Accounting Principles.

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein shall be construed, and all financial computations required under this Agreement shall be made, in accordance with GAAP, consistently applied; provided, however, that if GAAP shall have been modified after the Effective Date and the application of such modified GAAP shall have a material effect on such financial computations (including the computations required for the purpose of determining compliance with the covenants set forth in

Article VIII), then such computations shall be made and such financial statements, certificates and reports shall be prepared, and all accounting terms not otherwise defined herein shall be construed, in accordance with GAAP as in effect prior to such modification, unless and until the Majority Lenders and Holdings shall have agreed upon the terms of the application of such modified GAAP.

(b) References herein to "fiscal year", "fiscal quarter" and "fiscal month" refer to such fiscal periods of Holdings.

ARTICLE II.

THE CREDITS

2.01 Amounts and Terms of Commitments and Loans.

(a) The Term Loans. On the terms and subject to the conditions of this Agreement, each Term Lender severally agrees to make a term loan (each a "Term Loan" and, collectively, the "Term Loans") to Holdings on the Effective Date denominated in Dollars, in a principal amount equal to such Term Lender's Term Commitment. Any amount of the Term Loans repaid or prepaid may not be reborrowed.

(b) The Revolving Credit. On the terms and subject to the conditions of this Agreement, each Revolving Lender severally agrees to advance to Holdings from time to time during the period beginning on the Effective Date and ending on the Revolving Loan Maturity Date such loans (each such loan, a "Revolving Loan") in Dollars as Holdings may request under this Section 2.01(b); provided, however, that after giving effect to any Borrowing of Revolving Loans, (i) the Effective Amount of all Revolving Loans (without giving effect to any Revolving Loans that constitute capitalized payment-in-kind interest or payment-in-kind fees pursuant to Section 2.08(b) or Section 3.08(a)) and L/C Obligations shall not exceed the Aggregate Revolving Commitment, (ii) the Effective Amount of the Revolving Loans of any Revolving Lender (without giving effect to any Revolving Loans of such Revolving Lender that constitute capitalized payment-in-kind interest or payment-in-kind fees pursuant to Section 2.08(b) or Section 3.08(a)) plus the participation of such Revolving Lender in the Effective Amount of all L/C Obligations shall not at any time exceed such Revolving Lender's Revolving Commitment and (iii) the Effective Amount of all Revolving Loans, L/C Obligations and Term Loans shall not exceed the Borrowing Base then in effect. Within the limits of each Revolving Lender's Revolving Commitment, and subject to the other terms and conditions hereof, Holdings may borrow under this Section 2.01(b), prepay under Section 2.05 and reborrow under this Section 2.01(b).

2.02 Loan Accounts.

(a) The Loans made by each Lender and the Letters of Credit Issued by the L/C Issuer shall be evidenced by one or more accounts or records maintained by such Lender or L/C Issuer, as the case may be, in the ordinary course of business. The accounts or records maintained by the Administrative Agent, the L/C Issuer and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to Holdings and the

Letters of Credit Issued for the account of Holdings, and the interest and payments thereon. Any failure so to record or any error in doing so shall not, however, limit or otherwise affect the obligation of Holdings hereunder to pay any amount owing with respect to the Loans or any Letter of Credit.

(b) Upon the request of any Lender made through the Administrative Agent, the Loans made by such Lender may be evidenced by one or more Notes, instead of or in addition to loan accounts. Each such Lender shall endorse on the schedules annexed to its Note(s) the date, amount and maturity of each Loan made by it and the amount of each payment of principal made by Holdings with respect thereto. Each such Lender is irrevocably authorized by Holdings to endorse its Note(s), and each Lender's record shall be conclusive absent manifest error; provided, however, that the failure of a Lender to make, or an error in making, a notation thereon with respect to any Loan shall not limit or otherwise affect the obligations of Holdings hereunder or under any such Note to such Lender.

2.03 Procedure for Borrowing.

(a) Each Borrowing of Revolving Loans and Term Loans shall be made upon Holdings' irrevocable written notice delivered to the Administrative Agent and each Revolving Lender in the form of a Notice of Borrowing, which notice must be received by the Administrative Agent and each Revolving Lender prior to 7:00 a.m. (San Francisco time) on the requested Borrowing Date, specifying:

(i) the amount of the Borrowing, which shall be in a Minimum Amount, and whether such Borrowing shall be of Term Loans or Revolving Loans; and

(ii) the requested Borrowing Date, which shall be a Business Day.

(b) The Administrative Agent will promptly notify each Revolving Lender or Term Lender, as applicable, of its receipt of any Notice of Borrowing and of the amount of such Lender's Proportionate Share of that Borrowing.

(c) Each Lender will make the amount of its Proportionate Share of each Borrowing available to the Administrative Agent for the account of Holdings at the Administrative Agent's Payment Office by 11:00 a.m. (San Francisco time) on the Borrowing Date requested by Holdings in funds immediately available to the Administrative Agent. The proceeds of each such Borrowing will then be made available to Holdings by the Administrative Agent at such office by crediting the account of Holdings on the books of the Administrative Agent with the aggregate of the amounts made available to the Administrative Agent by the Lenders and in like funds as received by the Administrative Agent, or if requested by Holdings, by wire transfer in accordance with written instructions provided to the Administrative Agent by Holdings of such funds as received by the Administrative Agent, unless on the date of the Borrowing all or any portion of the proceeds thereof shall then be required to be applied to the repayment of any outstanding Loans or L/C Obligations, in which case such proceeds or portion thereof shall be applied to the payment of such Loans or L/C Obligations.

2.04 Voluntary Termination or Reduction of Revolving Commitments. Holdings may, upon not less than three (3) Business Days' prior written notice to the Administrative Agent,

terminate the Revolving Commitments, or permanently reduce the Revolving Commitments, provided that the aggregate amount of any partial reduction is in a Minimum Amount; unless, after giving effect thereto and to any prepayments of any Loans made on the effective date thereof, (i) the Effective Amount of all Revolving Loans (without giving effect to any Revolving Loans that constitute capitalized payment-in-kind interest or payment-in-kind fees pursuant to Section 2.08(b) or Section 3.08(a)) and L/C Obligations together would exceed the Aggregate Revolving Commitment then in effect, or (ii) the Effective Amount of all L/C Obligations would exceed the L/C Commitment then in effect. Once reduced in accordance with this Section 2.04, the Revolving Commitments may not be increased. Any reduction of the Revolving Commitments shall be applied to each Revolving Lender according to its Revolving Proportionate Share, and each reduction in the Revolving Commitments shall also reduce the L/C Commitment in a like amount. All accrued commitment and letter of credit fees to, but not including, the effective date of any reduction or termination of Revolving Commitments, shall be paid on the effective date of such reduction or termination.

2.05 Optional Prepayments.

(a) Notice; Payment. Subject to Sections 2.05(b) and 4.04, Holdings may, at any time or from time to time, upon irrevocable written notice to the Administrative Agent provided prior to 11:00 a.m. (San Francisco time) on the day of such prepayment, ratably prepay Loans in whole or in part, in Minimum Amounts; provided, however, that such notice may state that it is conditioned upon the consummation of a refinancing or other transaction, in which case such notice may be revoked by Holdings (by written notice to the Administrative Agent on or prior to the specified prepayment date), subject to Section 4.04, if such condition is not satisfied. Such notice of prepayment shall specify the date and amount of such prepayment and whether such prepayment of Loans is of Term Loans or Revolving Loans (or a combination thereof). The Administrative Agent will promptly notify the Term Lenders or the Revolving Lenders, as applicable, of its receipt of any such notice and of such prepayment. If such notice is given by Holdings, Holdings shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein, together with accrued interest to each such date on the amount prepaid and any amounts required pursuant to Section 4.04.

(b) Prepayment Premium. In the event that, prior to the Term Loan Maturity Date, the Term Loans are prepaid in whole or in part pursuant to Section 2.05(a) or Section 2.06(a) or, prior to the Revolving Loan Maturity Date, the Aggregate Revolving Commitment is permanently reduced in whole or in part in accordance with Section 2.04, including in either case in connection with a refinancing thereof (the date of either such event, the "Prepayment Date"), Holdings shall pay to the Administrative Agent for the account of each of the affected Lenders (in accordance with its respective Proportionate Share) a prepayment premium ("Prepayment Premium") equal to (i) 3.00% of the amount of such prepayment or commitment reduction, as the case may be, if the Prepayment Date occurs during the period commencing on the Effective Date and ending on the date immediately preceding the first anniversary of the Effective Date; (ii) 2.00% of the amount of such prepayment or commitment reduction, as the case may be, if the Prepayment Date occurs during the period commencing on the first anniversary of the Effective Date and ending on the date immediately preceding the second anniversary of the Effective Date; or (iii) 1.00% of the amount of such prepayment or commitment reduction, as the case may be, if the Prepayment Date occurs during the period commencing on the second anniversary of the

Effective Date and ending on the date immediately preceding the Term Loan Maturity Date. Notwithstanding the foregoing, the Prepayment Premium shall not apply to prepayments of any portion of the Term Loans that constitute capitalized payment-in-kind interest pursuant to Section 2.08(b); provided, however, that all prepayments of the outstanding principal amount of the Term Loans shall be applied first to the original principal amount thereof and last to any capitalized payment-in-kind interest. The Prepayment Premium is fully earned when due and, once paid, is non-refundable.

2.06 Mandatory Prepayments of Loans; Mandatory Commitment Reductions.

(a) Mandatory Prepayments of Loans.

(i) L/C Commitment Exceeded. If at any time the Effective Amount of all L/C Obligations exceeds the L/C Commitment, Holdings shall, in accordance with Section 3.07, Cash Collateralize on such date the outstanding Letters of Credit in an amount equal to the excess of the maximum amount then available to be drawn under the Letters of Credit over the L/C Commitment.

(ii) Aggregate Revolving Commitment Exceeded. If at any time the Effective Amount of all Revolving Loans (without giving effect to any Revolving Loans that constitute capitalized payment-in-kind interest or payment-in-kind fees pursuant to Section 2.08(b) or Section 3.08(a)) and L/C Obligations exceeds the Aggregate Revolving Commitment, Holdings shall immediately, and without notice or demand, prepay the outstanding principal amount of the Revolving Loans and L/C Borrowings and Cash Collateralize the L/C Obligations in an amount equal to the applicable excess in the following order of priority: first, Holdings shall prepay any L/C Borrowings then outstanding; second (if any such excess remains), Holdings shall prepay the Revolving Loans then outstanding; and third (if any such excess remains), Holdings shall Cash Collateralize any remaining L/C Obligations then outstanding in accordance with Section 3.07.

(iii) Borrowing Base Exceeded. If at any time the Effective Amount of all Revolving Loans, L/C Obligations and Term Loans exceeds the Borrowing Base then in effect, Holdings shall immediately, and without notice or demand, prepay the outstanding principal amount of the Revolving Loans, L/C Borrowings and Term Loans and Cash Collateralize the L/C Obligations in an amount equal to the applicable excess in the following manner (the "Mandatory Prepayment Priority"): on a pro rata and pari passu basis (as between and based upon the Effective Amount of all Revolving Loans and L/C Obligations, on the one hand, and the Effective Amount of all Term Loans, on the other hand), Holdings shall (A) apply the pro rata amount in respect of Revolving Loans and L/C Obligations in the following order of priority: first, to prepay any L/C Borrowings then outstanding; second (if any such excess remains), to prepay any Revolving Loans then outstanding; and third (if any such excess remains), in accordance with Section 3.07, to Cash Collateralize any remaining L/C Obligations then outstanding; and (B) apply the pro rata amount in respect of Term Loans to prepay the Term Loans then outstanding.

(iv) Dispositions of Property other than Excess Real Estate. If Holdings or any Subsidiary shall at any time make or agree to make a Non-Excess Real Estate

Disposition, then (A) Holdings shall promptly notify the Administrative Agent of such Non-Excess Real Estate Disposition (including notice of the amount of the estimated Net Proceeds to be received by Holdings or such Subsidiary in respect thereof), and (B) if, after giving effect to such Non-Excess Real Estate Disposition, the Net Proceeds of all Dispositions (i.e., Non-Excess Real Estate Dispositions and Dispositions of Excess Real Estate) consummated from and after the Plan Effective Date are greater than $5,000,000 in the aggregate, then promptly upon, and in no event later than one (1) Business Day after, receipt by Holdings or such Subsidiary of the Net Proceeds of such Non-Excess Real Estate Disposition, Holdings shall prepay the outstanding principal amount of the Revolving Loans, L/C Borrowings and Term Loans and Cash Collateralize the L/C Obligations in an amount equal to 100% of the Net Proceeds received in respect of such Non-Excess Real Estate Disposition (or, if less, the amount by which such Net Proceeds when added to the Net Proceeds of all Dispositions consummated from and after the Plan Effective Date exceed $5,000,000) in the Mandatory Prepayment Priority; provided, however, that with respect to any Non-Wholly-Owned Subsidiary, Holdings shall only be required to make the payments provided above in an amount not to exceed the ratable portion of the Net Proceeds received by such Non-Wholly-Owned Subsidiary based on Holdings' direct or indirect interest in such Non-Wholly-Owned Subsidiary; and provided further, however, that if the Net Proceeds of any such Non-Excess Real Estate Disposition are less than $100,000, Holdings may delay the payments required under this Section 2.06(a)(iv) until such time as aggregate Net Proceeds from Non-Excess Real Estate Dispositions in respect of which payments under this Section 2.06(a)(iv) have not been made exceed $100,000.

(v) Tax Refunds. If Holdings or any Subsidiary shall at any time receive cash, checks or other cash equivalent financial instruments from any Governmental Authority in respect of federal or state tax refunds for any tax year (including a NOL Carry-back Tax Refund) (all such amounts, "Tax Refund Proceeds"), then promptly upon, and in no event later than one (1) Business Day after, receipt by Holdings or such Subsidiary of such Tax Refund Proceeds, Holdings shall prepay the outstanding principal amount of the Revolving Loans, L/C Borrowings and Term Loans and Cash Collateralize the L/C Obligations in an amount equal to 100% of such Tax Refund Proceeds (or, if less, the portion of such Tax Refund Proceeds to which Borrower or the Lenders are entitled under the Reorganization Plan) in the Mandatory Prepayment Priority; provided, however, that if any such Tax Refund Proceeds are less than $100,000, Holdings may delay the payments required under this Section 2.06(a)(v) until such time as aggregate Tax Refund Proceeds in respect of which payments under this Section 2.06(a)(v) have not been made exceed $100,000.

(vi) Dispositions of Excess Real Estate (During Event of Default). If Holdings or any Subsidiary shall at any time make or agree to make a Disposition of any Excess Real Estate, then (A) Holdings shall promptly notify the Administrative Agent of such Disposition (including notice of the amount of the estimated Net Proceeds to be received by Holdings or such Subsidiary in respect thereof), and (B) if an Event of Default has occurred and is continuing at the time of such Disposition, then promptly upon, and in no event later than one (1) Business Day after, receipt by Holdings or such Subsidiary of the Net Proceeds of such Disposition, Holdings shall prepay the outstanding principal amount of the Revolving Loans, L/C Borrowings and Term Loans and Cash Collateralize the L/C Obligations in an amount equal to 100% of the Net Proceeds of such Disposition in the Mandatory Prepayment Priority; provided, however, that with respect to any Non-Wholly-Owned Subsidiary, Holdings shall only

be required to make the payments provided above in an amount equal to the ratable portion of the Net Proceeds received by such Non-Wholly-Owned Subsidiary based on Holdings' direct or indirect interest in such Non-Wholly-Owned Subsidiary.

(vii) Debt and Equity Issuances (During Event of Default). Upon the receipt of Net Issuance Proceeds in respect of the issuance of Indebtedness (other than Indebtedness permitted under Section 8.05) or the issuance and sale of any Equity Securities by Holdings or any Subsidiary, Holdings shall, within one (1) Business Day of Holdings' or such Subsidiary's receipt of the proceeds thereof, prepay, if an Event of Default has occurred and is continuing at the time of such payment, the outstanding principal amount of the Revolving Loans, L/C Borrowings and Term Loans and Cash Collateralize the L/C Obligations in an aggregate amount equal to 100% of such Net Issuance Proceeds in the Mandatory Prepayment Priority.

(viii) Excess Cash Flow (During Event of Default). Following the end of each fiscal year of Holdings, commencing with the fiscal year ending December 31, 2010, Holdings shall prepay, if an Event of Default has occurred and is continuing at the time of such payment, the outstanding principal amount of the Revolving Loans, L/C Borrowings and Term Loans and Cash Collateralize the L/C Obligations in an aggregate amount equal to 100% of Excess Cash Flow for such fiscal year in the Mandatory Prepayment Priority. Each prepayment pursuant to this Section 2.06(a)(viii) shall be made on or prior to the date that is five (5) Business Days after the date on which financial statements are delivered pursuant to Section 7.01(a) with respect to the fiscal year for which Excess Cash Flow is being calculated.

(ix) Cash Collateral Account Balance. If as of the close of business on any Business Day the balance in the Cash Collateral Account on such day exceeds $1,000,000, then Holdings shall within one (1) Business Day, and without notice or demand, prepay the outstanding principal amount of the Revolving Loans and L/C Borrowings in an amount equal to the applicable excess in the following order of priority: first, Holdings shall prepay any L/C Borrowings then outstanding; and second (if any such excess remains), Holdings shall prepay any Revolving Loans then outstanding.

(b) Interest. Holdings shall pay, together with each prepayment under this Section 2.06, accrued interest on the amount of any Loans prepaid and any amounts required pursuant to Section 4.04.

(c) Mandatory Commitment Reductions. The Aggregate Revolving Commitment shall be automatically and permanently reduced to $0 on the Revolving Loan Maturity Date. If, on the Effective Date, the Aggregate Term Commitment exceeds the aggregate outstanding principal amount of the Term Loans made on the Effective Date, such unused portion of the Aggregate Term Commitment shall thereafter automatically terminate on the Effective Date.

(d) Optional Waiver of Prepayments. Any Term Lender may elect, by notice to the Administrative Agent at or prior to the time and in the manner specified by the Administrative Agent, prior to any mandatory prepayment required to be made by Holdings under Section 2.06(a), to decline all (but not a portion) of its pro rata share of such prepayment

(such declined amounts, the "Declined Proceeds"). Any Declined Proceeds shall be offered to the Term Lenders not so declining such prepayment, with such Term Lenders having the right to decline any prepayment with Declined Proceeds at the time and in the manner specified by the Administrative Agent. Any Declined Proceeds rejected by such Term Lenders may be retained by Holdings.

2.07 Repayment.

(a) The Term Loans. Holdings shall repay to the Administrative Agent for the account of the Term Lenders on the Term Loan Maturity Date the aggregate principal amount of Term Loans outstanding on such date.

(b) The Revolving Loans. Holdings shall repay to the Administrative Agent for the account of the Revolving Lenders on the Revolving Loan Maturity Date the aggregate principal amount of Revolving Loans outstanding on such date.

2.08 Interest.

(a) Subject to Section 2.08(c) below, each Revolving Loan and Term Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing Date at a rate per annum equal to the LIBOR Rate plus the Applicable Margin.

(b) (i) Accrued cash pay interest on each Loan shall be due and payable in arrears on each Interest Payment Date for such Loan, (ii) accrued payment-in-kind interest on each Loan shall capitalize (as a Revolving Loan or Term Loan, as applicable) on each Interest Payment Date, and (iii) all accrued and unpaid interest shall be due and payable in cash in arrears at final maturity of the Loans (whether at stated maturity, upon acceleration or otherwise) and upon payment (including prepayment) in full of the Loans; provided that (A) additional interest accrued pursuant to Section 2.08(c) shall be due and payable in cash upon demand of the Administrative Agent at the request or with the consent of the Majority Lenders, and (B) in the event of any repayment or prepayment of any Loan, accrued cash pay interest on the principal amount repaid or prepaid shall be due and payable on the date of such repayment or prepayment; and provided, further, that in lieu of and in substitution for payment-in-kind interest, each Lender may, by irrevocable written election made to the Administrative Agent on or prior to the date that is 30 days after the Effective Date, elect to have its Loans accrue a daily fee at an equivalent rate per annum, it being understood that such accrued fee shall be payable by Holdings and shall capitalize at the same times and in the same manner as accrued payment-in-kind interest as described in clause (b)(ii) of this Section above. During the existence of any Event of Default, all interest accruing hereunder shall be payable in cash on demand of the Administrative Agent at the request or with the consent of the Majority Lenders.

(c) Notwithstanding Section 2.08(a), (i) at the election of the Administrative Agent at the request or with the consent of the Majority Lenders while any Event of Default exists or (ii) after acceleration, Holdings shall pay interest (after as well as before entry of judgment thereon to the extent permitted by law) on the principal amount of all outstanding Loans and other Obligations of Holdings, at a rate per annum which is determined by adding 4.00% per annum to the Applicable Margin and, in the case of Obligations not subject to the

Applicable Margin, at a rate per annum equal to the LIBOR Rate plus the Applicable Margin plus 4.00% per annum.

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

(e) Holdings may elect to treat the accrued interest due and payable with respect to each Loan on any given Interest Payment Date (i) as all cash pay interest in accordance with clause (i) of the definition of "Applicable Margin" or (ii) as a combination of cash pay interest and payment-in-kind interest in accordance with clause (ii) of such definition; provided, however, that Holdings may elect to pay a portion of such payment-in-kind interest in cash. Holdings shall provide notice of its election to the Administrative Agent at least three (3) Business Days before such Interest Payment Date (or by such other time acceptable to the Administrative Agent). If such notice is not timely provided, Holdings shall be deemed to have elected to treat such accrued interest as a combination of cash pay interest and payment-in-kind interest in accordance with clause (ii) of the definition of "Applicable Margin".

2.09 Fees. In addition to certain fees described in Section 3.08:

(a) Closing Fee. On the Effective Date, Holdings shall pay to the Administrative Agent for the account of each of the Lenders in accordance with its respective Proportionate Share a closing fee (which, for any Term Lender, shall be in the form of original issue discount) equal to 2.50% of the Aggregate Commitment (such fee, the "Closing Fee"). The Closing Fee is fully earned when due and, once paid, is non-refundable.

(b) Agency Fees. Holdings shall pay the fees specified in that certain letter agreement between Holdings and Wells Fargo dated October 5, 2009 (the "Fee Letter").

(c) Commitment Fees. Holdings shall pay to the Administrative Agent for the account of each Revolving Lender (except for Defaulting Lenders) a commitment fee on the actual daily unused portion of such Revolving Lender's Revolving Commitment (the "Available Commitment"), computed on a monthly basis in arrears on the last Business Day of each calendar month based upon the daily utilization for that month as calculated by the Administrative Agent at a rate per annum equal to the Applicable Fee Amount (such fees, the "Commitment Fees"). For purposes of calculating the Available Commitment under this Section 2.09, the Revolving Commitments shall be deemed used to the extent of the Effective Amount of Revolving Loans then outstanding plus the Effective Amount of L/C Obligations then outstanding (other than Revolving Loans that constitute capitalized payment-in-kind interest or

payment-in-kind fees pursuant to Section 2.08(b) or Section 3.08(a)). Such Commitment Fees shall accrue from the Effective Date to the Revolving Loan Maturity Date and shall be due and payable monthly in arrears on the last Business Day of each calendar month, with the final payment to be made on the Revolving Loan Maturity Date; provided that in connection with any termination of Revolving Commitments hereunder, the accrued Commitment Fees calculated for the period ending on such date shall also be paid on the date of termination. The Commitment Fees provided in this Section 2.09(c) shall accrue at all times after the Effective Date, including at any time during which one or more conditions in Article V are not met. Such fees are fully earned when due and, once paid, are non-refundable.

2.10 Computation of Fees and Interest.

(a) All computations of fees and interest 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) Each determination of an interest rate by the Administrative Agent shall be conclusive and binding on Holdings and the Lenders in the absence of manifest error. The Administrative Agent will, at the request of Holdings or any Lender, deliver to Holdings or the Lender, as the case may be, a statement showing the quotations used by the Administrative Agent in determining any interest rate and the resulting interest rate.

2.11 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by Holdings shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by Holdings hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Payment Office in Dollars and in immediately available funds not later than 11:00 a.m. (San Francisco time) on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Proportionate Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 11:00 a.m. (San Francisco time) shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by Holdings shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Funding by Lenders; Payments by Holdings; Presumption by Administrative Agent.

(i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing (or prior to the time of any Borrowing, in the case of any same day advance of Loans) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has

made such share available on such date in accordance with Section 2.03 and may, in reliance upon such assumption, make available to Holdings a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and Holdings severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to Holdings to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (B) in the case of a payment to be made by Holdings, the interest rate applicable to Loans. If Holdings and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to Holdings the amount of such interest paid by Holdings for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by Holdings shall be without prejudice to any claim Holdings may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Holdings; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from Holdings prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that Holdings will not make such payment, the Administrative Agent may assume that Holdings has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if Holdings has not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or Holdings with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to Holdings by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article V are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required

hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

2.12 Sharing of Payments, Etc.

(a) Except as otherwise provided herein:

(i) Each Revolving Loan and reduction of the Aggregate Revolving Commitment shall be made or shared among the Revolving Lenders pro rata according to their respective Revolving Proportionate Shares;

(ii) Each Term Loan shall be made or shared among the Term Lenders pro rata according to their respective Term Proportionate Shares;

(iii) Each payment of principal on Loans in any Borrowing shall be shared among the Lenders which made or funded the Loans in such Borrowing pro rata according to the respective unpaid principal amounts of such Loans then owed to such Lenders;

(iv) Each payment of interest on Loans in any Borrowing shall be shared among the Lenders that made or funded the Loans in such Borrowing pro rata according to (A) the respective unpaid principal amounts of such Loans so made or funded by such Lenders and (B) the dates on which such Lenders so made or funded such Loans;

(v) Each payment of Commitment Fees pursuant to this Agreement shall be shared among the Revolving Lenders (except for Defaulting Lenders) pro rata according to (A) their respective Revolving Proportionate Shares and (B) in the case of each Revolving Lender which becomes a Revolving Lender hereunder after the date hereof, the date upon which such Revolving Lender so became a Revolving Lender;

(vi) Each payment of any fees due in connection with any amendment hereto or any waiver of or forbearance from any Event of Default existing hereunder shall be shared among those Lenders consenting to such amendment, waiver or forbearance or as otherwise agreed to by such Lenders;

(vii) Each payment of interest (other than interest on Loans) and fees (other than Commitment Fees) shall be shared among the Lenders and the Administrative Agent owed the amount upon which such interest or fee accrues pro rata according to (A) the respective amounts so owed such Lenders and the Administrative Agent and (B) the dates on which such amounts became owing to such Lenders and the Administrative Agent; and

(viii) All other payments under this Agreement and the other Loan Documents shall be for the benefit of the Person or Persons specified.

(b) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it, or the participations in L/C Obligations held by it or other obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans or

participations and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans, subparticipations in L/C Obligations and participations in such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section 2.12(b) shall not be construed to apply to (x) any payment made by Holdings pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations to any assignee or participant, other than to Holdings or any Subsidiary thereof (as to which the provisions of this Section 2.12(b) shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.12(b) and will in each case notify the applicable Lenders following any such purchases or repayments.

2.13 Security and Guaranty.

(a) All Obligations under this Agreement, the Notes and all other Loan Documents shall be secured in accordance with the Collateral Documents.

(b) All Obligations of Holdings under this Agreement, each of the Notes and all other Loan Documents to which it is a party shall be unconditionally guaranteed by each Guarantor pursuant to its Guaranty.

2.14 Cash Collateral. The Cash Collateral Account and all cash collateral held therein shall be maintained pursuant to the Security Agreement. Holdings shall have access to the funds in the Cash Collateral Account and Holdings may from time to time give instructions to the depository bank directing the disposition of the funds in the Cash Collateral Account; provided, however, that if an Event of Default occurs and is continuing and the Administrative Agent elects to exercise control of the Cash Collateral Account, Holdings shall not have access to the funds in the Cash Collateral Account and may not direct the disposition of the funds in the Cash Collateral Account, except with the consent of the Administrative Agent.

ARTICLE III.

THE LETTERS OF CREDIT

3.01 The Letter of Credit Subfacility.

(a) On the terms and subject to the conditions set forth herein (i) the L/C Issuer agrees, (A) from time to time on any Business Day during the period from the Effective Date to the Revolving Loan Maturity Date to issue Letters of Credit for the account of Holdings, and to amend or renew Letters of Credit previously issued by it, in accordance with Section 3.02(c) and Section 3.02(d), and (B) to honor drafts under the Letters of Credit; and (ii) the Revolving Lenders severally agree to participate in Letters of Credit Issued for the account of Holdings; provided that the L/C Issuer shall not be obligated to Issue, and no Revolving Lender shall be obligated to participate in, any Letter of Credit if such Letter of Credit is not denominated in Dollars or if as of the date of Issuance of such Letter of Credit (the "Issuance Date") and after giving effect thereto (w) the Effective Amount of all L/C Obligations and Revolving Loans (without giving effect to any Revolving Loans that constitute capitalized payment-in-kind interest or payment-in-kind fees pursuant to Section 2.08(b) or Section 3.08(a)) shall exceed the Aggregate Revolving Commitment, (x) the participation of any Revolving Lender in the Effective Amount of all L/C Obligations plus the Effective Amount of the Revolving Loans of such Revolving Lender (without giving effect to any Revolving Loans of such Revolving Lender that constitute capitalized payment-in-kind interest or payment-in-kind fees pursuant to Section 2.08(b) or Section 3.08(a)) shall exceed such Revolving Lender's Revolving Commitment, (y) the Effective Amount of L/C Obligations shall exceed the L/C Commitment or (z) the Effective Amount of all Revolving Loans, L/C Obligations and Term Loans shall exceed the Borrowing Base then in effect. Within the foregoing limits, and subject to the other terms and conditions hereof, Holdings' ability to obtain Letters of Credit shall be fully revolving, and, accordingly, Holdings may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit which have expired or which have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Effective Date shall be subject to and governed by the terms and conditions hereof.

(b) The L/C Issuer is under no obligation to Issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from Issuing such Letter of Credit, or any Requirement of Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the Issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the L/C Issuer in good faith deems material to it;

(ii) the L/C Issuer has received written notice from any Revolving Lender, the Administrative Agent or Holdings, on or prior to the Business Day prior to the requested date of Issuance of such Letter of Credit, that one or more of the applicable conditions contained in Article V is not then satisfied, unless all of the Revolving Lenders have waived such unsatisfied conditions in writing;

(iii) the expiry date of any requested Letter of Credit is (A) with respect to Standby Letters of Credit, more than 365 days after the date of Issuance, unless the Majority Revolving Lenders have approved such expiry date in writing, (B) with respect to Commercial Letters of Credit, more than 30 days after the date of Issuance, unless the Majority Revolving Lenders have approved such expiry date in writing, or (C) after the Revolving Loan Maturity Date, unless all of the Revolving Lenders have approved such expiry date in writing;

(iv) the expiry date of any requested Letter of Credit is prior to the maturity date of any financial obligation to be supported by the requested Letter of Credit;

(v) any requested Letter of Credit does not provide for drafts, or is not otherwise in form and substance acceptable to the L/C Issuer, or the Issuance of a Letter of Credit shall violate any applicable policies of the L/C Issuer;

(vi) any Standby Letter of Credit is for the purpose of supporting the issuance of any letter of credit by any other Person;

(vii) any Standby Letter of Credit is in a face amount less than $250,000; or

(viii) any requested Letter of Credit is to be denominated in a currency other than Dollars.

(c) Letters of Credit issued under this Article III shall be either Commercial Letters of Credit or Standby Letters of Credit.

3.02 Issuance, Amendment and Renewal of Letters of Credit.

(a) Each Letter of Credit shall be issued upon the irrevocable written request of Holdings received by the L/C Issuer (with a copy sent by Holdings to the Administrative Agent) at least four (4) Business Days (or such shorter time as the L/C Issuer may agree in a particular instance in its sole discretion) prior to the proposed date of issuance. Each such request for issuance of a Letter of Credit shall be by facsimile, confirmed immediately in an original writing, in the form of an L/C Application, and shall specify in form and detail satisfactory to the L/C Issuer: (i) the proposed date of issuance of the Letter of Credit (which shall be a Business Day); (ii) the face amount of the Letter of Credit; (iii) the expiry date of the Letter of Credit; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by the beneficiary of the Letter of Credit in case of any drawing thereunder; (vi) the full text of any certificate to be presented by the beneficiary in case of any drawing thereunder; and (vii) such other matters as the L/C Issuer may require.

(b) At least two (2) Business Days prior to the Issuance of any Letter of Credit, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of the L/C Application or L/C Amendment Application from Holdings and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received notice on or before the Business Day immediately preceding the date the L/C Issuer is to issue a requested Letter of Credit from Holdings, the Administrative Agent or any Revolving Lender (A) directing the L/C Issuer not to issue such Letter of Credit because such issuance is not then permitted under Section 3.01(a) as a result of the limitations set forth in clauses (w) through (z) thereof or Section 3.01(b); or (B) that one or more conditions specified in Article V are not then satisfied; then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of Holdings in accordance with the L/C Issuer's usual and customary business practices. If the L/C Issuer does timely receive any such notice as provided in the preceding sentence, then the L/C Issuer shall not Issue such requested Letter of Credit without prior written consent from the Administrative Agent and each Revolving Lender.

(c) From time to time while a Letter of Credit is outstanding and prior to the Revolving Loan Maturity Date, the L/C Issuer will, upon the written request of Holdings received by the L/C Issuer (with a copy sent by Holdings to the Administrative Agent) at least four (4) Business Days (or such shorter time as the L/C Issuer may agree in a particular instance in its sole discretion) prior to the proposed date of amendment (including a renewal or extension thereof), amend any Letter of Credit issued by it. Each such request for amendment of a Letter of Credit shall be made by facsimile, confirmed immediately in an original writing, made in the form of an L/C Amendment Application and shall specify in form and detail satisfactory to the L/C Issuer: (i) the Letter of Credit to be amended; (ii) the proposed date of amendment of the Letter of Credit (which shall be a Business Day); (iii) the nature of the proposed amendment; and (iv) such other matters as the L/C Issuer may require. The L/C Issuer shall be under no obligation to amend any Letter of Credit if: (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms of this Agreement; or (B) the beneficiary of any such Letter of Credit does not accept the proposed amendment to the Letter of Credit. The Administrative Agent will promptly notify the Revolving Lenders of the receipt by the Administrative Agent of any L/C Application or L/C Amendment Application or the Issuance of any Letter of Credit notified to it by the L/C Issuer. From time to time the Administrative Agent will notify the Revolving Lenders of the amount of all outstanding Letters of Credit hereunder.

(d) The L/C Issuer and the Revolving Lenders agree that, while a Letter of Credit is outstanding and prior to the Revolving Loan Maturity Date, the L/C Issuer shall be entitled to authorize the renewal of any Letter of Credit issued by it. The L/C Issuer shall be under no obligation to so renew any Letter of Credit if: (A) the L/C Issuer would have no obligation at such time to issue or amend such Letter of Credit in its renewed form under the terms of this Agreement; or (B) the beneficiary of any such Letter of Credit does not accept the proposed renewal of the Letter of Credit. If any outstanding Letter of Credit shall provide that it shall be automatically renewed unless the beneficiary thereof receives notice from the L/C Issuer that such Letter of Credit shall not be renewed, and if at the time of renewal, the L/C Issuer would be entitled to authorize the renewal of such Letter of Credit in accordance with this Section 3.02(d) upon the request of Holdings, but the L/C Issuer shall not have received any

written direction by Holdings with respect thereto, the L/C Issuer shall nonetheless be permitted to allow such Letter of Credit to renew, and Holdings and the Revolving Lenders hereby authorize such renewal, and, accordingly, the L/C Issuer shall be deemed to have received an L/C Amendment Application from Holdings requesting such renewal.

(e) The L/C Issuer may, at its election (or as required by the Administrative Agent at the direction of the Majority Revolving Lenders), deliver any notices of termination or other communications to any Letter of Credit beneficiary or transferee, and take any other action as necessary or appropriate, at any time and from time to time, in order to cause the expiry date of such Letter of Credit to be a date not later than the Revolving Loan Maturity Date.

(f) This Agreement shall control in the event of any conflict with any L/C Related Document (other than any Letter of Credit).

(g) The L/C Issuer will also deliver to the Administrative Agent, concurrently or promptly following its delivery of a Letter of Credit, or amendment to or renewal of a Letter of Credit, to an advising bank or a beneficiary, a true and complete copy of each such Letter of Credit or amendment to or renewal of a Letter of Credit.

3.03 Risk Participations, Drawings and Reimbursements.

(a) Immediately upon the Issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a participation in such Letter of Credit and each drawing thereunder in an amount equal to the product of (i) the Revolving Proportionate Share of such Revolving Lender, multiplied by (ii) the maximum amount available to be drawn under such Letter of Credit and the amount of such drawing, respectively. Each Issuance of a Letter of Credit shall be deemed to utilize the Revolving Commitment of each Revolving Lender by an amount equal to the amount of such participation.

(b) In the event of any request for a drawing under a Letter of Credit by the beneficiary or transferee thereof, the L/C Issuer will promptly notify Holdings and specify in such notice the date such drawing will be honored by the L/C Issuer (the "Honor Date"). If the L/C Issuer so notifies Holdings prior to 9:00 a.m. (San Francisco time) on the Honor Date, Holdings, as account party under such Letter of Credit, shall reimburse the L/C Issuer no later than 10:00 a.m. (San Francisco time) on the Honor Date for the amount paid by the L/C Issuer under such Letter of Credit or, if the L/C Issuer shall so notify Holdings after 9:00 a.m. (San Francisco time) on the Honor Date, Holdings, as account party under such Letter of Credit, shall reimburse the L/C Issuer no later than 10:00 a.m. (San Francisco time) on the next succeeding Business Day for the amount paid by the L/C Issuer under such Letter of Credit on the Honor Date (each such date, a "Reimbursement Date"), in each case, in an amount equal to the amount so paid by the L/C Issuer. In the event Holdings fails to reimburse the L/C Issuer for the full amount of any drawing under any Letter of Credit by the required time as provided above on the Reimbursement Date, the L/C Issuer will promptly notify the Administrative Agent, and the Administrative Agent will promptly notify each Revolving Lender thereof (including the amount thereof and such Revolving Lender's Revolving Proportionate Share thereof), and Holdings shall be deemed to have requested that Revolving Loans be made by the Revolving Lenders to

Holdings to be disbursed on the Reimbursement Date for such Letter of Credit, subject to the amount of the unutilized portion of the Aggregate Revolving Commitment and subject to the conditions set forth in Section 5.02. Holdings hereby directs that the proceeds of any such Loans deemed to be borrowed by it shall be used to pay its reimbursement obligations in respect of any such drawing. Solely for the purposes of making such Loans, the Minimum Amount limitations set forth in Section 2.03 shall not be applicable. Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 3.03(b) may be oral if immediately confirmed in writing (including by facsimile); provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice. In the event that any amount of any drawing under any Letter of Credit is not reimbursed by Holdings on the Honor Date, such unreimbursed amount shall bear interest until it is either deemed to be an L/C Borrowing as provided in Section 3.03(d) or deemed to be converted to a Revolving Loan as provided in this Section 3.03(b), at a rate per annum equal to the LIBOR Rate plus the Applicable Margin.

(c) Each Revolving Lender shall, upon receipt of any notice pursuant to Section 3.03(b), make available to the Administrative Agent for the account of the L/C Issuer an amount in Dollars and in immediately available funds equal to its Revolving Proportionate Share of the amount of the drawing, whereupon such Revolving Lender shall (subject to Section 3.03(f)) be deemed to have made a Revolving Loan to Holdings in that amount. The Administrative Agent will promptly give notice of the occurrence of the Reimbursement Date, but failure of the Administrative Agent to give any such notice on the Reimbursement Date or in sufficient time to enable any Revolving Lender to effect such payment on such date shall not relieve such Revolving Lender from its obligations under this Section 3.03.

(d) With respect to any unreimbursed drawing that is not converted into Revolving Loans in whole or in part, because of Holdings' failure to satisfy the conditions set forth in Section 5.02 or for any other reason, Holdings shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of such drawing, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at a rate per annum equal to the LIBOR Rate plus the Applicable Margin plus 4.00% per annum. In such event, each Revolving Lender shall upon receipt of any notice pursuant to Section 3.03(b) make available to the Administrative Agent for the account of the L/C Issuer an amount in Dollars and in immediately available funds equal to its Revolving Proportionate Share of the amount of the drawing. Each Revolving Lender's payment to the L/C Issuer pursuant to this Section 3.03(d) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Revolving Lender in satisfaction of its participation obligation under this Section 3.03.

(e) If any Revolving Lender fails to make available to the Administrative Agent for the account of the L/C Issuer the amount of such Revolving Lender's Revolving Proportionate Share of the amount of any drawing by no later than 2:00 p.m. (San Francisco time) on the Reimbursement Date, then interest shall accrue on such Revolving Lender's obligation to make such payment, from the Reimbursement Date to the date such Revolving Lender makes such payment, at (i) the Federal Funds Rate in effect from time to time during the period commencing on the Reimbursement Date and ending on the date three (3) Business Days thereafter, and (ii) thereafter at the LIBOR Rate as in effect from time to time, payable on demand of the Administrative Agent.

(f) Each Revolving Lender's obligation in accordance with this Agreement to make or participate in the Revolving Loans or L/C Advances, as contemplated by this Section 3.03, as a result of a drawing under a Letter of Credit, shall be absolute and unconditional and without recourse to the L/C Issuer and shall not be affected by any circumstance, including (i) any set-off, counterclaim, recoupment, defense or other right which such Revolving Lender may have against the L/C Issuer, Holdings or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default, an Event of Default or a Material Adverse Effect; or (iii) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided, however, that each Revolving Lender's obligation to make Revolving Loans under this Section 3.03 is subject to the conditions set forth in Section 5.02; and provided, further, however, that a Revolving Lender may have recourse against the L/C Issuer, and the L/C Issuer may be liable to a Revolving Lender, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by such Revolving Lender which such Revolving Lender proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit.

3.04 Repayment of Participations.

(a) Upon (and only upon) receipt by the Administrative Agent for the account of the L/C Issuer of immediately available funds from Holdings (i) in reimbursement of any payment made by the L/C Issuer under the Letter of Credit with respect to which any Revolving Lender has paid the Administrative Agent for the account of the L/C Issuer for such Revolving Lender's participation in the Letter of Credit pursuant to Section 3.03 or (ii) in payment of interest thereon, the Administrative Agent will pay to each Revolving Lender, in the same funds as those received by the Administrative Agent for the account of the L/C Issuer, the amount of such Revolving Lender's Revolving Proportionate Share of such funds, and the L/C Issuer shall receive the amount of the Revolving Proportionate Share of such funds of any Revolving Lender that did not so pay the Administrative Agent for the account of the L/C Issuer.

(b) If the Administrative Agent or the L/C Issuer is required at any time to return to Holdings, or to a trustee, receiver, liquidator, custodian, or any official in any Insolvency Proceeding, any portion of the payments made by Holdings to the Administrative Agent for the account of the L/C Issuer pursuant to Section 3.04(a) in reimbursement of a payment made under the Letter of Credit or interest or fee thereon, each Revolving Lender shall, on demand of the Administrative Agent, forthwith return to the Administrative Agent or the L/C Issuer the amount of its Revolving Proportionate Share of any amounts so returned by the Administrative Agent or the L/C Issuer plus interest thereon from the date such demand is made to the date such amounts are returned by such Revolving Lender to the Administrative Agent or the L/C Issuer, at a rate per annum equal to (i) the Federal Funds Rate in effect from time to time during the period commencing on the date such demand is made and ending on the date three (3) Business Days thereafter, and (ii) thereafter at the LIBOR Rate as in effect from time to time.

3.05 Role of the L/C Issuer.

(a) Each Revolving Lender and Holdings agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft and certificates expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document.

(b) No Administrative Agent-Related Person nor any of the respective correspondents, participants or assignees of the L/C Issuer shall be liable to any Revolving Lender for: (i) any action taken or omitted in connection herewith at the request or with the approval of any Revolving Lender or the Majority Revolving Lenders or Majority Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any L/C-Related Document.

(c) Holdings hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude Holdings pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. No Administrative Agent-Related Person, nor any of the respective correspondents, participants or assignees of the L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (vii) of Section 3.06; provided, however, anything in such clauses to the contrary notwithstanding, that Holdings may have a claim against the L/C Issuer, and the L/C Issuer may be liable to Holdings, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Holdings which Holdings proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing: (i) the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary; and (ii) the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

3.06 Obligations Absolute. The obligations of Holdings under this Agreement and any L/C-Related Document to reimburse the L/C Issuer for a drawing under a Letter of Credit, and to repay any L/C Borrowing and any drawing under a Letter of Credit converted into Revolving Loans, shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement and each such other L/C-Related Document under all circumstances, including the following:

(i) any lack of validity or enforceability of this Agreement or any L/C-Related Document;

(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 Holdings in respect of any Letter of Credit or any other amendment or waiver of or any consent to departure from all or any of the L/C-Related Documents;

(iii) the existence of any claim, set-off, defense or other right that Holdings may have at any time against any beneficiary or any transferee of any Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by the L/C-Related Documents or any unrelated transaction;

(iv) any draft, demand, certificate or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit;

(v) any payment by the L/C Issuer under any Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of any Letter of Credit; or any payment made by the L/C Issuer under any Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of any Letter of Credit, including any arising in connection with any Insolvency Proceeding;

(vi) any exchange, release or non-perfection of any collateral, or any release or amendment or waiver of or consent to departure from any other guarantee, for all or any of the obligations of Holdings in respect of any Letter of Credit; or

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, Holdings or a Guarantor.

3.07 Cash Collateral Pledge. (a) Upon the request of the Administrative Agent, if the L/C Issuer has honored any full or partial drawing request on any Letter of Credit and such drawing has resulted in an L/C Borrowing hereunder, or (b) if, as of the Revolving Loan Maturity Date, any Letters of Credit may for any reason remain outstanding and partially or wholly undrawn, or (c) upon the occurrence of the circumstances described in Sections 2.06(a)(i) or 2.06(a)(iii) requiring Holdings to Cash Collateralize Letters of Credit, or (d) upon the occurrence of the circumstances described elsewhere in Section 2.06(a) requiring Holdings to Cash Collateralize Letters of Credit, then Holdings shall immediately Cash Collateralize the L/C Obligations in an amount equal to such L/C Obligations, or in such other applicable amount required under Section 2.06(a). In the case of the preceding clauses (a), (b) and (c), Holdings shall, to the extent necessary, make such additional pledges from time to time as shall be necessary to ensure that all such L/C Obligations remain at all times fully Cash Collateralized. Cash collateral held to secure the L/C Obligations under this Section 3.07 or Section 9.02 shall be maintained in the L/C Cash Collateral Account pursuant to the Security Agreement. If L/C

Obligations are Cash Collateralized pursuant to Section 2.06(a)(iii) and at any time thereafter the Borrowing Base then in effect exceeds the Effective Amount of all Revolving Loans, L/C Obligations and Term Loans, then Holdings may request in writing that the Administrative Agent release funds from the L/C Cash Collateral Account in an amount up to the Dollar amount of the applicable excess, and promptly following its receipt of such written request the Administrative Agent shall, subject to the other provisions of this Agreement and the other Loan Documents, so release such funds in such Dollar amount, provided that no Default then exists and the Administrative Agent has received a certification to such effect from a Responsible Officer of Holdings. If L/C Obligations are Cash Collateralized pursuant to Sections 2.06(a)(iv) through 2.06(a)(viii), then at any time thereafter Holdings may request in writing that the Administrative Agent release all or a portion of such cash collateral, and promptly following its receipt of such written request the Administrative Agent shall, subject to the other provisions of this Agreement and the other Loan Documents, so release such funds, provided that no Default then exists.

3.08 Letter of Credit Fees.

(a) Holdings shall pay to the Administrative Agent for the account of each of the Revolving Lenders in accordance with its respective Revolving Proportionate Share a letter of credit fee with respect to the Letters of Credit equal to the rate per annum equal to the Applicable Fee Amount of the actual daily maximum amount available to be drawn of the outstanding Letters of Credit, computed on a monthly basis in arrears on the last Business Day of each calendar month based upon Letters of Credit outstanding for that month as calculated by the Administrative Agent. Such letter of credit fees shall be due and payable as follows: (i) accrued cash pay letter of credit fees shall be payable monthly in arrears on the last Business Day of each calendar month during which Letters of Credit are outstanding, and (ii) accrued payment-in-kind letter of credit fees shall capitalize (as Revolving Loans) on the last Business Day of each calendar month during which Letters of Credit are outstanding, in each case commencing on the first such monthly date to occur after the Effective Date, to the Revolving Loan Maturity Date (or such later date upon which the outstanding Letters of Credit shall expire), with the final payment to be made on the Revolving Loan Maturity Date (or such later expiration date). Such fees are fully earned when due and, once paid, are non-refundable.

(b) Holdings shall pay to the L/C Issuer, for the L/C Issuer's sole account, a letter of credit fronting fee for each Letter of Credit Issued by the L/C Issuer equal to 0.500% per annum of the actual daily maximum amount available to be drawn of the outstanding Letters of Credit, computed on a monthly basis in arrears on the last Business Day of each calendar month based upon Letters of Credit outstanding for that month as calculated by the L/C Issuer. Such letter of credit fronting fees shall be due and payable monthly in arrears on the last Business Day of each calendar month during which Letters of Credit are outstanding, commencing on the first such monthly date to occur after the Effective Date, to the Revolving Loan Maturity Date (or such later date upon which the outstanding Letters of Credit shall expire), with the final payment to be made on the Revolving Loan Maturity Date (or such later expiration date). Such fees are fully earned when due and, once paid, are non-refundable.

(c) Holdings shall pay to the L/C Issuer from time to time on demand the normal issuance, presentation, transfer, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect.

(d) Notwithstanding Section 3.08(a), while any Event of Default exists or after acceleration, Holdings shall pay a letter of credit fee (after as well as before entry of judgment thereon to the extent permitted by law) in cash on the actual daily maximum amount available to be drawn of the outstanding Letters of Credit, at a rate per annum which is determined by adding 4.00% per annum to the rate otherwise then in effect hereunder for such Letters of Credit.

(e) Holdings may elect to treat the accrued letter of credit fees due and payable under Section 3.08(a) with respect to each Letter of Credit on the last Business Day of any given calendar month for which letter of credit fees are due therefor (i) as all cash pay fees in accordance with clause (ii)(a) of the definition of "Applicable Fee Amount" or (ii) as a combination of cash pay fees and payment-in-kind fees in accordance with clause (ii)(b) of such definition; provided, however, that Holdings may elect to pay a portion of such payment-in-kind fees in cash. Holdings shall provide notice of its election to the Administrative Agent at least three (3) Business Days before the last Business Day of such calendar month (or by such other time acceptable to the Administrative Agent). If such notice is not timely provided, Holdings shall be deemed to have elected to treat such accrued letter of credit fees as a combination of cash pay fees and payment-in-kind fees in accordance with clause (ii)(b) of the definition of "Applicable Fee Amount".

3.09 Applicability of ISP98 and UCP. Unless otherwise expressly agreed by the L/C Issuer and Holdings when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to each Standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits (the "UCP"), as most recently published by the International Chamber of Commerce (the "ICC") at the time of issuance (including the ICC decision published by the Commission on Banking Technique and Practice on April 6, 1998 regarding the European single currency (euro)) shall apply to each Commercial Letter of Credit.

3.10 Trade Bank as L/C Issuer. The parties hereto acknowledge and agree that, at its option, Wells Fargo, as L/C Issuer, may arrange for Letters of Credit to be issued by Trade Bank as agent for Wells Fargo. All parties hereto understand and agree that to the extent any Letters of Credit are issued by Trade Bank as agent for Wells Fargo, (i) Trade Bank is agent only to Wells Fargo and not to Holdings and has no obligations to Holdings, (ii) the Letters of Credit issued by Trade Bank will be deemed Letters of Credit issued by the L/C Issuer for all purposes hereunder and (iii) any of the obligations performed or rights exercised pursuant to or in connection with the issuance of any Letter of Credit by Trade Bank shall be deemed obligations performed or rights exercised by Wells Fargo as L/C Issuer. To the extent that the L/C Issuer is required to provide any notices to, or take any other actions for the benefit of, the Administrative Agent hereunder, with respect to any Letter of Credit issued by Trade Bank, no such notice or action shall be required.

ARTICLE IV.

TAXES, YIELD PROTECTION AND ILLEGALITY

4.01 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of Holdings hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if Holdings shall be required by applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) Holdings shall make such deductions and (iii) Holdings shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by Holdings. Without limiting the provisions of subsection (a) above, Holdings shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by Holdings. Holdings shall indemnify the Administrative Agent, each Lender and the L/C Issuer, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Holdings by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by Holdings to a Governmental Authority, Holdings shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which Holdings is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to Holdings (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by Holdings or the Administrative Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without

withholding or at a reduced rate of withholding. In addition, any Lender, if requested by Holdings or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Holdings or the Administrative Agent as will enable Holdings or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, in the event that Holdings is resident for tax purposes in the United States, any Foreign Lender shall deliver to Holdings and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of Holdings or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed copies of Internal Revenue Service Form W-8ECI,

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

(iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit Holdings to determine the withholding or deduction required to be made.

(f) Treatment of Certain Refunds. If the Administrative Agent, any Lender or the L/C Issuer determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by Holdings or with respect to which Holdings has paid additional amounts pursuant to this Section, it shall pay to Holdings an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Holdings under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that Holdings, upon the request of the Administrative Agent, such Lender or the L/C Issuer, agrees to repay the amount paid over to Holdings (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or the L/C Issuer in the event the Administrative Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent, any Lender or the L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Holdings or any other Person.

(g) Nothing contained in this Section 4.01 shall override any term or provision of any Specified Swap Contract regarding withholding taxes relating to Swap Contracts.

4.02 Illegality.

(a) If any Lender determines that the introduction of any Requirement of Law, or any change in any Requirement of Law, or in the interpretation or administration of any Requirement of Law, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make or maintain Loans priced by reference to LIBOR, then, on notice thereof by such Lender to Holdings through the Administrative Agent, and solely with respect to such Lender's Loans, the Alternative Base Rate shall apply instead of the LIBOR Rate and all references in this Agreement to "LIBOR Rate" shall instead be deemed to refer to "Alternative Base Rate" until such Lender notifies the Administrative Agent and Holdings that the circumstances giving rise to such determination no longer exist.

(b) Before giving any notice to the Administrative Agent under this Section 4.02, the affected Lender shall designate a different Lending Office if such designation will avoid the need for giving such notice or making such demand and will not, in the judgment of such Lender, be illegal or otherwise disadvantageous to such Lender.

4.03 Increased Costs.

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

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

(ii) subject any Lender or the L/C Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Loan made by it, or change the basis of taxation of payments to such Lender or the L/C Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 4.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or the L/C Issuer); or

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

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

amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

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

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer delivered pursuant to Section 4.06 setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to Holdings shall be conclusive absent manifest error. Holdings shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that Holdings shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies Holdings of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

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

(a) any failure by Holdings (for a reason other than the failure of such Lender to make a Loan) to prepay or borrow any Loan on the date or in the amount notified by Holdings; or

(b) any assignment of a Loan as a result of a request by Holdings pursuant to Section 11.11;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained.

For purposes of calculating amounts payable by Holdings to the Lenders under this Section 4.04, each Lender shall be deemed to have funded each Loan made by it by a matching deposit or other borrowing in the London interbank market for a comparable amount and for a comparable period, whether or not such Loan was in fact so funded.

4.05 Inability to Determine Rates. If the Administrative Agent or the Majority Lenders determine that for any reason adequate and reasonable means do not exist for determining LIBOR with respect to a proposed Borrowing of Loans or that LIBOR with respect to a proposed Borrowing does not adequately and fairly reflect the cost to such Lenders of funding such Loans, the Administrative Agent will promptly so notify Holdings and each Lender. Thereafter, until the Administrative Agent upon the instruction of the Majority Lenders revokes such notice in writing, the Alternative Base Rate shall apply instead of the LIBOR Rate and all references in this Agreement to "LIBOR Rate" shall instead be deemed to refer to "Alternative Base Rate".

4.06 Certificates of Lenders. Any Lender claiming reimbursement or compensation under this Article IV shall deliver to Holdings (with a copy to the Administrative Agent) a certificate setting forth in reasonable detail the amount payable to such Lender hereunder, and the basis for calculation of such amount, and such certificate shall be conclusive and binding on Holdings in the absence of manifest error.

4.07 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 4.03, or Holdings is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.01, or if any Lender gives a notice pursuant to Section 4.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 4.01 or 4.03, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 4.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Holdings hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 4.03, or if Holdings is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.01, Holdings may replace such Lender in accordance with Section 11.11.

4.08 Survival. The agreements and obligations of Holdings in this Article IV shall survive the termination of the Commitments, the termination or expiration of all Letters of Credit and the payment of all other Obligations.

ARTICLE V.

CONDITIONS PRECEDENT

5.01 Conditions to Effective Date. The obligations of each Lender and the L/C Issuer to make its initial Credit Extension hereunder shall be subject to the condition that the Administrative Agent shall have received on or before the Effective Date all of the following, in form and substance reasonably satisfactory to the Administrative Agent and, to the extent specified below, the Majority Lenders or each Lender, as the case may be:

(a) Credit Agreement. This Agreement executed by (i) Holdings and each direct or indirect Subsidiary of Holdings; (ii) each Lender and the L/C Issuer; and (iii) the Administrative Agent;

(b) Resolutions; Incumbency.

(i) Copies of the resolutions of the board of directors of each Loan Party (or other similar enabling action of each Loan Party that is not a corporation) authorizing the transactions contemplated hereby, certified as of the Effective Date by the Secretary or an Assistant Secretary of such Person; and

(ii) a certificate of the Secretary or Assistant Secretary of each Loan Party, dated as of the Effective Date, certifying the names, titles and true signatures of the officers of such Person authorized to execute, deliver and perform, as applicable, this Agreement and all other Loan Documents to be delivered by it hereunder;

(c) Financial Statements. The unaudited consolidated balance sheet of Holdings and its Subsidiaries as at October 31, 2009, and the related consolidated statements of income or operations and cash flows for the fiscal month and year-to-date period then ended, certified by a Responsible Officer of Holdings;

(d) Organization Documents; Good Standing. Each of the following documents:

(i) the Organization Documents of each Loan Party as in effect on the Effective Date, certified by the Secretary or Assistant Secretary of such Person as of the Effective Date; and

(ii) a good standing certificate, as of a recent date, for each Loan Party from the Secretary of State (or similar, applicable Governmental Authority) of its state of incorporation or formation and each state where its ownership, lease or operation of property or the conduct of its business requires such Loan Party be qualified or otherwise licensed to do business;

(e) Legal Opinion. An opinion of Gibson, Dunn & Crutcher LLP, counsel to the Loan Parties and addressed to the Administrative Agent and the Lenders, dated the Effective Date, in form and substance reasonably acceptable to the Administrative Agent;

(f) Payment of Fees. Evidence of payment by Holdings of all accrued and unpaid fees, costs and expenses to the extent then due and payable on the Effective Date, together with reasonable Attorney Costs of the Administrative Agent to the extent invoiced prior to or on the Effective Date, plus such additional amounts of reasonable Attorney Costs of the Administrative Agent as shall constitute the Administrative Agent's reasonable estimate of Attorney Costs incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude final settling of accounts between Holdings and the Administrative Agent); including any such costs, fees and expenses arising under or referenced in Section 2.09 and Section 11.04;

(g) Officer's Certificate. A certificate signed by a Responsible Officer of Holdings, dated as of the Effective Date, stating that:

(i) the representations and warranties contained in Article VI are true and correct on and as of such date, as though made on and as of such date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date;

(ii) no Default exists or would result from the initial Credit Extension; and

(iii) there has occurred since the Plan Effective Date no event or circumstance that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(h) Collateral Documents. The Collateral Documents, executed by each applicable Loan Party, in appropriate form for recording, where necessary, together with:

(i) copies of all UCC-1 financing statements to be filed to perfect the security interests of the Administrative Agent for the benefit of the Lenders, or other evidence satisfactory to the Administrative Agent that there have been filed, registered or recorded all financing statements and other filings, registrations and recordings necessary and advisable to perfect the Liens of the Administrative Agent for the benefit of the Lenders in accordance with applicable law, including evidence of recordation of the Mortgages in respect of the Mortgaged Property (which may consist of a written or telephonic confirmation from the title insurance company) or issuance of gap coverage reasonably satisfactory to the Administrative Agent;

(ii) receipt by the Administrative Agent of all certificates and instruments representing the Pledged Collateral, together with stock transfer powers executed in blank with signatures guaranteed, as the Administrative Agent may specify;

(iii) funds sufficient to pay any filing or recording tax or fee in connection with any and all UCC-1 financing statements and Mortgages;

(iv) title insurance policies (or a binding commitment therefor) for the Mortgages in respect of the Mortgaged Property (A) issued by a title insurance company of recognized standing satisfactory to the Administrative Agent, (B) on an ALTA lender's extended coverage policy, in an amount and form reasonably satisfactory to the Administrative Agent, (C)

naming the Administrative Agent, for the ratable benefit of the Lenders, as the insured thereunder, (D) insuring that each Mortgage insured thereby creates a valid first priority Lien on the property covered by such Mortgage, subject to no other Liens, other than Permitted Liens, and to no other exceptions, other than those satisfactory to the Administrative Agent, and (E) containing such endorsements and affirmative coverage as the Administrative Agent may reasonably request; and

(v) such surveys and appraisals and other documents and instruments in connection with the Mortgages as shall reasonably be deemed necessary by the Administrative Agent;

(i) Insurance Policies. Evidence that the Administrative Agent has been named as loss payee under all policies of casualty insurance under a standard lender's loss payable endorsement and as additional insured under all policies of liability insurance required in accordance with Section 7.06 and the Collateral Documents, together with a certificate of insurance as to all insurance coverage on the properties of Holdings and its Subsidiaries;

(j) Borrowing Base Certificate. A completed Borrowing Base Certificate, as of October 31, 2009, signed by a Responsible Officer of Holdings;

(k) Assignments of Trademarks. Evidence that such actions have been taken as the Administrative Agent deems necessary to ensure the Administrative Agent's and the Lenders' rights as secured party with respect to any trademarks of Holdings or any Guarantor party hereto;

(l) Notes. Notes executed by Holdings for the Lenders requesting Notes;

(m) Reorganization. Evidence that (A) the Bankruptcy Court has entered the Confirmation Order, which shall not have been stayed, reversed, vacated or otherwise modified in any manner that is materially adverse to the rights or interests of the Lenders or the Administrative Agent or is otherwise satisfactory to the Administrative Agent and the Lenders, and (B) the Reorganization Plan has become effective;

(n) Second Lien Term Loan Documents. Evidence that the Second Lien Term Loan Documents in form and substance reasonably satisfactory to the Administrative Agent and the Majority Lenders have been duly executed by all of the parties thereto;

(o) Intercreditor Agreement. Evidence that the Intercreditor Agreement has been duly executed by all of the parties thereto;

(p) Other Documents. Such other approvals, opinions, documents or materials as the Administrative Agent may reasonably request; and

(q) Liquidity on Emergence. Evidence that Holdings' Liquidity (calculated (i) without giving effect to clause (v) of the definition thereof and (ii) after giving effect to the Credit Extensions to be made hereunder on the Effective Date) as of the Effective Date is not less than the result of $65,000,000 minus any portion of the Prepetition Tax Liabilities paid by Holdings and its Subsidiaries on or prior to the Effective Date.

5.02 Conditions to All Credit Extensions. The obligation of each Lender to make any Credit Extension (including its initial Credit Extension) and the obligation of the L/C Issuer to Issue any Letter of Credit (including the initial Letter of Credit) shall be subject to the satisfaction of the following conditions precedent on the relevant Borrowing Date or Issuance Date:

(a) Notice, Application. The Administrative Agent shall have received a Notice of Borrowing or in the case of any Issuance of any Letter of Credit, the L/C Issuer and the Administrative Agent shall have received an L/C Application or L/C Amendment Application, as required under Section 3.02;

(b) Continuation of Representations and Warranties. The representations and warranties in Article VI qualified as to materiality shall be true and correct and those not so qualified shall be true and correct in all material respects on and as of such Borrowing Date or Issuance Date with the same effect as if made on and as of such Borrowing Date or Issuance Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 5.02(b), the representations and warranties contained in Section 6.11(a) shall be deemed to refer to the most recent statements furnished pursuant to such Section;

(c) No Existing Default. No Default shall exist or shall result from such Borrowing or Issuance;

(d) No Material Adverse Effect. There has occurred since the Plan Effective Date no event or circumstance that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(e) No Future Advance Notice. Neither the Administrative Agent nor any Lender shall have received from Holdings or any other Person any notice that any Collateral Document will no longer secure on a first priority basis future advances or future Loans to be made or extended under this Agreement;

(f) No Cash Collateral Balance. Unless waived by the Administrative Agent and the Majority Lenders, in the event of a Borrowing (i) the balance in the Cash Collateral Account shall be zero and (ii) the balance in the L/C Cash Collateral Account attributable solely to the Cash Collateralization of L/C Obligations pursuant to Sections 2.06(a)(iv) through 2.06(a)(viii) shall be zero; and

(g) Borrowing Base Certificate. Holdings shall have delivered to the Administrative Agent the completed Borrowing Base Certificate as and when last required under Section 7.02(h), and the statements contained therein shall be true, correct and complete on and as of the date of such Credit Extension as though made on and as of such date, except for changes in the information set forth in such Borrowing Base Certificate in the ordinary course of business.

Each Notice of Borrowing and L/C Application or L/C Amendment Application submitted by Holdings hereunder shall constitute a representation and warranty by Holdings

hereunder, as of the date of each such notice and as of each Borrowing Date or Issuance Date, as applicable, that the conditions in this Section 5.02 are satisfied.

ARTICLE VI.

REPRESENTATIONS AND WARRANTIES

Holdings represents and warrants to the Administrative Agent and each Lender that:

6.01 Corporate Existence and Power. Holdings and each of its Subsidiaries:

(a) is a corporation, limited liability company or partnership duly organized or formed, as the case may be, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation;

(b) has the power and authority and all governmental licenses, authorizations, consents and approvals (i) to own its assets and carry on its business and (ii) in the case of any Loan Party, to execute, deliver, and perform its obligations under the Loan Documents;

(c) is duly qualified, 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, license or good standing; and

(d) is in compliance with all Requirements of Law;

except, in each case referred to in clauses (b)(i), (c) or (d) of this Section 6.01, to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

6.02 Corporate Authorization; No Contravention. The execution, delivery and performance by each Loan Party of this Agreement and each other Loan Document to which such Loan Party is party, have been duly authorized by all necessary corporate, limited liability company or other applicable organizational action, and do not and will not:

(a) contravene the terms of any of that Person's Organization Documents;

(b) conflict with or result in any breach or contravention of, or the creation of any Lien under, any document evidencing any Indebtedness or any material 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; or

(c) violate any Requirement of Law.

6.03 Governmental Authorization. Except for the Confirmation Order, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority (except for recordings or filings in connection with the Liens granted to the Administrative Agent under the Collateral Documents and any filings that may be required under Securities Laws in connection with the enforcement of such Liens) is necessary or required

in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document.

6.04 Binding Effect. This Agreement and each other Loan Document to which any Loan Party is a party constitute the legal, valid and binding obligations of such Loan Party, enforceable against such Loan Party in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

6.05 Litigation. Except as specifically disclosed in Schedule 6.05, there are no actions, suits, proceedings, claims or disputes pending, or to the best knowledge of Holdings, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, against Holdings or any of its Subsidiaries 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) are reasonably likely to result in an adverse result for Holdings or any of its Subsidiaries, which adverse result would reasonably be expected to have a Material Adverse Effect. 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 or any other Loan Document, or directing that the transactions provided for herein or therein not be consummated as herein or therein provided.

6.06 No Defaults. No Default exists or would result from the incurring of any Obligations by any Loan Party or from the grant or perfection of the Liens in favor of the Administrative Agent and the Lenders on the Collateral. Neither Holdings nor any Subsidiary is in default under or with respect to any Contractual Obligation in any respect which, individually or together with all such defaults, could reasonably be expected to have a Material Adverse Effect, or that would create an Event of Default under Section 9.01(e).

6.07 ERISA Compliance. Except as specifically disclosed in Schedule 6.07:

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state law. Each Plan which is intended to qualify under section 401(a) of the Code has received a favorable determination letter from the IRS and to the best knowledge of Holdings, nothing has occurred which would cause the loss of such qualification. Holdings and each ERISA Affiliate have made all required contributions to any Plan subject to section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the best knowledge of Holdings, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan which has resulted or would reasonably be expected to result in a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with

respect to any Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except as would not reasonably be expected to have a Material Adverse Effect, (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither Holdings nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under section 4007 of ERISA); (iv) neither Holdings nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under section 4219 of ERISA, would result in such liability) under section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither Holdings nor any ERISA Affiliate has engaged in a transaction that could be subject to section 4069 or 4212(c) of ERISA.

6.08 Use of Proceeds; Margin Regulations. The proceeds of the Loans and the Letters of Credit will be used solely for the purposes set forth in and permitted by Section 7.12 and Section 8.07. No Loan Party is generally engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock.

6.09 Title to Properties; Liens. Holdings and each Subsidiary have good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of their respective businesses, except for such defects in title as could not, individually or in the aggregate, have a Material Adverse Effect. The real and personal property of Holdings and its Subsidiaries is subject to no Liens, other than Permitted Liens.

6.10 Taxes. Holdings and its Subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against Holdings or any Subsidiary that would, if made, have a Material Adverse Effect.

6.11 Financial Condition.

(a) The unaudited balance sheet of Holdings and its Subsidiaries for the fiscal month ended October 31, 2009 and the related consolidated statements of income or operations and cash flows for the fiscal month and year-to-date period ended on that date:

(i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, subject to year end audit adjustments, quarterly accounting adjustments and the absence of footnotes;

(ii) are complete and accurate in all material respects and fairly present the financial condition of Holdings and its Subsidiaries as of the date thereof and results of operations and cash flows for the period covered thereby; and

(iii) except as specifically disclosed in Schedule 6.11, show all material Indebtedness and other material liabilities, direct or contingent, of Holdings and its consolidated Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Contingent Obligations;

(b) Since the Plan Effective Date, there has not been, nor is it reasonably likely that there will be, any Material Adverse Effect; and

(c) Any pro forma financial statements of Holdings and its Subsidiaries furnished by Holdings to the Administrative Agent hereunder, and any financial projections furnished to the Administrative Agent hereunder (including the consolidated forecasted balance sheet and statements of income and cash flows of Holdings and its Subsidiaries delivered pursuant to Section 7.01(d)), were prepared by Holdings based on estimates and assumptions believed to be reasonable and fair in light of current conditions and facts known to Holdings on the date such pro forma financial statements or projections, as the case may be, were furnished to the Administrative Agent, and as of the date so furnished reflect, in the case of pro forma financial statements, Holdings good faith representation of the pro forma financial condition of Holdings and its Subsidiaries as of the date thereof and, in the case of financial projections, Holdings good faith and reasonable estimates of the future financial performance of Holdings and its Subsidiaries for the periods set forth therein.

6.12 Environmental Matters. Holdings conducts in the Ordinary Course of Business a review of the effect of existing Environmental Laws and existing Environmental Claims on its business, operations and properties, and as a result thereof Holdings has reasonably concluded that, except as specifically disclosed in Schedule 6.12, such Environmental Laws and Environmental Claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(a) Except as specifically disclosed in Schedule 6.12, the ongoing operations of Holdings and each of its Subsidiaries comply in all respects with all Environmental Laws, except such non-compliance which would not (if enforced in accordance with applicable law) result in liability in excess of $5,000,000 in the aggregate.

(b) Holdings and each of its Subsidiaries have obtained all licenses, permits, authorizations and registrations required under any Environmental Law ("Environmental Permits") and necessary for their respective ordinary course operations, all such Environmental Permits are in good standing, and Holdings and each of its Subsidiaries are in compliance with all material terms and conditions of such Environmental Permits, except to the extent the failure to obtain any such Environmental Permit or to maintain any such Environmental Permit in good standing or otherwise to be in compliance with the material terms thereof could not reasonably be expected to have a Material Adverse Effect.

(c) Except as specifically disclosed in Schedule 6.12, none of Holdings, any of its Subsidiaries or any of their respective property or operations is subject to any outstanding written order from or agreement with any Governmental Authority, nor subject to any judicial or docketed administrative proceeding, respecting any Environmental Law, Environmental Claim

or Hazardous Material that would reasonably be expected to give rise to a potential liability of Holdings and its Subsidiaries in excess of $5,000,000 in the aggregate.

(d) Except as specifically disclosed in Schedule 6.12, there are no Hazardous Materials or other conditions or circumstances existing with respect to any property of Holdings or any Subsidiary, or arising from operations prior to the Effective Date of Holdings or any of its Subsidiaries, that would reasonably be expected to give rise to Environmental Claims with a potential liability of Holdings and its Subsidiaries in excess of $5,000,000 in the aggregate for all such conditions, circumstances or property. In addition, (i) neither Holdings nor any Subsidiary has any underground storage tanks (A) that are not properly registered or permitted under applicable Environmental Laws, or (B) that are leaking or disposing of Hazardous Materials off-site, in each case, that would reasonably be expected to give rise to a potential liability of Holdings and its Subsidiaries in excess of $5,000,000 in the aggregate and (ii) Holdings and its Subsidiaries have notified all of their employees of the existence, if any, of any health hazard arising from the conditions of their employment and have met all notification requirements under Title III of CERCLA and all other Environmental Laws.

6.13 Collateral Documents.

(a) (i) The provisions of each of the Collateral Documents are effective (and, in the case of the Mortgages, upon recordation thereof) to create in favor of the Administrative Agent on behalf of the Lenders and the other Secured Parties, a legal, valid and enforceable first priority Lien in all right, title and interest of Holdings, or the applicable Loan Party (as the case may be), in the Collateral described therein to secure the Obligations, subject only to Permitted Liens, (ii) all filings and other actions necessary or desirable to perfect and maintain the perfection and first priority status of such Liens have been duly made or taken and remain in full force and effect and (iii) each Intellectual Property Security Agreement has been delivered to the Administrative Agent when required hereby or by the Security Agreement for filing in the U.S. Patent and Trademark Office and the U.S. Copyright Office.

(b) All representations and warranties of Holdings and each of its Subsidiaries party thereto contained in the Collateral Documents are true and correct.

(c) Each Mortgage, when delivered in accordance with Section 7.15 and recorded in the appropriate real property records, (i) is effective to grant to the Administrative Agent for the benefit of the Lenders a legal, valid and enforceable deed of trust/mortgage Lien on all the right, title and interest of the mortgagor under such Mortgage in the Mortgaged Property described therein, (ii) was duly recorded in the real property records of the county listed on the schedule to such Mortgage and the mortgage recording fees and taxes in respect thereof were paid and compliance was otherwise had with the formal requirements of state law applicable to the recording of real estate mortgages generally, and (iii) creates a legal, valid, enforceable and perfected first priority Lien on the Mortgaged Property encumbered thereby, subject to no other Liens, except as noted in the title policies in respect thereof delivered to the Administrative Agent pursuant to Section 7.15 and Permitted Liens. In addition, financing statements have been filed in the offices specified in each such Mortgage thereby creating a legal, valid, enforceable and perfected first Lien on all right, title and interest of Holdings or such Subsidiary under such Mortgage in all personal property and fixtures which is covered by such

Mortgage, subject to no other Liens, except as noted in the title policies delivered to the Administrative Agent pursuant to Section 7.15 and Permitted Liens.

6.14 Regulated Entities. None of Holdings, any Person Controlling Holdings, or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

6.15 No Burdensome Restrictions. Neither Holdings nor any Subsidiary is a party to or bound by any Contractual Obligation, or subject to any restriction in any Organization Document, or any Requirement of Law, which could reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 6.15 or otherwise permitted hereunder, neither Holdings nor any Subsidiary is a party to or bound by any Contractual Obligation which restricts, limits or prohibits the payment of dividends by any Subsidiary or the making of any other distribution in respect of such Subsidiary's capital stock or other equity interests.

6.16 Copyrights, Patents, Trademarks and Licenses, Etc. Holdings or its Subsidiaries own or are licensed or otherwise have the right to use all of the patents, trademarks, service marks, trade names, copyrights, contractual franchises, authorizations and other rights that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except for such conflicts as would not reasonably be expected to have a Material Adverse Effect. To the best knowledge of Holdings, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by Holdings or any Subsidiary infringes upon any rights held by any other Person, except for those infringements that would, individually or in the aggregate, not reasonably be expected to have a Material Adverse Effect. Except as specifically disclosed in Schedule 6.05, no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of Holdings, threatened, and no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code is pending or, to the best knowledge of Holdings, proposed, which, in either case, could reasonably be expected to have a Material Adverse Effect.

6.17 Subsidiaries. As of the Effective Date, Holdings has no Subsidiaries other than those U.S. Wholly-Owned Subsidiaries specifically disclosed in part (a) of Schedule 6.17 and has no equity investments in any other Person other than those specifically disclosed in part (b) of Schedule 6.17. All of the outstanding equity interests in the Subsidiaries of Holdings which are owned directly or indirectly by Holdings have been validly issued, are fully paid and nonassessable and are owned, as of the Effective Date, in the amounts specified on Part (a) of Schedule 6.17, and all such equity interests are owned free and clear of all Liens, other than Liens granted to the Administrative Agent or pursuant to the Second Lien Term Loan Documents.

6.18 Insurance. The properties of Holdings and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of Holdings, in such amounts, with such deductibles and covering such risks as are deemed to be appropriate by Holdings in the exercise of its reasonable business judgment.

6.19 Swap Obligations. Neither Holdings nor any of its Subsidiaries has incurred any outstanding obligations under any Swap Contracts, other than Permitted Swap Obligations. In the ordinary course of managing its business, Holdings undertakes its own independent assessment of its consolidated assets, liabilities and commitments and considers appropriate means of mitigating and managing risks associated with such matters, and Holdings has not relied on any swap counterparty or any Affiliate of any swap counterparty in determining whether to enter into any Swap Contract. Neither Holdings nor any of its Subsidiaries has entered into any master agreement relating to Swap Contracts and under which termination values resulting from Swap Contracts that are Specified Swap Contracts are nettable against termination values resulting from Swap Contracts that are not Specified Swap Contracts, unless only Specified Swap Contracts are outstanding under such master agreement.

6.20 Full Disclosure. None of the representations or warranties made by any Loan Party in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of any Loan Party in connection with the Loan Documents (including the offering and disclosure materials delivered by or on behalf of any Loan Party to the Lenders prior to the Effective Date), contains any untrue statement of a material fact (when taken as a whole) or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered; provided, however, that with respect to information relating to Holdings' industry generally and not to Holdings or its Subsidiaries specifically, the Loan Parties' represent and warrant only that such information was derived from sources the Loan Parties believe to be reliable and the Loan Parties have no reason to believe at the time such information was furnished or provided to the Administrative Agent or any Lender that such information was misleading; and provided further that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, such Loan Party represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule (it being understood that forecasts and projections by their nature involve approximations and uncertainties).

6.21 Real Property. Schedule 6.21 contains a complete listing of all real property owned in fee simple by Holdings and each other Loan Party as of the Effective Date.

6.22 Eligible Accounts. As to each Account that is identified by Holdings as an Eligible Account in a Borrowing Base Certificate submitted to the Administrative Agent, such Account is (a) a bona fide existing payment obligation of the applicable Account Debtor created by the sale and delivery of Inventory or the rendition of services to such Account Debtor in the Ordinary Course of Business of Holdings or any Guarantor, (b) owed to Holdings or a Guarantor, and (c) not excluded as ineligible by virtue of one or more of the excluding criteria set forth in the definition of Eligible Accounts.

6.23 Eligible Fixed Assets. As to each item of fixed assets that is identified by Holdings as Eligible Fixed Assets in a Borrowing Base Certificate submitted to Administrative Agent, such fixed assets are (a) of good and saleable quality, and (b) not excluded as ineligible

by virtue of one or more of the excluding criteria set forth in the definition of Eligible Fixed Assets.

6.24 Eligible Inventory. As to each item of Inventory that is identified by Holdings as Eligible Inventory or Eligible Truss and Millwork Inventory in a Borrowing Base Certificate submitted to Administrative Agent, such Inventory is (a) of good and merchantable quality, free from known defects, and (b) not excluded as ineligible by virtue of one or more of the excluding criteria set forth in the definition of Eligible Inventory.

6.25 Labor Matters. There are no strikes, lockouts or slowdowns against Holdings or any Subsidiary pending or, to the best knowledge of Holdings, threatened that could reasonably be expected to result in a Material Adverse Effect.

6.26 Solvency. Immediately after the consummation of the transactions to occur on the Effective Date and immediately following the making of the Loans made on the Effective Date and after giving effect to the application of the proceeds of such Loans, (a) the fair value of the consolidated assets of Holdings, at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the consolidated property of Holdings will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) Holdings will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) Holdings will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Effective Date.

ARTICLE VII.

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, or any Loan or other Obligation shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, unless the Majority Lenders waive compliance in writing:

7.01 Financial Statements. Holdings shall deliver to the Administrative Agent (which will promptly deliver to each Lender):

(a) as soon as available, but not later than 90 days after the end of each fiscal year (or, in the case of the fiscal year ending December 31, 2009, not later than 150 days after the end of such fiscal year), a copy of the audited consolidated balance sheet of Holdings and its Subsidiaries as at the end of such year and the related consolidated statements of income or operations, shareholders' equity, retained earnings and cash flows for such year, setting forth in each case in comparative form the figures for the previous fiscal year, and accompanied by the report and opinion of KPMG or another nationally recognized registered public accounting firm (the "Independent Auditor") which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception (provided, however, that the report and opinion accompanying the

financial statements for fiscal year 2009 may be subject to a "going concern" or like qualification or exception) or any qualification or exception as to the scope of such audit and which shall state that such consolidated financial statements present fairly the financial position and the results of operations and cash flows of Holdings and its Subsidiaries for the periods indicated in conformity with GAAP applied on a basis consistent with prior years;

(b) as soon as available, but not later than 45 days after the end of each of the first three fiscal quarters of each fiscal year, a copy of the unaudited consolidated balance sheet of Holdings and its Subsidiaries as of the end of such quarter and the related consolidated statements of income and cash flows for the period commencing on the first day and ending on the last day of such quarter, and certified by a Responsible Officer of Holdings as being complete and accurate in all material respects and fairly presenting in accordance with GAAP (subject to fresh start accounting adjustments through March 31, 2010, year-end audit adjustments and the absence of footnotes), the consolidated financial position and the results of operations and cash flows of Holdings and its Subsidiaries;

(c) as soon as available, but not later than 30 days after the end of each fiscal month, (i) a copy of the unaudited consolidated balance sheet of Holdings and its Subsidiaries as of the end of such month and the related consolidated statements of income and cash flows for the period commencing on the first day and ending on the last day of such month and the year-to-date period ending on the last day of such month, and certified by a Responsible Officer of Holdings as being complete and accurate in all material respects and fairly presenting in accordance with GAAP (subject to fresh start accounting adjustments through March 31, 2010, year-end audit adjustments, quarterly accounting adjustments and the absence of footnotes) the consolidated financial position and the results of operations and cash flows of Holdings and its Subsidiaries, (ii) a management commentary in respect of the financial condition and results of operations of Holdings and its Subsidiaries for such fiscal month for which financial statements have then been delivered in accordance with the preceding clause (i), which management commentary shall be accompanied by a comparison of the consolidated statements of income and cash flows for such fiscal month versus the forecasted consolidated income and cash flows for such fiscal month last delivered pursuant to the following clause (iii) or Section 7.01(d), as the case may be, and (iii) a rolling 13-week consolidated cash flow forecast, updated monthly, for Holdings and its Subsidiaries, which forecast shall (A) state the assumptions used in the preparation thereof, (B) be otherwise substantially in the form attached hereto as Exhibit I, and (C) be accompanied by a certificate of a Responsible Officer of Holdings certifying that such cash flow forecast represents Holdings' reasonable good faith estimates and assumptions as to future performance, which Holdings believes to be fair and reasonable as of the time made in light of then current and reasonably foreseeable business conditions (it being understood that forecasts and projections by their nature involve approximations and uncertainties);

(d) as soon as available, but not later than 90 days after the end of each fiscal year (or, in the case of the fiscal year ending December 31, 2009, not later than 60 days after the end of such fiscal year) or as more frequently requested by the Administrative Agent from time to time, an updated consolidated financial forecast for Holdings and its Subsidiaries for the then current fiscal month and each fiscal month thereafter through December 31, 2012 (provided, however, that such consolidated financial forecast may be presented on a quarterly basis for all or any portion of such period with the consent of the Administrative Agent), including forecasted

consolidated balance sheets and consolidated statements of income and cash flows of Holdings and its Subsidiaries, which forecast shall (i) state the assumptions used in the preparation thereof, (ii) be accompanied by a comparison of Holdings' actual financial results versus the consolidated financial forecast last delivered by Holdings to the Administrative Agent and the Lenders, together with a statement of a Responsible Officer of Holdings explaining in reasonable detail any significant variances therein, (iii) be accompanied by a certificate of a Responsible Officer of Holdings certifying that such financial projections represent Holdings' reasonable good faith estimates and assumptions as to future performance, which Holdings believes to be fair and reasonable as of the time made in light of then current and reasonably foreseeable business conditions (it being understood that forecasts and projections by their nature involve approximations and uncertainties), and (iv) be otherwise substantially in the form attached hereto as Exhibit J; and

(e) promptly, such other financial statements and information as the Administrative Agent, at the request of any Lender, may from time to time request.

7.02 Certificates; Other Information. Holdings shall furnish to the Administrative Agent (which shall promptly furnish to each Lender), in form and detail satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Section 7.01(a), a certificate of the Independent Auditor stating that in the course of the regular examination of the financial statements of Holdings and its Subsidiaries, which examination was conducted by such accounting firm in accordance with GAAP, nothing has come to the attention of the Independent Auditor which would cause it to believe that an Event of Default under Section 8.19 has occurred and is continuing, or if, in the opinion of the Independent Auditor, an Event of Default under Section 8.19 has occurred and is continuing, a statement as to the nature thereof (which certificate may be limited to the extent required by accounting rules or guidelines);

(b) concurrently with the delivery of the financial statements referred to in Section 7.01(a), Section 7.01(b) and Section 7.01(c), a completed Compliance Certificate certified by a Responsible Officer of Holdings;

(c) promptly, copies of all financial statements and reports that Holdings sends to its shareholders generally;

(d) promptly upon sending or receipt, copies of any and all management letters and correspondence relating to management letters, sent or received by Holdings or any of its Subsidiaries to or from the Independent Auditor;

(e) at the same time it is provided to the holders of any Permitted Subordinated Debt, any notices and other information provided to such holders pursuant to the reporting and notices provisions of the Subordinated Debt Documents (without duplication of any notices, financial statements and other information required hereunder);

(f) within 20 days of the Administrative Agent's request therefor, (i) a current list of the names, addresses and outstanding debts of all account debtors, and (ii) a current list of the names, addresses and outstanding amounts due all creditors of Holdings or any Subsidiary;

(g) concurrently with the delivery of the financial statements referred to in Section 7.01(a) and Section 7.01(b), a completed Update Certificate, certified by a Responsible Officer of Holdings;

(h) not later than 30 days after the end of each calendar month, a completed Borrowing Base Certificate setting forth the calculation of the Borrowing Base as of the close of business on the last day of such calendar month, certified by a Responsible Officer of Holdings; provided, however, that Holdings may, at its option, deliver such Borrowing Base Certificate together with such certification at such more frequent intervals as it may elect;

(i) promptly upon the request from time to time of the Administrative Agent, a status report on (i) any federal or state tax audits of Holdings or any of its Subsidiaries, (ii) the filing of any federal or state tax returns, (iii) any anticipated tax refunds, tax abatements or other credits and (iv) such other tax-related matters as the Administrative Agent may reasonably request;

(j) promptly upon the reasonable request of the Administrative Agent from time to time, a report of all outstanding Surety Instruments;

(k) promptly, such additional information regarding the business, financial or corporate affairs of Holdings or any Subsidiary as the Administrative Agent, at the request of any Lender, may from time to time reasonably request;

(l) not later than 30 days after the end of each fiscal month, a monthly status report on the Wind-Down Business Units, which report shall address such matters as may be reasonably requested from time to time by the Administrative Agent and shall otherwise be in a form satisfactory to the Administrative Agent; and

(m) not later than 14 days after the delivery of the financial statements referred to in Section 7.01(c), a monthly management call with the Administrative Agent and the Lenders to discuss such financial statements and such other matters as the Administrative Agent or any participating Lender may reasonably request.

7.03 Notices. Holdings shall promptly notify the Administrative Agent (which shall promptly notify each Lender):

(a) of the occurrence of any Default, and of the occurrence or existence of any event or circumstance that foreseeably will become a Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) any breach or non-performance of, or any default under, any Contractual Obligation of Holdings or any of its Subsidiaries which has resulted or could result in a Material Adverse Effect; and (ii) any dispute, litigation, investigation, proceeding or suspension which may exist at any time between Holdings or any of its Subsidiaries and any

Governmental Authority (including under or pursuant to any Environmental Laws) which has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) of the commencement of, or any material development in, any litigation or proceeding affecting Holdings or any Subsidiary (i) which, if adversely determined, would reasonably be expected to have a Material Adverse Effect, or (ii) in which the relief sought is an injunction or other stay of the performance of this Agreement or any Loan Document;

(d) upon, but in no event later than ten (10) days after, becoming aware of (i) any and all material enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Holdings or any Subsidiary or any of their respective properties pursuant to any applicable Environmental Laws, (ii) all other Environmental Claims, and (iii) any environmental or similar condition on any real property adjoining or in the vicinity of the property of Holdings or any Subsidiary that could reasonably be anticipated to cause such property or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use of such property under any Environmental Laws;

(e) of the occurrence of any of the following events affecting Holdings or any ERISA Affiliate (but in no event more than ten (10) days after such event), and deliver to the Administrative Agent and each Lender a copy of any notice with respect to such event that is filed with a Governmental Authority and any notice delivered by a Governmental Authority to Holdings or any ERISA Affiliate with respect to such event:

(i) an ERISA Event;

(ii) a material increase in the Unfunded Pension Liability of any Pension Plan;

(iii) the adoption of, or the commencement of contributions to, any Plan subject to section 412 of the Code by Holdings or any ERISA Affiliate; or

(iv) the adoption of any amendment to a Plan subject to section 412 of the Code, if such amendment results, or would reasonably be expected to result, in a material increase in contributions or Unfunded Pension Liability;

(f) of any material change in accounting policies or financial reporting practices by Holdings or any of its consolidated Subsidiaries;

(g) upon the request from time to time of the Administrative Agent, the Swap Termination Values, together with a description of the method by which such amounts were determined, relating to any Swap Contracts to which Holdings or any of its Subsidiaries is party;

(h) the occurrence of any Event of Loss exceeding $5,000,000;

(i) of the entry by Holdings into any Specified Swap Contract, together with the details thereof;

(j) of the occurrence of any default, event of default, termination event or other event under any Specified Swap Contract that after the giving of notice, passage of time or both, would permit either counterparty to such Specified Swap Contract to terminate early any or all trades relating to such contract; and

(k) of the occurrence or existence of any Internal Control Event.

Each notice under this Section 7.03 shall be accompanied by a written statement by a Responsible Officer of Holdings setting forth details of the occurrence referred to therein, and stating what action Holdings or any affected Subsidiary proposes to take with respect thereto and at what time. Each notice under Section 7.03(a) shall describe with particularity any and all clauses or provisions of this Agreement or other Loan Document that have been (or foreseeably will be) breached or violated.

7.04 Preservation of Corporate Existence, Etc. Holdings shall, and shall cause each Subsidiary to, except in connection with transactions permitted by Section 8.03 and sales of assets permitted by Section 8.02:

(a) preserve and maintain in full force and effect its (i) legal existence and (ii) good standing under the laws of its state or jurisdiction of incorporation or formation;

(b) preserve and maintain in full force and effect all governmental rights, privileges, qualifications, permits, licenses and franchises necessary or desirable in the normal conduct of its business;

(c) use reasonable efforts, in the Ordinary Course of Business, to preserve its business organization and goodwill; and

(d) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non preservation of which could reasonably be expected to have a Material Adverse Effect.

7.05 Maintenance of Property. Holdings shall, and shall cause each Subsidiary to, maintain, and preserve all its property which is used or useful in its business in good repair and condition (ordinary wear and tear excepted), and from time to time make necessary repairs, renewals and replacements thereto so that its property shall be preserved and maintained consistent with Holdings' or such Subsidiary's past practice.

7.06 Insurance. In addition to insurance requirements set forth in the Collateral Documents, Holdings shall maintain, and shall cause each Subsidiary to maintain, with financially sound and reputable independent insurers, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, including workers' compensation insurance, public liability and property and casualty insurance. All such insurance shall name the Administrative Agent as loss payee and as additional insured, for the benefit of the Lenders, as their interests may appear. All casualty and key man insurance maintained by Holdings shall name the Administrative Agent as loss payee and all liability insurance shall name the Administrative

Agent as additional insured for the benefit of the Lenders, as their interests may appear. Upon the request of the Administrative Agent, Holdings shall furnish the Administrative Agent, with sufficient copies for each Lender, at reasonable intervals a certificate of a Responsible Officer of Holdings (and, if requested by the Administrative Agent, any insurance broker of Holdings) setting forth the nature and extent of all insurance maintained by Holdings and its Subsidiaries in accordance with this Section 7.06 or any Collateral Documents (and which, in the case of a certificate of a broker, were placed through such broker).

7.07 Payment of Obligations. Holdings shall, and shall cause each of its Subsidiaries to, pay and discharge as the same shall become due and payable, all their respective obligations and liabilities, including:

(a) all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings and adequate reserves in accordance with GAAP are being maintained by Holdings or such Subsidiary;

(b) all lawful claims which, if unpaid, would by law become a Lien upon its property not constituting a Permitted Lien; and

(c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness (except where failure to do so would not otherwise constitute a Default hereunder).

7.08 Compliance with Laws. Holdings shall comply, and shall cause each Subsidiary to comply, with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business (including the Federal Fair Labor Standards Act), except such as may be contested in good faith or as to which a bona fide dispute may exist or where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

7.09 Compliance with ERISA. Holdings shall, and shall cause each of its ERISA Affiliates to: (a) maintain each Plan in compliance with the applicable provisions of ERISA, the Code and other federal or state law except for any noncompliance that would not reasonably be expected to have a Material Adverse Effect; (b) cause each Plan which is qualified under section 401(a) of the Code to maintain such qualification; and (c) make all required contributions to any Plan subject to section 412 of the Code.

7.10 Inspection of Property and Books and Records.

(a) Holdings shall, and shall cause each Subsidiary 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 Holdings and such Subsidiary. Holdings shall permit, and shall cause each Subsidiary to permit, representatives and independent contractors of the Administrative Agent or any Lender to visit and inspect any of their respective properties, to examine their respective corporate, financial, operating and other records, and make copies thereof or abstracts therefrom, and to discuss their respective affairs, finances and accounts with their respective directors, officers, and independent public accountants, all at the expense of Holdings and at such

reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to Holdings; provided, however, when an Event of Default exists the Administrative Agent or any Lender may do any of the foregoing at any time during normal business hours and without advance notice.

(b) Without limiting the generality of Section 7.10(a), as frequently as the Administrative Agent or the Majority Lenders may deem appropriate, Holdings will provide Administrative Agent or its designees access to Holdings' and its Subsidiaries' records and premises and allow auditors or appraisers to conduct audits and appraisals of Holdings' and its Subsidiaries' property, plant, equipment, inventory and accounts. Holdings shall pay all reasonable fees and expenses of each such audit and appraisal.

7.11 Environmental Laws.

(a) Holdings shall, and shall cause each Subsidiary to, conduct its operations and keep and maintain its property in compliance with all Environmental Laws, except to the extent the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

(b) Upon the written request of the Administrative Agent, Holdings shall submit and cause each of its Subsidiaries to submit, to the Administrative Agent, at Holdings' sole cost and expense, at reasonable intervals, a report providing an update of the status of any environmental, health or safety compliance, hazard or liability issue identified in any notice or report required pursuant to Section 7.03(d), that could, individually or in the aggregate, result in liability in excess of $1,000,000.

7.12 Use of Proceeds. Holdings shall, directly or indirectly, use the proceeds of the Loans to finance in part the distributions to be made under the Reorganization Plan, to pay the fees and expenses associated therewith, to repay in full the Debtors' obligations under the DIP Credit Agreement, to replace or "backstop" letters of credit issued and outstanding under the DIP Credit Agreement, and for working capital and other general corporate purposes not in contravention of any Requirement of Law or of any Loan Document.

7.13 Additional Guarantors.

(a) If Holdings shall incorporate, create or acquire any direct or indirect Subsidiary, Holdings shall cause such Subsidiary to furnish promptly, but in no event more than 30 days thereafter (or, in the case of Section 7.13(a)(iv), within 90 days) or, in each case, such longer period as the Administrative Agent may approve in its discretion, each of the following to the Administrative Agent:

(i) a duly executed notice and agreement in substantially the form of Exhibit E (an "Additional Guarantor Assumption Agreement");

(ii) (A) copies of the resolutions of the board of directors (or equivalent governing body) of such Subsidiary approving and authorizing the execution, delivery and performance by such Subsidiary of its Additional Guarantor Assumption Agreement and this Agreement, certified as of the date of such Additional Guarantor Assumption Agreement (the

"Additional Guarantor Accession Date") by the Secretary or an Assistant Secretary (or other appropriate officer) of such Subsidiary; (B) a certificate of the Secretary or Assistant Secretary (or other appropriate officer) of such Subsidiary certifying the names and true signatures of the officers of such Subsidiary authorized to execute and deliver and perform, as applicable, its Additional Guarantor Assumption Agreement, this Agreement and all other Loan Documents to be delivered hereunder; (C) copies of the articles or certificate of incorporation and bylaws (or other applicable Organization Documents) of such Subsidiary as in effect on the Additional Guarantor Accession Date, certified by the Secretary or Assistant Secretary (or other appropriate officer) of such Subsidiary as of the Additional Guarantor Accession Date; and (D) an opinion of counsel to such Subsidiary and addressed to the Administrative Agent and the Lenders, in form and substance reasonably acceptable to the Administrative Agent;

(iii) (A) such amendments to the schedules to the Security Agreement as shall be required in connection with the accession of such Subsidiary thereto; and (B) UCC-1 financing statements for each jurisdiction in which such filing is necessary to perfect the security interest of the Administrative Agent on behalf of the Lenders in the Collateral of such Subsidiary and in which the Administrative Agent requests that such filing be made; and

(iv) if such Subsidiary owns any real property in fee simple, then Holdings shall promptly notify the Administrative Agent in writing of the fair market value and book value of such real property at the time of the incorporation, creation or acquisition of such Subsidiary. Thereafter, at the Administrative Agent's election, Holdings shall promptly cause such Subsidiary to deliver to the Administrative Agent a Mortgage, in form and substance reasonably satisfactory to the Administrative Agent, in respect of such real property, duly executed by the Administrative Agent and the record owner of the real property encumbered thereby (such execution to be duly acknowledged by a notary public) and in proper form for recording in the real estate records of the county in which such real property is located, together with such title insurance policies and endorsements, surveys, appraisals, consents, estoppels, subordination agreements and other documents and other instruments as the Administrative Agent may reasonably request. Schedule 6.21 shall be deemed amended to include as Mortgaged Property all real property as to which a Mortgage is delivered to the Administrative Agent as provided in this Section 7.13(a)(iv).

(b) Additionally, Holdings and such Subsidiary shall execute and deliver to the Administrative Agent such other items as reasonably requested by the Administrative Agent in connection with the foregoing, including officers' certificates, search reports, control agreements and other certificates and documents.

7.14 Additional Stock Pledges. If Holdings, directly or indirectly, incorporates, creates or acquires any additional Subsidiary, or otherwise acquires any capital stock, membership interests or other equity interests of any other Person, then within ten (10) days thereafter or such longer period as the Administrative Agent may approve in its discretion, Holdings shall (i) (A) pledge the capital stock, membership interests or other equity interests of such additional Subsidiary or other Person to the Administrative Agent pursuant to the Security Agreement, if such stock, membership interest or other interest is directly owned by Holdings, or (B) if such stock, membership interest or other interest is owned by a Guarantor, cause such Guarantor to pledge the capital stock, membership interest or other equity interest of such additional

Subsidiary or other Person to the Administrative Agent pursuant to the Security Agreement, (ii) execute and deliver, or cause such Guarantor to have executed and delivered, to the Administrative Agent stock transfer powers executed in blank with signatures guaranteed as the Administrative Agent shall request, and such UCC-1 financing statements (as furnished by the Administrative Agent) in each jurisdiction in which such filing is necessary to perfect the security interest of the Administrative Agent in the Collateral with respect to Holdings or such Guarantor, and (iii) deliver such other items as reasonably requested by the Administrative Agent in connection with the foregoing, including resolutions, incumbency and officers' certificates, opinions of counsel, search reports, control agreements and other certificates and documents.

7.15 Further Assurances.

(a) Holdings shall ensure that all written information, exhibits and reports furnished to the Administrative Agent or the Lenders do not and will not contain, when considered with all other information so furnished, 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 misleading in light of the circumstances in which made, and will promptly disclose to the Administrative Agent and the Lenders and correct any material defect or error that may be discovered therein or in any Loan Document or in the execution, acknowledgement or recordation thereof, provided that to the extent any such written information, exhibit or report was based upon or constitutes a forecast or projection, Holdings shall ensure only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, exhibit or report (it being understood that forecasts and projections by their nature involve approximations and uncertainties).

(b) If at any time after the Effective Date, Holdings or any other Loan Party shall become the owner in fee simple of any real property, then Holdings shall promptly notify the Administrative Agent in writing of the fair market value or book value of such real property at the time of its acquisition. Thereafter, at the election of the Administrative Agent or the Majority Lenders, Holdings shall promptly deliver to the Administrative Agent a Mortgage, in form and substance satisfactory to the Administrative Agent, in respect of such real property, duly executed by the Administrative Agent and the record owner of the real property encumbered thereby (such execution to be duly acknowledged by a notary public) and in proper form for recording in the real estate records of the county in which such real property is located, together with such title insurance policies and endorsements, surveys, appraisals, consents, estoppels, subordination agreements and other documents and other instruments as the Administrative Agent may reasonably request. Schedule 6.21 shall be deemed amended to include as Mortgaged Property all real property as to which a Mortgage is delivered to the Administrative Agent as provided in this Section 7.15(b).

(c) Promptly upon request by the Administrative Agent, Holdings shall (and shall cause any Guarantor to) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register (and, if requiring the execution by any third party, use commercially reasonable efforts to obtain), any and all such further acts, deeds, conveyances, security agreements, control agreements, assignments, estoppel certificates, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments the Administrative Agent or the Majority Lenders 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 Administrative Agent and Lenders the rights granted or now or hereafter intended to be granted to the Lenders under any Loan Document or under any other document executed in connection therewith.

7.16 Cash Balance; Cash Sweep. Holdings shall, and shall cause its Subsidiaries to, take all steps necessary to ensure that the Cash Balance is at all times subject to a first priority Lien in favor of the Administrative Agent on behalf of the Lenders and the other Secured Parties to secure the Obligations and that the Cash Balance is held in deposit accounts or securities accounts, or any combination thereof, that are maintained by a branch office of a bank or securities intermediary located within the United States and that are subject to the control of the Administrative Agent within the meaning of Section 9-314 of the UCC. Holdings shall, and shall cause its Subsidiaries to, take all steps necessary to ensure that the Collected and Available Cash in excess of $1,000,000 is swept to the Cash Collateral Account on a daily basis.

7.17 Tax Returns. Holdings shall, and shall cause its Subsidiaries to, timely file all federal and other material tax returns and reports required to be filed and to take all other steps necessary to ensure that Holdings and its Subsidiaries are paid all tax refunds to which Holdings and its Subsidiaries may be entitled as a result of net operating losses or otherwise in any applicable tax period.

ARTICLE VIII.

NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, or any Loan or other Obligation shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, unless the Majority Lenders waive compliance in writing:

8.01 Limitation on Liens.

(a) Holdings shall not, and shall not suffer or permit any Subsidiary 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"):

(i) any Lien existing on the Effective Date and set forth in Schedule 8.01, provided that (a) such Lien (including any Lien securing Permitted Refinancing Indebtedness) shall not attach to any property or asset of Holdings or any Subsidiary other than the property or asset originally so encumbered on the Effective Date and (b) such Lien shall secure only those obligations that it secures on the Effective Date and Permitted Refinancing Indebtedness in respect thereof;

(ii) any Lien created under any Loan Document;

(iii) Liens securing Holdings' obligations under the Second Lien Term Loan Documents (including any Liens securing Permitted Refinancing Indebtedness in respect thereof), provided that the same are subject to and subordinate to the Liens created under the Loan Documents in accordance with the provisions of the Intercreditor Agreement;

(iv) Liens for taxes, fees, assessments or other governmental charges which are not delinquent or remain payable without penalty, or which are being contested in good faith and by appropriate proceedings, if adequate reserves in accordance with GAAP are maintained by Holdings or such Subsidiary, which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(v) carriers', warehousemen's, mechanics', landlords', materialmen's, repairmen's or other similar Liens arising in the Ordinary Course of Business which are not delinquent or which are being contested in good faith and by appropriate proceedings, if adequate reserves in accordance with GAAP are maintained by Holdings or such Subsidiary, which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(vi) Liens (other than any Lien imposed by ERISA and other than on the Collateral) consisting of pledges or deposits required in the Ordinary Course of Business in connection with workers' compensation, unemployment insurance and other social security legislation;

(vii) Liens securing (A) the non-delinquent performance of bids, trade contracts (other than for borrowed money), leases (other than Capital Leases), statutory obligations, (B) contingent obligations on surety and appeal bonds, and (C) other non-delinquent obligations of a like nature; in each case, incurred in the Ordinary Course of Business, provided all such Liens in the aggregate would not (even if enforced) cause a Material Adverse Effect;

(viii) Liens consisting of judgment or judicial attachment liens with respect to any judgment that does not constitute an Event of Default under Section 9.01(i);

(ix) easements, rights of way, restrictions and other similar encumbrances incurred in the Ordinary Course of Business which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the businesses of Holdings and its Subsidiaries;

(x) Liens on specific tangible assets of Persons which become Subsidiaries after the date of this Agreement; provided, however, that (A) such Liens existed at the time the respective Persons became Subsidiaries and were not created in anticipation thereof, (B) any such Lien does not by its terms cover any assets after the time such Person becomes a Subsidiary which were not covered immediately prior thereto, (C) any such Lien does not by its terms secure any Indebtedness other than Indebtedness existing immediately prior to the time such Person becomes a Subsidiary and Permitted Refinancing Indebtedness in respect thereof, and (D) such Indebtedness is permitted by Section 8.05(d);

(xi) purchase money Liens on any property acquired or held by Holdings or its Subsidiaries in the Ordinary Course of Business, securing Indebtedness incurred or assumed for the purpose of financing all or any part of the cost of acquiring such property; provided that (A) any such Lien attaches to such property concurrently with or within 180 days after the acquisition thereof, (B) such Lien attaches solely to the property so acquired in such transaction, (C) the principal amount of the Indebtedness secured thereby does not exceed 100% of the cost of such property, and (D) such Indebtedness is permitted under Section 8.05(d);

(xii) Liens securing obligations in respect of Capital Leases on assets subject to such leases, provided that such Capital Leases are otherwise permitted hereunder;

(xiii) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; provided that (A) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by Holdings in excess of those set forth by regulations promulgated by the FRB, and (B) such deposit account is not intended by Holdings or any Subsidiary to provide collateral to the depository institution; and

(xiv) precautionary Uniform Commercial Code financing statement filings in respect of Operating Leases entered into by Holdings or any of its Subsidiaries in the Ordinary Course of Business.

(b) Holdings shall not, and shall not permit any of its Subsidiaries to, enter into or suffer to exist any agreement (other than the Loan Documents and, subject to the provisions of the Intercreditor Agreement, the Second Lien Term Loan Documents) prohibiting or conditioning the creation or assumption of any Lien upon any of its properties, revenues or assets, whether now owned or hereafter acquired, except (i) with respect to specific tangible assets subject to a Permitted Lien, (ii) agreements for the sale of a Subsidiary or assets, provided that (A) any such prohibition or condition on the creation or assumption of any Lien applies only to the Subsidiary or assets that are to be sold while such sale is pending and (B) such sale is permitted under Section 8.02, (iii) stockholders agreements, charter or other formation or joint venture documents relating to Non-Wholly-Owned Subsidiaries, and (iv) pursuant to customary anti-assignment or no-subletting clauses in leases, licenses or contracts entered into in the Ordinary Course of Business, which restrict only the assignment of such lease, license or contract, as applicable.

Notwithstanding the foregoing, no Liens may exist at any time on or with respect to the Pledged Collateral, except under the Loan Documents and, subject to the provisions of the Intercreditor Agreement, the Second Lien Term Loan Documents.

8.02 Disposition of Assets. Holdings shall not, and shall not suffer or permit any Subsidiary to, directly or indirectly, sell, assign, lease, convey, transfer or otherwise dispose of (whether in one or a series of transactions) any property (including accounts and notes receivable, with or without recourse), except:

(a) dispositions of inventory, all in the Ordinary Course of Business;

(b) the sale of equipment to the extent that such equipment is exchanged for credit against the purchase price of similar replacement equipment, or the proceeds of such sale are reasonably promptly applied to the purchase price of such replacement equipment;

(c) dispositions of inventory and equipment by Holdings or any other Loan Party to Holdings or any other Loan Party pursuant to reasonable business requirements and in the Ordinary Course of Business;

(d) the lease or sublease of real property by Holdings or any Subsidiary to other Persons in the Ordinary Course of Business;

(e) the sale of cash equivalents and other short term money market investments in the Ordinary Course of Business pursuant to Holdings' usual and customary cash management policies and procedures; the use of cash and cash equivalents for purposes not prohibited hereby;

(f) dispositions pursuant to sales and leaseback transactions permitted under Section 8.13;

(g) dispositions of Excess Real Estate which are made for Fair Market Value (as determined in good faith by Holdings); provided that (i) not less than 75% of the aggregate purchase price for such disposition shall be paid in cash, and (ii) the Net Proceeds of such disposition shall be applied in accordance with Section 2.06(a)(vi), if applicable; and

(h) dispositions not otherwise permitted hereunder which are made for Fair Market Value (as determined in good faith by Holdings); provided that (i) at the time of any disposition, no Event of Default shall exist or shall result from such disposition, (ii) not less than 75% of the aggregate purchase price for such disposition shall be paid in cash, (iii) no disposition by Holdings of any of its equity interest in BMC West Corporation or SelectBuild Construction, Inc. shall be permitted hereunder, (iv) the Net Proceeds of such disposition shall be applied in accordance with Section 2.06(a)(iv), if applicable, and (v) the aggregate purchase price for all such dispositions (exclusive of dispositions of the Wind-Down Business Units) shall not exceed $15,000,000.

8.03 Consolidations and Mergers. Holdings shall not, and shall not suffer or permit any Subsidiary 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, except:

(a) any Subsidiary may merge with Holdings, provided that Holdings shall be the continuing or surviving Person, or with any one or more Subsidiaries, provided that if any transaction shall be between a Subsidiary and a Wholly-Owned Subsidiary, the Wholly-Owned Subsidiary shall be the continuing or surviving Person, and provided further that if any transaction shall be between a Subsidiary and a Loan Party, the Loan Party shall be the continuing or surviving Person;

(b) as permitted by Section 8.02;

(c) any Subsidiary may distribute or sell all or substantially all of its assets (upon voluntary liquidation, dissolution or otherwise) to Holdings or to a Wholly-Owned Subsidiary, provided that if the Subsidiary distributing or selling its assets is a Loan Party, then the Person purchasing or otherwise receiving the assets must also be a Loan Party; and

(d) Upon the written consent of the Majority Lenders, Holdings or any Subsidiary thereof may merge with or consolidate into any other Person that is not a Subsidiary, provided that (i) in the case of Holdings, Holdings shall be the continuing or surviving Person, (ii) if a Loan Party is a party to such merger, then the surviving or continuing entity must be a Loan Party or become a Loan Party in accordance with Section 7.13, (iii) such merger or consolidation is in connection with a Permitted Acquisition, and (iv) no such merger or consolidation shall be made while there exists a Default or if a Default would occur as a result thereof.

8.04 Loans and Investments. Holdings shall not purchase or acquire, or suffer or permit any Subsidiary to purchase or acquire, any capital stock, equity interest, or any obligations or other securities of, or any interest in, any Person, or make any Acquisitions, or make any advance, loan, extension of credit or capital contribution to or any other investment in, any Person including any Affiliate of Holdings (together, "Investments") except for:

(a) Investments held by Holdings or any Subsidiary in the form of cash equivalents and short term money market investments in the Ordinary Course of Business pursuant to Holdings' usual and customary cash management policies and procedures;

(b) extensions of credit in the nature of accounts receivable or notes receivable arising from the sale or lease of goods or services in the Ordinary Course of Business, together with investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(c) (i) Investments by Holdings and its Subsidiaries in the equity interests of their respective Subsidiaries outstanding on the Effective Date and (ii) additional Investments by Holdings and its Subsidiaries that are Loan Parties in other Loan Parties (other than Holdings);

(d) Investments incurred in order to consummate Permitted Acquisitions;

(e) Investments constituting Permitted Swap Obligations or payments or advances under Swap Contracts relating to Permitted Swap Obligations;

(f) Investments constituting non-cash consideration received by Holdings or any Subsidiary in respect of any asset dispositions permitted under Section 8.02; and

(g) Restricted Payments, to the extent permitted under Section 8.11.

8.05 Limitation on Indebtedness. Holdings shall not, and shall not suffer or permit any Subsidiary to, create, incur, assume, suffer to exist, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(a) Indebtedness incurred pursuant to the Loan Documents or, subject to the provisions of the Intercreditor Agreement, the Second Lien Term Loan Documents, including any Permitted Refinancing Indebtedness in respect thereof;

(b) Indebtedness consisting of Contingent Obligations permitted pursuant to Section 8.08;

(c) Indebtedness existing on the Effective Date set forth on Schedule 8.05 and any Permitted Refinancing Indebtedness in respect thereof;

(d) (i) Indebtedness secured by Liens permitted by Sections 8.01(a)(xi) and 8.01(a)(xii) outstanding on the Effective Date and set forth on Schedule 8.05(d), together with Permitted Refinancing Indebtedness in respect thereof; and (ii) Indebtedness incurred after the Effective Date secured by Liens permitted by Sections 8.01(a)(xi) or 8.01(a)(xii) in an aggregate principal amount not to exceed $5,000,000 at any time outstanding;

(e) Indebtedness of Holdings or other Loan Parties to Holdings or other Loan Parties;

(f) Indebtedness incurred pursuant to sales and leaseback transactions permitted under Section 8.13;

(g) Indebtedness of a Person or Indebtedness secured by assets of a Person that, in either case, becomes a Subsidiary or Indebtedness attaching to assets that are acquired by Holdings or any of its Subsidiaries, in each case after the Effective Date as the result of a Permitted Acquisition, provided that (i) such Indebtedness existed at the time such Person became a Subsidiary or at the time such assets were acquired and, in each case, was not created in anticipation thereof and (ii) such Indebtedness is not guaranteed in any respect by Holdings or any Subsidiary (other than by any such Person that so becomes a Subsidiary and existing Subsidiaries of such Person); and any Permitted Refinancing Indebtedness in respect thereof;

(h) other unsecured Indebtedness in an aggregate principal amount outstanding at any one time not to exceed $10,000,000; and

(i) additional Indebtedness which by its terms is expressly subordinated to the Obligations, provided that (i) the terms of such subordination shall be satisfactory to the Majority Lenders, (ii) the terms of such Indebtedness and the indenture or other agreement evidencing such Indebtedness otherwise shall be satisfactory in all material respects to the Majority Lenders (including terms and conditions relating to the interest rate, fees, amortization, maturity, covenants, events of default and remedies), (iii) no such Indebtedness shall be incurred while there exists a Default or if a Default would occur as a result thereof, and (iv) without limiting the generality of the foregoing, as of the end of the most recent quarter for which Holdings has delivered financial statements under Section 5.01(c), Section 7.01(a) or Section 7.01(b) and immediately after giving effect to such incurrence, Holdings shall be in full pro forma

compliance with the financial covenants set forth in Section 8.19 (any such Indebtedness issued in compliance with this Section 8.05(i) hereinafter "Permitted Subordinated Debt").

8.06 Transactions with Affiliates. Holdings shall not, and shall not suffer or permit any Subsidiary to, enter into any transaction with any Affiliate of Holdings, except upon fair and reasonable terms no less favorable to Holdings or such Subsidiary than it would obtain in a comparable arm's length transaction with a Person not an Affiliate of Holdings or such Subsidiary; provided, however, that the foregoing restriction shall not apply to (i) transactions between or among Holdings and any Guarantor (including between Guarantors), (ii) Investments and Restricted Payments permitted hereby (iii) customary fees paid to directors (or members of a similar governing body) of Holdings or its Subsidiaries in the Ordinary Course of Business, (iv) customary indemnities provided to directors of Holdings and its Subsidiaries in the Ordinary Course of Business and (v) compensation arrangements for officers and other employees of Holdings and its Subsidiaries entered into in the Ordinary Course of Business.

8.07 Use of Proceeds. Holdings shall not, and shall not suffer or permit any Subsidiary to, use any portion of the Loan proceeds or any Letter of Credit, directly or indirectly, (i) to purchase or carry Margin Stock, (ii) to repay or otherwise refinance indebtedness of Holdings or others incurred to purchase or carry Margin Stock, (iii) to extend credit for the purpose of purchasing or carrying any Margin Stock, in a manner that would not result in the contravention of Regulation T, U or X of the FRB, or (iv) for any use not permitted under Section 7.12.

8.08 Contingent Obligations. Holdings shall not, and shall not suffer or permit any Subsidiary to, create, incur, assume or suffer to exist any Contingent Obligations, except:

(a) endorsements for collection or deposit in the Ordinary Course of Business;

(b) Contingent Obligations in respect of Swap Contracts permitted under Section 8.04(e);

(c) Contingent Obligations of Holdings in respect of Indebtedness of any other Loan Party, or Contingent Obligations of any Loan Party in respect of Indebtedness of another Loan Party or of Holdings, in each case to the extent such Indebtedness is permitted hereunder;

(d) Contingent Obligations of Holdings and its Subsidiaries existing as of the Effective Date and set forth on Schedule 8.08;

(e) Contingent Obligations with respect to Surety Instruments incurred in the Ordinary Course of Business and not exceeding at any time $60,000,000 in aggregate principal amount in respect of Holdings and its Subsidiaries together;

(f) Contingent Obligations consisting of normal and customary indemnities issued in the Ordinary Course of Business (including under professional services agreements, construction and materials supply agreements, intellectual property agreements or employment and consulting agreements) or consisting of normal and customary indemnities pursuant to the issuance and sale of securities;

(g) Contingent Obligations in respect of Operating Leases, to the extent such Operating Leases are permitted to be entered into hereby;

(h) Contingent Obligations consisting of customary indemnification and purchase price adjustment obligations incurred in connection with asset dispositions permitted under Section 8.02; and

(i) Contingent Obligations consisting of Earn-Out Obligations incurred in connection with Permitted Acquisitions.

8.09 Subsidiaries. Holdings shall not, and shall not suffer or permit any Subsidiary to, incorporate, create or acquire any Subsidiary which is not a U.S. Subsidiary.

8.10 Lease Obligations. Holdings shall not, and shall not suffer or permit any Subsidiary to, create or suffer to exist any obligations for the payment of rent for any property under any Operating Lease which exceed an aggregate amount of $35,000,000 for all Operating Leases in any fiscal year.

8.11 Restricted Payments. Holdings shall not, and shall not suffer or permit any Subsidiary to, declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any shares of any class of its capital stock or other equity interests (other than dividends or other distributions by a Subsidiary to Holdings or to a Subsidiary that is a Loan Party), or purchase, redeem or otherwise acquire for value any shares of its capital stock or other equity interests or any warrants, rights or options to acquire such shares or other equity interests, now or hereafter outstanding (collectively, "Restricted Payments"); except that Holdings may:

(a) declare and make dividend payments or other distributions payable solely in its common stock;

(b) so long as no Event of Default has occurred and is continuing or would be caused thereby, declare and make dividends required to be declared or paid pursuant to the terms of any securities issued in an offering by Holdings of common stock, preferred stock or other equity interests of Holdings, so long as the dividend provisions of such securities were approved by the Majority Lenders in writing prior to the issuance of such securities;

(c) allow any Non-Wholly-Owned Subsidiary to make distributions to its owners (on a pro rata basis); and

(d) so long as no Event of Default has occurred and is continuing or would be caused thereby, purchase Holdings' Equity Securities from present or former officers or employees of Holdings or any of its Subsidiaries following the death, disability or termination of employment of such officer or employee in accordance with any stock incentive plan approved by Holdings' board of directors, in an aggregate amount not to exceed $1,000,000 in any fiscal year.

8.12 ERISA. Holdings shall not, and shall not suffer or permit any of its ERISA Affiliates to: (a) engage in a prohibited transaction or violation of the fiduciary responsibility

rules with respect to any Plan which has resulted or could reasonably expected to result in liability of Holdings in an aggregate amount in excess of $5,000,000; or (b) engage in a transaction that could be subject to section 4069 or 4212(c) of ERISA and that would reasonably be expected to have a Material Adverse Effect.

8.13 Sales and Leasebacks. Holdings shall not, and shall not permit any of its Subsidiaries to, become liable, directly or indirectly, with respect to any lease (a "Subject Lease"), whether an Operating Lease or a Capital Lease, of any property (whether real, personal or mixed), whether now owned or hereafter acquired, (i) which Holdings or such Subsidiary has sold or transferred or is to sell or transfer to any other Person or (ii) which Holdings or such Subsidiary intends to use for substantially the same purposes as any other property which has been or is to be sold or transferred by Holdings or such Subsidiary to any other Person in connection with such lease; provided that Holdings and any of its Subsidiaries may enter into any such lease if either (A) (1) no Default shall then exist or would occur as a result thereof and (2) such lease is an Operating Lease with a term of not more than three (3) years entered into in connection with the sale of a facility pending the repurchase and construction of a replacement facility in a new location, or (B) (1) no Default shall then exist or would occur as a result thereof, (2) as of the end of the most recent month for which Holdings has delivered financial statements under Section 5.01(c) or Section 7.01(c) and immediately after giving effect to any such lease, Holdings shall be in full pro forma compliance with the financial covenants set forth in Section 8.19, and (3) the Disposition Value of the property sold or transferred, or to be sold or transferred, in connection with the lease, when added to the aggregate Disposition Value of all other property sold or transferred, or to be sold or transferred, in connection with all other leases entered into pursuant to this Section 8.13 from and after the Effective Date, does not exceed $10,000,000.

8.14 Certain Payments. Holdings shall not, and shall not permit any of its Subsidiaries to, (i) prepay, redeem, repurchase or otherwise acquire for value any of the Permitted Subordinated Debt; (ii) make any principal, interest or other payments on any Permitted Subordinated Debt if not permitted by the respective subordination provisions of the Subordinated Debt Documents; or (iii) make any principal, interest or other payments on the Indebtedness under the Second Lien Term Loan Documents if not permitted by the Intercreditor Agreement.

8.15 Modification of Second Lien Term Loan Documents. Holdings shall not, and shall not permit any of its Subsidiaries to, agree to or otherwise suffer or permit any amendment, modification or waiver of any provision of the Second Lien Term Loan Documents to the extent any such amendment, modification or waiver is prohibited under the Intercreditor Agreement.

8.16 Modification of Subordinated Debt Documents. Holdings shall not, and shall not permit any of its Subsidiaries to, agree to or permit any amendment, modification or waiver of any provision of any Subordinated Debt Document (including any amendment, modification or waiver pursuant to an exchange of other securities or instruments for outstanding Permitted Subordinated Debt) if the effect of such amendment, modification or waiver is to (i) increase the interest rate on such Permitted Subordinated Debt or change (to earlier dates) the dates upon which principal and interest are due thereon; (ii) alter the redemption, prepayment or subordination provisions thereof; (iii) alter the covenants and events of default in a manner

which would make such provisions more onerous or restrictive to Holdings or such Subsidiary; or (iv) otherwise increase the obligations of Holdings or such Subsidiary in respect of such Permitted Subordinated Debt or confer additional rights upon the holders thereof which individually or in the aggregate would be adverse to Holdings, its Subsidiaries or the Lenders.

8.17 Change in Business. Holdings shall not, and shall not suffer or permit any Subsidiary to, engage in any material line of business substantially different from those lines of business carried on by Holdings and its Subsidiaries on the date hereof and lines of business ancillary thereto.

8.18 Accounting Changes. Holdings shall not, and shall not suffer or permit any Subsidiary to, make any significant change in accounting treatment or reporting practices, except as permitted by GAAP, or change the fiscal year of Holdings or of any Subsidiary, except to change the fiscal year of a Subsidiary to conform its fiscal year to that of Holdings.

8.19 Financial Covenants.

(a) Holdings shall not permit its Liquidity as of the last day of any fiscal month to be less than the following amounts for the respective periods set forth below:

Period	Minimum Liquidity
January 2010	$50,000,000
February 2010	$50,000,000
March 2010	$50,000,000
April 2010	$47,500,000
May 2010	$40,000,000
June 2010	$40,000,000
July 2010	$30,000,000
August 2010	$15,000,000
September 2010	$20,000,000
October 2010	$35,000,000
November 2010	$50,000,000
December 2010	$50,000,000
January 2011	$45,000,000
February 2011	$45,000,000
March 2011	$45,000,000
April 2011	$40,000,000
May 2011	$40,000,000
June 2011	$40,000,000
July 2011	$20,000,000
August 2011	$20,000,000
September 2011	$20,000,000
October 2011	$50,000,000
November 2011	$50,000,000
December 2011	$50,000,000

January 2012	$45,000,000
February 2012	$45,000,000
March 2012	$45,000,000
April 2012	$40,000,000
May 2012	$40,000,000
June 2012	$40,000,000
July 2012	$20,000,000
August 2012	$20,000,000
September 2012	$20,000,000
October 2012	$50,000,000
November 2012	$50,000,000
December 2012	$50,000,000

(b) Holdings shall not permit its EBITDA as at the end of any fiscal quarter to be less than the following amounts for the respective periods set forth below:

Measurement Period	Minimum EBITDA
Six Months Ending June 30, 2010	$(15,000,000)
Nine Months Ending September 30, 2010	$(10,000,000)
Twelve Months Ending December 31, 2010	$(5,000,000)
Twelve Months Ending March 31, 2011	$2,500,000
Twelve Months Ending June 30, 2011	$10,000,000
Twelve Months Ending September 30, 2011	$20,000,000
Twelve Months Ending December31, 2011	$30,000,000
Twelve Months Ending March 31, 2012	$30,000,000
Twelve Months Ending June 30, 2012	$40,000,000
Twelve Months Ending September 30, 2012	$60,000,000
Twelve Months Ending December31, 2012	$75,000,000

8.20 No Restrictions on Subsidiary Dividends. Holdings shall not, and shall not suffer or permit any Subsidiary to, enter into or be bound by any Contractual Obligation which

restricts, limits or prohibits the payment of dividends by any Subsidiary or the making of any other distribution in respect of such Subsidiary's capital stock or other equity interests, except for the following:

(a) agreements for the sale of a Subsidiary or assets, provided that (i) any such restriction, limitation or prohibition on the payment of dividends or other distributions applies only to the Subsidiary to be sold or to the Subsidiary that owns the assets to be sold, in each case, while such sale is pending and (ii) such sale is permitted under Section 8.02; and

(b) agreements in respect of Indebtedness permitted under Section 8.05 of any Subsidiary acquired after the Effective Date that was incurred by such Subsidiary prior to the date on which such Subsidiary was acquired (other than Indebtedness incurred as consideration for, in contemplation of, or to provide all or any portion of the funds or credit support utilized to consummate the transaction or series of related transactions pursuant to which such Subsidiary becomes a Subsidiary or was otherwise acquired).

8.21 Capital Expenditures. Holdings shall not, and shall not permit any of its Subsidiaries to, make any Capital Expenditures in excess of, on a consolidated basis, in any fiscal year the following amounts for the respective periods set forth below, excluding Capital Expenditures to the extent made using insurance or condemnation proceeds paid on account of an Event of Loss and applied to repair, reconstruct or replace the affected property:

Period	CapEx Limit
Fiscal 2010	$7,500,000
Fiscal 2011	$10,000,000
Fiscal 2012	$10,000,000

8.22 No Opt-In to Article 8 of the UCC. Holdings shall not suffer or permit any Subsidiary which is either a limited partnership or limited liability company to amend its limited partnership agreement or limited liability company operating agreement, as the case may be, to certificate any of its limited partnership interests or membership interests, as the case may be, or opt into Article 8 of the UCC, without the prior written consent of the Administrative Agent.

ARTICLE IX.

EVENTS OF DEFAULT

9.01 Event of Default. Any of the following shall constitute an "Event of Default":

(a) Non Payment. Holdings fails to make, (i) when and as required to be made herein, payments of any amount of principal of any Loan or of any L/C Obligation, (ii) within three (3) Business Days after the same becomes due, any payment or transfer under any Specified Swap Contract, or (iii) within three (3) Business Days after the same becomes due, payment of any interest, fee or any other amount payable hereunder or under any other Loan Document (other than a Specified Swap Contract);

(b) Representation or Warranty. Any representation or warranty by any Loan Party made or deemed made herein, in any other Loan Document (other than a Specified Swap Contract), or which is contained in any certificate, document or financial or other statement by any Loan Party, or any Responsible Officer, furnished at any time under this Agreement, or in or under any other Loan Document (other than a Specified Swap Contract), is incorrect in any material respect on or as of the date made or deemed made;

(c) Specific Defaults. Holdings or any other Loan Party fails to perform or observe any term, covenant or agreement contained in any of Sections 7.01(a), 7.01(c), 7.02(b), 7.02(h), 7.03(a), 7.04(a)(i), 7.12, 7.13, 7.14 or 7.16 or in Article VIII;

(d) Other Defaults. Any Loan Party fails to perform or observe any other term or covenant contained in this Agreement or any other Loan Document (other than a Specified Swap Contract), and such default shall continue unremedied for a period of 20 days after the earlier of (i) the date upon which a Responsible Officer of Holdings obtained actual knowledge of such failure and (ii) the date upon which written notice thereof is given to Holdings by the Administrative Agent or any Lender;

(e) Cross Default. (i) Holdings or any Subsidiary (A) fails to make any payment in respect of any Indebtedness or Contingent Obligation (other than in respect of Swap Contracts or 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 $5,000,000 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 relevant document on the date of such failure; or (B) 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, and such failure continues after the applicable grace or notice period, if any, specified in the relevant document on the date of such failure 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 administrative agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause such Indebtedness to be declared to be due and payable or to be repurchased, prepaid, defeased or redeemed prior to its stated maturity, or such Contingent Obligation to become payable or cash collateral in respect thereof to be demanded; (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (1) any event of default under such Swap Contract as to which Holdings or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (2) any Termination Event (as so defined) as to which Holdings or any Subsidiary is an Affected Party (as so defined), and, in either event, the Swap Termination Value owed by Holdings or such Subsidiary as a result thereof is greater than $5,000,000; or (iii) there occurs under any of the Second Lien Term Loan Documents any default as to which Holdings or any Subsidiary is the defaulting party (as set forth therein), and such default continues beyond all applicable grace or notice periods, if any, set forth therein;

(f) Insolvency; Voluntary Proceedings. Holdings or any Subsidiary (i) ceases or fails to be solvent, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or

otherwise; (ii) voluntarily ceases to conduct its business in the ordinary course; (iii) commences any Insolvency Proceeding with respect to itself; or (iv) takes any action to effectuate or authorize any of the foregoing;

(g) Involuntary Proceedings. (i) Any involuntary Insolvency Proceeding is commenced or filed against Holdings or any Subsidiary, or any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of Holdings' or any Subsidiary's properties, and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within 60 days after commencement, filing or levy; (ii) Holdings or any Subsidiary admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or (iii) Holdings or any Subsidiary acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or administrative agent therefor), or other similar Person for itself or a substantial portion of its property or business;

(h) ERISA. (i) An ERISA Event shall occur with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of Holdings under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of $5,000,000; (ii) the aggregate amount of Unfunded Pension Liability among all Pension Plans at any time exceeds $5,000,000; or (iii) Holdings or any ERISA Affiliate shall fail 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;

(i) Monetary Judgments. One or more non-interlocutory judgments, non interlocutory orders, decrees or arbitration awards is entered against Holdings or any Subsidiary involving in the aggregate a liability (to the extent not covered by independent third party insurance as to which the insurer does not dispute coverage) as to any single or related or unrelated series of transactions, incidents or conditions, of $5,000,000 or more, and the same shall remain unsatisfied, unvacated and unstayed pending appeal for a period of 30 days after the entry thereof;

(j) Non Monetary Judgments. Any non monetary judgment, order or decree is entered against Holdings or any Subsidiary which does or would reasonably be expected to have a Material Adverse Effect, and there shall be any period of 30 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;

(k) Change of Control. There occurs any Change of Control;

(l) Guarantor Defaults. Any Guarantor fails in any material respect to perform or observe any term, covenant or agreement in its Guaranty; or any Guaranty is for any reason partially (including with respect to future advances) or wholly revoked or invalidated, or otherwise ceases to be in full force and effect, or such Guarantor or any other Person contests in any manner the validity or enforceability thereof or denies that it has any further liability or

obligation thereunder; or any event described at subsections (f) or (g) of this Section 9.01 occurs with respect to any Guarantor;

(m) Invalidity of Subordination Provisions. The subordination provisions applicable to the Permitted Subordinated Debt or in the Intercreditor Agreement shall be for any reason revoked or invalidated, or otherwise cease to be in full force and effect, or the holders thereof or any other Person shall contest in any manner the validity or enforceability thereof or denies that it has any further liability or obligation thereunder, or the Indebtedness hereunder is for any reason subordinated or does not have the priority contemplated by this Agreement or such subordination provisions; or

(n) Collateral. (i) Any provision of any Collateral Document shall for any reason cease to be valid and binding on or enforceable against Holdings or any Subsidiary party thereto or Holdings or any Subsidiary shall so state in writing or bring an action to limit its obligations or liabilities thereunder; or (ii) any Collateral Document shall for any reason (other than pursuant to the terms thereof) 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 Permitted Liens.

9.02 Remedies. At any time after the occurrence and during the continuance of any Event of Default (other than an Event of Default referred to in Section 9.01(f) or Section 9.01(g)):

(a) the Administrative Agent may or shall, upon instructions from the Majority Revolving Lenders, by written notice to Holdings (i) terminate the Revolving Commitments, any obligation of the L/C Issuer to make Credit Extensions and the obligations of the Revolving Lenders to make Loans, (ii) require that Holdings Cash Collateralize the L/C Obligations in an amount equal to the then Effective Amount of the L/C Obligations; and/or (iii) declare all or a portion of the outstanding Obligations owed to the Revolving Lenders and payable by Holdings to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Notes to the contrary notwithstanding; and

(b) the Administrative Agent may or shall, upon instructions from the Majority Term Lenders, by written notice to Holdings declare all or a portion of the outstanding Obligations owed to the Term Lenders and payable by Holdings to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Notes to the contrary notwithstanding.

Upon the occurrence or existence of any Event of Default described in Section 9.01(f) or 9.01(g), immediately and without notice, (1) the Revolving Commitments, any obligation of the L/C Issuer to make Credit Extensions and the obligations of the Lenders to make Loans shall automatically terminate, (2) Holdings shall immediately Cash Collateralize the Obligations in an amount equal to the then Effective Amount of all Revolving Loans, L/C Obligations and Term Loans and (3) all outstanding Obligations payable by Holdings hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice

of any kind, all of which are hereby expressly waived, anything contained herein or in the Notes to the contrary notwithstanding. In addition to the foregoing remedies, upon the occurrence or existence of any Event of Default, the Administrative Agent may exercise any other right, power or remedy available to it under any of the Loan Documents or otherwise by law, either by suit in equity or by action at law, or both.

9.03 Application of Funds. After the exercise of remedies provided for in Section 9.02 (or after the Loans have automatically become immediately due and payable and the Obligations have automatically been required to be Cash Collateralized as set forth in the last paragraph of Section 9.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article IV) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and fees payable under Section 2.09(c) and Section 3.08(a)) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer and amounts payable under Article IV), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid fees payable under Section 2.09(c) and Section 3.08(a) and interest on the Loans, L/C Borrowings and other Obligations, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, (i) to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, and (ii) to Cash Collateralize that portion of the L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to payment of that portion of the Obligations constituting (i) amounts owing to any Swap Providers in respect of Specified Swap Contracts and (ii) amounts owing to any Bank Product Provider in respect of Bank Product Agreements, ratably among the Swap Providers and the Bank Product Providers in proportion to the respective amounts described in this clause Fifth held by them;

Sixth, to payment of all other Obligations, ratably among the Persons owed such Obligations in proportion to the respective amounts described in this clause Sixth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to Holdings or as otherwise required by applicable law.

Subject to Section 3.03, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

9.04 Specified Swap Contract Remedies. Notwithstanding any other provision of this Article IX, but subject to Section 9.03, each Swap Provider shall have the right, with prior notice to the Administrative Agent, but without the approval or consent of the Administrative Agent or the other Lenders, with respect to any Specified Swap Contract of such Swap Provider, (a) to declare an event of default, termination event or other similar event thereunder and to create an Early Termination Date (as defined in such Specified Swap Contract), (b) to determine net termination amounts in accordance with the terms of such Specified Swap Contracts and to set-off amounts between such Specified Swap Contracts, and (c) to prosecute any legal action against Holdings to enforce net amounts owing to such Swap Provider.

ARTICLE X.

THE ADMINISTRATIVE AGENT

10.01 Appointment and Authority. Each of the Lenders and the L/C Issuer hereby irrevocably appoints Wells Fargo to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither Holdings nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

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

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

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

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

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

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 9.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by Holdings, a Lender or the L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

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

any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

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

10.06 Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and Holdings. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right, in consultation with Holdings (except during the continuance of an Event of Default, in which case no consultation with Holdings shall be required), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify Holdings and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Majority Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by Holdings to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Holdings and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

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

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

10.08 Collateral Matters.

(a) The Administrative Agent is authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action with respect to any Collateral or the Collateral Documents which may be necessary to perfect and maintain perfected the security interest in and Liens upon the Collateral granted pursuant to the Collateral Documents.

(b) The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion, to release any Lien granted to or held by the Administrative Agent upon any Collateral (i) upon termination of the Commitments and payment in full of all Loans and all other Obligations known to the Administrative Agent and payable under this Agreement or any other Loan Document; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any disposition permitted hereunder; (iii) constituting property in which Holdings or any Subsidiary owned no interest at the time the Lien was granted or at any time thereafter; (iv) constituting property leased to Holdings or any Subsidiary in a transaction permitted under this Agreement; (v) consisting of an instrument evidencing Indebtedness or other debt instrument, if the indebtedness evidenced thereby has been paid in full; (vi) if approved, authorized or ratified in writing by the Majority Lenders or all the Lenders, as the case may be, as provided in Section 11.01. Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to release particular types or items of Collateral pursuant to this Section 10.08(b), provided that the absence of any such confirmation for whatever reason shall not affect the Administrative Agent's rights under this Section 10.08.

(c) Each Lender agrees with and in favor of each other (which agreement shall not be for the benefit of Holdings or any Subsidiary) that the Obligations to such Lender under this Agreement and the other Loan Documents shall not be secured by any real property collateral now or hereafter acquired by such Lender other than the Mortgaged Properties described in the Mortgages.

10.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on Holdings) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.09, 3.08 and 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 11.04.

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

10.10 Intercreditor Agreement. Each Lender hereby acknowledges that it has received and reviewed the Intercreditor Agreement and agrees to be bound by the terms thereof. Each Lender hereby authorizes and directs the Administrative Agent to enter into the Intercreditor Agreement on behalf of such Lender and agrees that the Administrative Agent may take such actions for itself and on such Lender's behalf as is contemplated by the terms of the Intercreditor Agreement; provided, however, that no amendment to or waiver of any of the provisions of the Intercreditor Agreement, or consent given by the First Lien Agent (as defined therein) to any departure therefrom by the Second Lien Agent (as defined therein), shall be permitted or

effective unless the same shall be in writing and signed by the Administrative Agent and the Majority Lenders (or the Administrative Agent with the consent of the Majority Lenders), and any such amendment, waiver or consent shall be permitted and effective only in the specific instance and for the specific purpose for which given. Each Lender hereby acknowledges that Wells Fargo may be acting under the Intercreditor Agreement in multiple capacities as the First Lien Agent (as applicable) and the Second Lien Agent (as applicable).

ARTICLE XI.

MISCELLANEOUS

11.01 Amendments and Waivers.

(a) Except as otherwise provided herein or in any other Loan Document, (i) no amendment to any provision of this Agreement or any of the other Loan Documents shall in any event be effective unless the same shall be in writing and signed by Holdings (or other Loan Party thereto, as applicable), the Administrative Agent and the Majority Lenders (or the Administrative Agent with the written consent of the Majority Lenders); and (ii) no waiver of any provision of this Agreement or any other Loan Document, or consent to any departure by Holdings or other party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Administrative Agent and the Majority Lenders (or the Administrative Agent with the consent of the Majority Lenders). Any such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall do any of the following:

(A) increase the amount, or extend the stated expiration or termination date, of the Term Commitment of any Term Lender without the consent of such Term Lender;

(B) reduce or forgive the principal of, or interest or rate of interest on, the Term Loans of any Term Lender or any fee or other amount payable to any Term Lender hereunder without the consent of such Term Lender; provided, however, that only the consent of the Majority Lenders shall be necessary to change the manner of computation of any financial covenant or related definition used in determining the Applicable Margin that would result in a reduction of any interest rate on any Term Loan, or to amend the default rate of interest as determined under Section 2.08(c) or to waive any obligation of Holdings to pay interest at the default rate of interest;

(C) postpone any date fixed for any payment in respect of principal of, or interest on, the Term Loans of any Term Lender or any fee or other amount payable to the any Term Lender hereunder without the consent of such Term Lender;

and provided further, however, that no amendment, waiver or consent shall do any of the following:

(D) increase the amount, or extend the stated expiration or termination date, of the Revolving Commitment of any Revolving Lender without the consent of such Revolving Lender;

(E) reduce or forgive the principal of, or interest or rate of interest on, the Revolving Loans of any Revolving Lender or any fee or other amount payable to any Revolving Lender hereunder without the consent of such Revolving Lender; provided, however, that only the consent of the Majority Lenders shall be necessary to change the manner of computation of any financial covenant or related definition used in determining the Applicable Margin or Applicable Fee Amount that would result in a reduction of any interest rate on any Revolving Loan or in a reduction of any Commitment Fees or Letter of Credit fees, or to amend the default rate of interest as determined under Section 2.08(c) or to waive any obligation of Holdings to pay interest at the default rate of interest;

(F) postpone any date fixed for any payment in respect of principal of, or interest on, the Revolving Loans of any Revolving Lender or any fee or other amount payable to any Revolving Lender hereunder without the consent of such Revolving Lender;

and provided further, however, that, unless in writing and signed by all of the Lenders (or by the Administrative Agent with the written consent of all the Lenders), no amendment, waiver or consent shall do any of the following:

(G) change the definition of "Majority Lenders", "Majority Revolving Lenders" or "Majority Term Lenders" or any definition or provision of this Agreement requiring the approval of Majority Lenders or some other specified amount of Lenders;

(H) consent to the assignment or transfer by Holdings or any other Loan Party of any of its rights and obligations under the Loan Documents;

(I) release any Guarantor or any material portion of the Collateral except as contemplated herein, in the Guaranty or in the Collateral Documents;

(J) amend, modify or waive the provisions of Section 2.12 or Section 9.03; or

(K) amend, modify or waive the provisions of this Section 11.01(a);

provided, further, that (1) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required hereinabove to take such action, affect the rights, obligations or duties of the Administrative Agent under any Loan Document, (2) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required hereinabove to take such action, affect the rights, obligations or duties of the L/C Issuer under any Loan Document, (3) the Fee Letter and documents evidencing Specified Swap Contracts may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto and (4) Section 11.07(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification. Notwithstanding anything to the contrary herein, a Defaulting Lender shall not have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased without its consent, nor may any amendment, waiver or consent reduce or forgive the principal of, or accrued and unpaid interest

on, the outstanding Loans of such Lender or any accrued fee or other accrued amount payable to such Lender without its consent.

(b) In connection with any such proposed amendment, waiver or consent requiring the consent of all Term Lenders, all Revolving Lenders or all Lenders, as the case may be, if the consent of the Majority Term Lenders (in the case of any proposed amendment, waiver or consent requiring the consent of all Term Lenders), the Majority Revolving Lenders (in the case of any proposed amendment, waiver or consent requiring the consent of all Revolving Lenders) or the Majority Lenders (in the case of any proposed amendment, waiver or consent requiring the consent of all Lenders) is obtained, but the consent of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in this Section 11.01 being referred to as a "Non-Consenting Lender"), then, so long as the Lender that is acting as the Administrative Agent is not a Non-Consenting Lender, Holdings may replace such Non-Consenting Lender in accordance with Section 11.11.

No failure or delay by the Administrative Agent or any Lender in exercising any right under this Agreement or any other Loan Document shall operate as a waiver thereof or of any other right hereunder or thereunder nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right hereunder or thereunder. Unless otherwise specified in such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given. The Lenders may condition the giving or making of any amendment, waiver or consent of any term, covenant, agreement or condition of this Agreement or any other Loan Document on payment of a fee by Holdings.

11.02 Notices; Effectiveness; Electronic Communication.

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

(i) if to Holdings, the Administrative Agent or the L/C Issuer, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

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

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II or Article III if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or Holdings may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, Etc. Each of Holdings, the Administrative Agent and the L/C Issuer may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to Holdings, the Administrative Agent and the L/C Issuer.

(d) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Notices of Borrowing) purportedly given by or on behalf of Holdings even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Holdings shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of Holdings. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Administrative 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. 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.

11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. Holdings shall pay (i) all reasonable out of pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated); (ii) all reasonable out of pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; (iii) all out of pocket expenses incurred by the Administrative Agent, any Lender or the L/C Issuer (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the L/C Issuer), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent, any Lender or the L/C Issuer, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or similar negotiations in respect of such Loans or Letters of Credit; (iv) all out of pocket expenses incurred by any originating Lender (i.e., excluding any Lender by way of an assignment or other transfer pursuant to Section 11.06) in connection with obtaining up to two (2) private credit estimates of the credit facilities provided for herein (or the Revolving Commitments or Term Commitments, as applicable to such Lender), one from Standard & Poor's and one from Moody's; and (v) all reasonable fees, charges and disbursements of McDermott Will & Emery LLP in an aggregate amount not to exceed $75,000 incurred by any Person in connection with the preparation and negotiation of this Agreement and the other Loan Documents, provided that the transactions to occur hereunder on the Effective Date are consummated and such Person is a Lender that funds its Proportionate Share of the Borrowings made on the Effective Date.

(b) Indemnification by Holdings. Holdings shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by Holdings or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of

Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by Holdings or any of its Subsidiaries, or any Environmental Claims related in any way to Holdings or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Holdings or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by Holdings or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if Holdings or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that Holdings for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Proportionate Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.11(d).

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

(e) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent and the L/C Issuer, the replacement of any Lender, the termination of

the Aggregate Revolving Commitment and Aggregate Term Commitment and the repayment, satisfaction or discharge of all the other Obligations.

11.05 Marshalling; Payments Set Aside. Neither the Administrative Agent nor the Lenders shall be under any obligation to marshal any assets in favor of Holdings or any other Person or against or in payment of any or all of the Obligations. To the extent that any Loan Party makes a payment to the Administrative Agent or the Lenders, or the Administrative Agent or the Lenders exercise their right of set-off, and such payment or the proceeds of such set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (a) to the extent of such recovery the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its Proportionate Share of any amount so recovered from or repaid by the Administrative Agent.

11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither Holdings nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section, or (iv) to an SPC in accordance with the provisions of subsection (h) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations) at the time owing to it); provided that:

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of

the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000, in the case of any assignment in respect of the Revolving Commitments, or $1,000,000, in the case of any assignment in respect of the Term Loans, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, Holdings otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) any assignment of a Revolving Commitment must be approved by the Administrative Agent and the L/C Issuer unless the Person that is the proposed assignee is itself a Revolving Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee) (each such approval not to be unreasonably withheld or delayed); and

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount, if any, required as set forth in Schedule 11.06, and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 4.01, 4.03, 4.04, and 11.04. Upon request, Holdings (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of Holdings, shall maintain at the Administrative Agent's Payment Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and Holdings, the Administrative

Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by each of Holdings and the L/C Issuer at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent, waiver or amendment to the Loan Documents is pending, any Lender may request and receive from the Administrative Agent a copy of the Register.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, Holdings or the Administrative Agent, sell participations to any Person (other than a natural person or Holdings or any of Holdings' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Holdings, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the provisos to Section 11.01(a) that affects such Participant. Subject to subsection (e) of this Section, Holdings agrees that each Participant shall be entitled to the benefits of Sections 4.01, 4.03 and 4.04 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.12 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 4.01 or 4.03 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Holdings' prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 4.01 unless Holdings is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Holdings, to comply with Section 4.01(e) as though it were a Lender.

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

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

(h) Special Purpose Funding Vehicles. Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and Holdings (an "SPC") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof or, if it fails to do so, to make such payment to the Administrative Agent as is required under Section 2.11. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of Holdings under this Agreement (including its obligations under Section 4.03), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior debt of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding under the laws of the United States or any State thereof. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of Holdings and the Administrative Agent and with the payment of a processing fee in the amount of $2,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or guarantee or credit or liquidity enhancement to such SPC.

(i) Resignation as L/C Issuer after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Wells Fargo assigns all of its Commitment and Loans pursuant to subsection (b) above, Wells Fargo may, upon 30 days' notice to Holdings and the Lenders, resign as L/C Issuer. In the event of any such resignation as L/C Issuer, Holdings shall be entitled to appoint from among the Revolving Lenders a successor L/C Issuer hereunder; provided, however, that no failure by Holdings to appoint any such successor shall affect the resignation of Wells Fargo as L/C Issuer. If Wells Fargo resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of

Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Revolving Lenders to make Revolving Loans or fund risk participations in unreimbursed drawings, pursuant to Section 3.03). Upon the appointment of a successor L/C Issuer, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Wells Fargo to effectively assume the obligations of Wells Fargo with respect to such Letters of Credit.

11.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any pledgee referred to in Section 11.06(f) or (iii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Holdings and its obligations, (g) with the consent of Holdings or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings.

For purposes of this Section, "Information" means all information received from Holdings or any Subsidiary relating to Holdings or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by Holdings or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Holdings acknowledges that the Administrative Agent will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of Holdings hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system.

11.08 Set off. If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time

and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of Holdings or any other Loan Party against any and all of the obligations of Holdings or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of Holdings or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify Holdings and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

NOTWITHSTANDING THE FOREGOING, NO LENDER SHALL EXERCISE, OR ATTEMPT TO EXERCISE, ANY RIGHT OF SET-OFF, BANKER'S LIEN, OR THE LIKE, AGAINST ANY DEPOSIT ACCOUNT OR PROPERTY OF HOLDINGS OR ANY SUBSIDIARY OF HOLDINGS HELD OR MAINTAINED BY THE LENDER WITHOUT THE PRIOR WRITTEN CONSENT OF THE ADMINISTRATIVE AGENT.

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

11.10 Guaranty.

(a) Guaranty. Each of the Guarantors unconditionally and irrevocably, jointly and severally, guarantees to the Administrative Agent, the L/C Issuer and the Lenders, and their respective successors, endorsers, transferees and assigns (the "Guaranteed Persons"), the full and prompt payment when due (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise) and performance of all indebtedness, liabilities and other obligations of Holdings to any Guaranteed Person, whether arising out of or in connection with this Agreement, any other Loan Document or otherwise, including all unpaid principal of the Loans, all L/C Obligations, all interest accrued thereon, all fees due under this Agreement and all other amounts payable by Holdings to any Guaranteed Person thereunder or in connection therewith. The terms "indebtedness," "liabilities" and "obligations" are used herein in their most comprehensive sense and include any and all advances, debts, obligations and liabilities, now existing or hereafter arising, whether voluntary or involuntary and whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether

recovery upon such indebtedness, liabilities and obligations may be or hereafter become unenforceable or shall be an allowed or disallowed claim under the Bankruptcy Code or other applicable law. The foregoing indebtedness, liabilities and other obligations of Holdings shall hereinafter be collectively referred to as the "Guaranteed Obligations." The Guaranteed Obligations include interest which, but for an Insolvency Proceeding, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Holdings for such interest in any such Insolvency Proceeding.

(b) Separate Obligation. Each Guarantor acknowledges and agrees (i) that the Guaranteed Obligations are separate and distinct from any indebtedness, obligations or liabilities arising under or in connection with any other agreement, instrument or guaranty, including under any provision of this Agreement other than this Section 11.10, executed at any time by such Guarantor in favor of any Guaranteed Person, and (ii) such Guarantor shall pay and perform all of the Guaranteed Obligations as required under this Section 11.10, and each Guaranteed Person may enforce any and all of its rights and remedies hereunder, without regard to any other agreement, instrument or guaranty, including any provision of this Agreement other than this Section 11.10, at any time executed by such Guarantor in favor of any Guaranteed Person, regardless of whether or not any such other agreement, instrument or guaranty, or any provision thereof or hereof, shall for any reason become unenforceable or any of the indebtedness, obligations or liabilities thereunder or hereunder shall have been discharged, whether by performance, avoidance or otherwise. Each Guarantor acknowledges that in providing benefits to Holdings and such Guarantor, the Guaranteed Persons are relying upon the enforceability of this Section 11.10 and the Guaranteed Obligations as separate and distinct indebtedness, obligations and liabilities of such Guarantor, and each Guarantor agrees that each Guaranteed Person would be denied the full benefit of their bargain if at any time this Section 11.10 or the Guaranteed Obligations were treated any differently. The fact that the Guaranty of each Guarantor is set forth in this Agreement rather than in a separate guaranty document is for the convenience of Holdings and the Guarantors and shall in no way impair or adversely affect the rights or benefits of any Guaranteed Person under this Section 11.10. Each Guarantor agrees to execute and deliver a separate agreement, immediately upon request at any time of any Guaranteed Person, evidencing such Guarantor's obligations under this Section 11.10. Upon the occurrence of any Event of Default, a separate action or actions may be brought against each Guarantor, whether or not Holdings or any other Guarantor or Person is joined therein or a separate action or actions are brought against Holdings or any other Guarantor or Person.

(c) Limitation of Guaranty. To the extent that any court of competent jurisdiction shall impose by final judgment under applicable law (including the California Uniform Fraudulent Transfer Act and §§544 and 548 of the Bankruptcy Code) any limitations on the amount of any Guarantor's liability with respect to the Guaranteed Obligations which any Guaranteed Person can enforce under this Section 11.10, each Guaranteed Person by its acceptance hereof accepts such limitation on the amount of such Guarantor's liability hereunder to the extent needed to make this Section 11.10 fully enforceable and nonavoidable.

(d) Liability of Guarantor. The liability of each Guarantor under this Section 11.10 shall be irrevocable, absolute, independent and unconditional, and shall not be affected by any circumstance which might constitute a discharge of a surety or guarantor other than the indefeasible payment and performance in full of all Guaranteed Obligations. In

furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(i) such Guarantor's liability hereunder shall be the immediate, direct, and primary obligation of such Guarantor and shall not be contingent upon any Guaranteed Person's exercise or enforcement of any remedy it may have against Holdings or any other Person, or against any collateral or other security for any Guaranteed Obligations;

(ii) this Guaranty is a guaranty of payment when due and not merely of collectibility;

(iii) such Guarantor's payment of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge such Guarantor's liability for any portion of the Guaranteed Obligations remaining unsatisfied; and

(iv) such Guarantor's liability with respect to the Guaranteed Obligations shall remain in full force and effect without regard to, and shall not be impaired or affected by, nor shall such Guarantor be exonerated or discharged by, any of the following events:

(1) any Insolvency Proceeding;

(2) any limitation, discharge, or cessation of the liability of Holdings or any other guarantor or Person for any Guaranteed Obligations due to any statute, regulation or rule of law, or any invalidity or unenforceability in whole or in part of any of the Guaranteed Obligations or the Loan Documents;

(3) any merger, acquisition, consolidation or change in structure of Holdings or any other Guarantor or Person, or any sale, lease, transfer or other disposition of any or all of the assets or shares of Holdings or any other Guarantor or other Person;

(4) any assignment or other transfer, in whole or in part, of any Guaranteed Person's interests in and rights under this Guaranty or the other Loan Documents;

(5) any claim, defense, counterclaim or set-off, other than that of prior performance, that Holdings, such Guarantor, any other guarantor or other Person may have or assert, including any defense of incapacity or lack of corporate or other authority to execute any of the Loan Documents;

(6) any Guaranteed Person's amendment, modification, renewal, extension, cancellation or surrender of any Loan Document or any Guaranteed Obligations;

(7) any Guaranteed Person's exercise or nonexercise of any power, right or remedy with respect to any Guaranteed Obligations or any collateral;

(8) any Guaranteed Person's vote, claim, distribution, election, acceptance, action or inaction in any Insolvency Proceeding; or

(9) any other guaranty, whether by any Guarantor or any other Person, of all or any part of the Guaranteed Obligations or any other indebtedness, obligations or liabilities of any Guaranteed Person.

(e) Consents of Guarantor. Each Guarantor hereby unconditionally consents and agrees that, without notice to or further assent from such Guarantor:

(i) the principal amount of the Guaranteed Obligations may be increased or decreased and additional indebtedness or obligations of Holdings under the Loan Documents may be incurred and the time, manner, place or terms of any payment under any Loan Document be extended or changed, by one or more amendments, modifications, renewals or extensions of any Loan Document or otherwise;

(ii) the time for Holdings' (or any other Person's) performance of or compliance with any term, covenant or agreement on its part to be performed or observed under any Loan Document may be extended, or such performance or compliance waived, or failure in or departure from such performance or compliance consented to, all in such manner and upon such terms as any Guaranteed Person (or the Majority Lenders, as the case may be) may deem proper;

(iii) each Guaranteed Person may request and accept other guarantees and may take and hold other security as collateral for the Guaranteed Obligations, and may, from time to time, in whole or in part, exchange, sell, surrender, release, subordinate, modify, waive, rescind, compromise or extend such other guaranties or security and may permit or consent to any such action or the result of any such action, and may apply such security and direct the order or manner of sale thereof;

(iv) each Guaranteed Person may exercise, or waive or otherwise refrain from exercising, any other right, remedy, power or privilege even if the exercise thereof affects or eliminates any right of subrogation or any other right of such Guarantor against Holdings.

(f) Guarantor's Waivers. Each Guarantor waives and agrees not to assert:

(i) any right to require the Administrative Agent, the L/C Issuer or any Lender to marshal assets in favor of Holdings, the Guarantors, any other guarantor or any other Person, to proceed against Holdings, any other guarantor or any other Person, to proceed against or exhaust any of the Collateral, to give notice of the terms, time and place of any public or private sale of personal property security constituting the Collateral or other collateral for the Guaranteed Obligations or comply with any other provisions of Chapter 6 of Division 9 of the UCC (or any equivalent provision of any other applicable law) or to pursue any other right, remedy, power or privilege of the Administrative Agent, the L/C Issuer or any Lender whatsoever;

(ii) the defense of the statute of limitations in any action hereunder or for the collection or performance of the Guaranteed Obligations;

(iii) any defense arising by reason of any lack of corporate or other authority or any other defense of Holdings, such Guarantor or any other Person;

(iv) any defense based upon any Guaranteed Person's errors or omissions in the administration of the Guaranteed Obligations;

(v) any rights to set-offs and counterclaims;

(vi) without limiting the generality of the foregoing, to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties, or which may conflict with the terms of this Section 11.10;

(vii) any defense based upon an election of remedies (including, if available, an election to proceed by nonjudicial foreclosure) which destroys or impairs the subrogation rights of such Guarantor or the right of such Guarantor to proceed against Holdings or any other obligor of the Guaranteed Obligations for reimbursement;

(viii) without limiting the generality of the foregoing, to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties, or which may conflict with the terms of this Section 11.10, including any and all benefits that otherwise might be available to such Guarantor under California Civil Code §§1432, 2809, 2787 to 2855, inclusive, 2899 and 3433 and California Code of Civil Procedure §§580a, 580b, 580d and 726 or Texas Property Code §§51.003 – 51.005. Accordingly, each Guarantor waives all rights and defenses that such Guarantor may have because Holdings' debt is secured by real property. This means, among other things: (A) the Administrative Agent, the L/C Issuer and the Lenders may collect from such Guarantor without first foreclosing on any real or personal property Collateral pledged by Holdings or such Guarantor; and (B) if the Administrative Agent forecloses on any real property Collateral pledged by Holdings or such Guarantor: (1) the amount of the debt may be reduced only by the price for which that Collateral is sold at the foreclosure sale, even if the Collateral is worth more than the sale price, and (2) the Administrative Agent, the L/C Issuer and the Lenders may collect from such Guarantor even if the Administrative Agent, by foreclosing on the real property Collateral, has destroyed any right such Guarantor may have to collect from Holdings. This is an unconditional and irrevocable waiver of any rights and defenses such Guarantor may have because Holdings' debt is secured by real property. These rights and defenses include, but are not limited to, any rights of defenses based upon section 580a, 580b, 580d or 726 of the California Code of Civil Procedure or sections 51.003 – 51.005 of the Texas Property Code; and

(ix) any and all notice of the acceptance of this Guaranty, and any and all notice of the creation, renewal, modification, extension or accrual of the Guaranteed Obligations, or the reliance by any Guaranteed Person upon this Guaranty, or the exercise of any right, power or privilege hereunder. The Guaranteed Obligations shall conclusively be deemed

to have been created, contracted, incurred and permitted to exist in reliance upon this Guaranty. Each Guarantor waives promptness, diligence, presentment, protest, demand for payment, notice of default, dishonor or nonpayment and all other notices to or upon Holdings, such Guarantor or any other Person with respect to the Guaranteed Obligations.

(g) Financial Condition of Holdings. No Guarantor shall have any right to require any Guaranteed Person to obtain or disclose any information with respect to: the financial condition or character of Holdings or the ability of Holdings to pay and perform the Guaranteed Obligations; the Guaranteed Obligations; any collateral or other security for any or all of the Guaranteed Obligations; the existence or nonexistence of any other guarantees of all or any part of the Guaranteed Obligations; any action or inaction on the part of any Guaranteed Person or any other Person; or any other matter, fact or occurrence whatsoever. Each Guarantor hereby acknowledges that it has undertaken its own independent investigation of the financial condition of Holdings and the other Loan Parties and all other matters pertaining to this Guaranty and further acknowledges that it is not relying in any manner upon any representation or statement of any Guaranteed Person with respect thereto.

(h) Subrogation. Until the Guaranteed Obligations shall be satisfied in full and the Commitments shall be terminated, each Guarantor shall not have, and shall not directly or indirectly exercise (i) any rights that it may acquire by way of subrogation under this Section 11.10, by any payment hereunder or otherwise, (ii) any rights of contribution, indemnification, reimbursement or similar suretyship claims arising out of this Section 11.10 or (iii) any other right which it might otherwise have or acquire (in any way whatsoever) which could entitle it at any time to share or participate in any right, remedy or security of any Guaranteed Person as against Holdings or other guarantors, whether in connection with this Section 11.10, any of the other Loan Documents or otherwise. If any amount shall be paid to any Guarantor on account of the foregoing rights at any time when all the Guaranteed Obligations shall not have been paid in full, such amount shall be held in trust for the benefit of each Guaranteed Person and shall forthwith be paid to the Administrative Agent to be credited and applied to the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of the Loan Documents.

(i) Continuing Guaranty. This Guaranty is a continuing guaranty and agreement of subordination and shall continue in effect and be binding upon each Guarantor until termination of the Commitments and payment and performance in full of all Guaranteed Obligations, including Guaranteed Obligations which may exist continuously or which may arise from time to time under successive transactions, and each Guarantor expressly acknowledges that this Guaranty shall remain in full force and effect notwithstanding that there may be periods in which no Guaranteed Obligations exist.

(j) Reinstatement. This Guaranty shall continue to be effective or shall be reinstated and revived, as the case may be, if, for any reason, any payment of the Guaranteed Obligations by or on behalf of Holdings (or receipt of any proceeds of collateral) shall be rescinded, invalidated, declared to be fraudulent or preferential, set aside, voided or otherwise required to be repaid to Holdings, its estate, trustee, receiver or any other Person (including under the Bankruptcy Code or other state or federal law), or must otherwise be restored by any Guaranteed Person, whether as a result of Insolvency Proceedings or otherwise. All losses,

damages, costs and expenses that any Guaranteed Person may suffer or incur as a result of any voided or otherwise set aside payments shall be specifically covered by the indemnity in favor of the Lenders and the Administrative Agent contained in Section 11.04.

(k) Substantial Benefits. The funds that have been borrowed from the Lenders by Holdings have been and are to be contemporaneously used for the direct or indirect benefit of Holdings and each Guarantor. It is the position, intent and expectation of the parties that Holdings and each Guarantor have derived and will derive significant and substantial direct or indirect benefits from the accommodations that have been made by the Lenders under the Loan Documents.

(l) Knowing and Explicit Waivers. EACH GUARANTOR ACKNOWLEDGES THAT IT EITHER HAS OBTAINED THE ADVICE OF LEGAL COUNSEL OR HAS HAD THE OPPORTUNITY TO OBTAIN SUCH ADVICE IN CONNECTION WITH THE TERMS AND PROVISIONS OF THIS SECTION 11.10. EACH GUARANTOR ACKNOWLEDGES AND AGREES THAT EACH OF THE WAIVERS AND CONSENTS SET FORTH HEREIN ARE MADE WITH FULL KNOWLEDGE OF THEIR SIGNIFICANCE AND CONSEQUENCES, AND THAT ALL SUCH WAIVERS AND CONSENTS HEREIN ARE EXPLICIT AND KNOWING AND WHICH EACH GUARANTOR EXPECTS TO BE FULLY ENFORCEABLE.

(m) Release of Subsidiary Guarantors. Holdings may at any time deliver to the Administrative Agent a certificate from a Responsible Officer of Holdings certifying as of the date of the certificate that, after the consummation of the transaction or series of transactions described in such certificate (which certification shall also state that such transactions, individually or in the aggregate, will be in compliance with the terms and conditions of this Agreement, including to the extent applicable Section 8.02 and Section 8.03, and that no Event of Default existed, exists or will exist, as the case may be, immediately before, as a result of or immediately after giving effect to such transaction or transactions and termination), the Guarantor identified in such certification will no longer be a Subsidiary of Holdings. Effective upon the consummation of the transaction or series of transactions described in such certificate effected in compliance with this Agreement, the Subsidiary identified in such certification shall thereupon automatically cease to be a Guarantor hereunder and shall cease to be a party hereto and shall thereupon automatically be released from its obligations under this Section 11.10 and under the Security Agreement, and all Liens in favor of the Administrative Agent and the Lenders under the Collateral Documents in respect of the property of such Subsidiary shall thereupon terminate. Holdings shall promptly notify the Administrative Agent of the consummation of any such transaction or series of transactions. The Administrative Agent, on behalf of the Lenders, shall, at Holdings' expense, execute and deliver such instruments as Holdings may reasonably request to evidence such release and Lien termination.

11.11 Replacement of Lenders. If any Lender requests compensation under Section 4.03, or if Holdings is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.01, or if any Lender is a Defaulting Lender or if any other circumstance exists hereunder that gives Holdings the right to replace a Lender as a party hereto (including pursuant to Section 11.01(b)), then Holdings may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent,

require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) Holdings shall have paid to the Administrative Agent the assignment fee specified in Section 11.06;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 4.04) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Holdings (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 4.03 or payments required to be made pursuant to Section 4.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with any Requirement of Law.

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

11.12 Notification of Addresses, Lending Offices, Etc. Each Lender shall notify the Administrative Agent in writing of any changes in the address to which notices to such Lender should be directed, of addresses of any Lending Office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as the Administrative Agent shall reasonably request.

11.13 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or by email in pdf format shall be effective as delivery of a manually executed counterpart of this Agreement.

11.14 Severability. Whenever possible, each provision of the Loan Documents shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of any of the Loan Documents shall be prohibited by or invalid under any such law or regulation in any jurisdiction, it shall, as to such jurisdiction, be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any

reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of such Loan Document, or the validity or effectiveness of such provision in any other jurisdiction.

11.15 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and legal benefit of Holdings and the other Loan Parties, the Lenders, the Administrative Agent and the Administrative Agent-Related Persons, the Indemnitees and their respective 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.

11.16 Governing Law; Jurisdiction, Etc.

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

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

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

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) NOTHING IN THIS SECTION 11.16 SHALL OVERRIDE ANY CONTRARY PROVISION CONTAINED IN ANY SPECIFIED SWAP CONTRACT.

11.17 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered in San Francisco, California, by their proper and duly authorized officers as of the day and year first above written.

BORROWER

BUILDING MATERIALS HOLDING CORPORATION

By _____
Name: Paul Street
Title: Chief Executive Officer

GUARANTORS

BMC WEST CORPORATION

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD CONSTRUCTION, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD NORTHERN CALIFORNIA, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

C CONSTRUCTION, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

TWF CONSTRUCTION, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

H.N.R. FRAMING SYSTEMS, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD SOUTHERN CALIFORNIA, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD NEVADA, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD ARIZONA, LLC

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD ILLINOIS, LLC

By _____
Name: Paul Street
Title: Chief Executive Officer

ILLINOIS FRAMING, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent, L/C Issuer and Lender

By _____
Name: Seth D. Moldoff
Title: Senior Vice President

BUILDING RECOVERY, LLC,
as Revolving Lender and Term Lender

By Bayside Capital, Inc.,
as Manager

By _____
Name:
Title:

DUANE STREET CLO 1, LTD.,
as Term Lender

By DiMaio Ahmad Capital LLC,
as Collateral Manager

By _____
Name:
Title:

DUANE STREET CLO II, LTD.,
as Term Lender

By DiMaio Ahmad Capital LLC,
as Collateral Manager

By _____
Name:
Title:

DUANE STREET CLO III, LTD.,
as Term Lender

By DiMaio Ahmad Capital LLC,
as Collateral Manager

By _____
Name:
Title:

DUANE STREET CLO IV, LTD.,
as Term Lender

By DiMaio Ahmad Capital LLC,
as Collateral Manager

By _____
Name:
Title:

FRASER SULLIVAN CLO I LTD.,
as Term Lender

By Fraser Sullivan Investment Management, LLC,
as Collateral Manager

By _____
Name:
Title:

FRASER SULLIVAN CLO II LTD.,
as Term Lender

By Fraser Sullivan Investment Management, LLC,
as Collateral Manager

By _____
Name:
Title:

VAN KAMPEN DYNAMIC CREDIT
OPPORTUNITIES FUND,
as Term Lender

By Van Kampen Asset Management,

By _____
Name:
Title:

VAN KAMPEN SENIOR INCOME TRUST,
as Term Lender

By Van Kampen Asset Management,

By _____
Name:
Title:

VAN KAMPEN SENIOR LOAN FUND,
as Term Lender

By Van Kampen Asset Management,

By _____
Name:
Title:

QUALCOMM GLOBAL TRADING, INC.,
as Term Lender

By Morgan Stanley Investment Management,
as Investment Manager

By _____
Name:
Title:

MORGAN STANLEY PRIME INCOME TRUST,
as Term Lender

By _____
Name:
Title:

THIRD AVENUE SPECIAL SITUATIONS
(MASTER) FUND, L.P.,
as Term Lender

By Third Avenue Opportunity Management LLC,
its General Partner

By Third Avenue Management LLC,
its Managing Member

By _____
Name:
Title:

REPUBLIC LOAN FUNDING, LTD.,
as Term Lender

By Highland Capital Management, L.P.,
as Collateral Manager

By Strand Advisors, Inc.,
its General Partner

By _____
Name:
Title:

HIGHLAND CREDIT OPPORTUNITIES CDO LTD,
as Term Lender

By Highland Capital Management, L.P.,
as Collateral Manager

By Strand Advisors, Inc.,
its General Partner

By _____
Name:
Title:

EXHIBIT A

FORM OF NOTICE OF BORROWING

Date: _____

To: Wells Fargo Bank,
National Association,
as Administrative Agent

Ladies and Gentlemen:

The undersigned, Building Materials Holding Corporation ("Holdings"), refers to the Senior Secured Credit Agreement, dated as of [_____], 2009 (as extended, renewed, amended or restated from time to time, the "Credit Agreement"), by and among Holdings, as borrower, certain subsidiaries of Holdings, as guarantors, the financial institutions from time to time party thereto (the "Lenders") and Wells Fargo Bank, National Association, as issuing bank of certain letters of credit (in such capacity, the "L/C Issuer") and as administrative agent (in such capacity, the "Administrative Agent"), the terms defined therein being used herein as therein defined, and hereby gives you notice irrevocably, pursuant to Section 2.03 of the Credit Agreement, of the Borrowing specified below:

1. The Business Day of the proposed Borrowing is _____.

2. The aggregate amount of the proposed Borrowing is $_____.

3. The proposed Borrowing is of [Term Loans][Revolving Loans].

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the proposed Borrowing, before and after giving effect thereto and to the application of the proceeds therefrom:

(a) the representations and warranties of Holdings contained in Article VI of the Credit Agreement qualified as to materiality are true and correct, and those not so qualified are true and correct in all material respects, as though made on and as of such date, except to the extent such representations and warranties expressly refer to an earlier date, in which case they are true and correct as of such earlier date, and except that this notice shall be deemed instead to refer to the last day of the most recent fiscal year and fiscal quarter for which financial statements have then been delivered in respect of the representation and warranty made in Section 6.11(a) of the Credit Agreement;

(b) no Default or Event of Default has occurred and is continuing, or would result from such proposed Borrowing;

(c) there has occurred since the Plan Effective Date no event or circumstance that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(d) after giving effect to the proposed Borrowing, the Effective Amount of all Revolving Loans, L/C Obligations and Term Loans will not exceed the Borrowing Base in effect on such date;

(e) after giving effect to the proposed Borrowing, the Effective Amount of all Revolving Loans (without giving effect to any Revolving Loans that constitute capitalized payment-in-kind interest or payment-in-kind fees pursuant to Section 2.08(b) or Section 3.08(a) of the Credit Agreement) and L/C Obligations will not exceed the Aggregate Revolving Commitment in effect on such date;

(f) the balance in the Cash Collateral Account is zero and the balance in the L/C Cash Collateral Account attributable solely to the Cash Collateralization of L/C Obligations pursuant to Sections 2.06(a)(iv) through 2.06(a)(viii) of the Credit Agreement is zero; and

(g) the statements contained in the most recent Borrowing Base Certificate delivered by Holdings to the Administrative Agent pursuant to Section 7.02(h) of the Credit Agreement are true, correct and complete on and as of the effective date of such Borrowing Base Certificate.

BUILDING MATERIALS HOLDING CORPORATION

By: _____
Name: _____
Title: _____

EXHIBIT B

FORM OF COMPLIANCE CERTIFICATE

BUILDING MATERIALS HOLDING CORPORATION

Financial Statements Date: _____

Reference is made to that certain Senior Secured Credit Agreement, dated as of [_____], 2009 (as extended, renewed, amended or restated from time to time, the "Credit Agreement"), by and among Holdings, as borrower, certain subsidiaries of Holdings, as guarantors, the financial institutions from time to time party thereto (the "Lenders") and Wells Fargo Bank, National Association, as issuing bank of certain letters of credit (in such capacity, the "L/C Issuer") and as administrative agent (in such capacity, the "Administrative Agent"). Unless otherwise defined herein, capitalized terms used herein have the respective meanings assigned to them in the Credit Agreement.

The undersigned Responsible Officer of Holdings hereby certifies as of the date hereof that he/she is the [_____] of Holdings, and that, as such, he/she is authorized to execute and deliver this Certificate to the Administrative Agent on the behalf of Holdings and its consolidated Subsidiaries, and that:

[Use the following paragraph if this Certificate is delivered in connection with the annual financial statements required by Section 7.01(a) of the Credit Agreement.]

(a) Attached hereto are true and correct copies of the audited consolidated balance sheet of Holdings and its Subsidiaries as at the end of the fiscal year ended _____ and the related consolidated statements of income or operations, shareholders' equity, retained earnings and cash flows for such year, setting forth in each case in comparative form the figures for the previous fiscal year, accompanied by the report and opinion of the Independent Auditor, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to ***[***any "going concern" or like qualification or exception or***] [delete for Certificate delivered in connection with the annual financial statements for fiscal year 2009]*** any qualification or exception as to the scope of such audit and which states that such consolidated financial statements present fairly the financial position and the results of operations and cash flows of Holdings and its Subsidiaries for the periods indicated in conformity with GAAP applied on a basis consistent with prior years.

or

[Use the following paragraph if this Certificate is delivered in connection with the quarterly financial statements required by Section 7.01(b) of the Credit Agreement.]

(a) Attached hereto are true and correct copies of the unaudited consolidated balance sheet of Holdings and its Subsidiaries as of the end of the fiscal quarter ended _____ and the related consolidated statements of income and cash flows for the period commencing on the first day and ending on the last day of such quarter, which are complete and accurate in all material

respects and fairly present, in accordance with GAAP (subject to fresh start accounting adjustments through March 31, 2010, year-end audit adjustments and the absence of footnotes), the financial position, the results of operations and the cash flows of Holdings and the Subsidiaries.

or

[Use the following paragraph if this Certificate is delivered in connection with the monthly financial statements required by Section 7.01(c) of the Credit Agreement.]

(a) Attached hereto are true and correct copies of (i) the unaudited consolidated balance sheet of Holdings and its Subsidiaries as of the end of the fiscal month ended _____ and the related consolidated statements of income and cash flows for the period commencing on the first day and ending on the last day of such month and the year-to-date period ending on the last day of such month, which are complete and accurate in all material respects and fairly present, in accordance with GAAP (subject to fresh start accounting adjustments through March 31, 2010, year-end audit adjustments, quarterly accounting adjustments, and the absence of footnotes) the consolidated financial position, the results of operations and the cash flows of Holdings and the Subsidiaries, (ii) a management commentary in respect of the financial condition and results of operations of Holdings and its Subsidiaries for the financial statements delivered in accordance with the preceding clause (i), which management commentary is accompanied by a comparison of the consolidated statements of income and cash flows for such fiscal month versus the forecasted consolidated income and cash flows for such fiscal month last delivered pursuant to the following clause (iii) or Section 7.01(d) of the Credit Agreement, as the case may be, and (iii) an updated rolling 13-week consolidated cash flow forecast for Holdings and its Subsidiaries, which forecast (A) states the assumptions used in the preparation thereof and (B) represents Holdings' reasonable good faith estimates and assumptions as to future performance, which Holdings believes to be fair and reasonable as of the time made in light of then current and reasonably foreseeable business conditions (it being understood that forecasts and projections by their nature involve approximations and uncertainties).

(b) The undersigned has reviewed and is familiar with the terms of the Credit Agreement and has made, or has caused to be made under his/her supervision, a detailed review of the transactions and condition (financial or otherwise) of Holdings and its Subsidiaries during the accounting period covered by the attached financial statements.

(c) Holdings and its Subsidiaries, during such period, have observed, performed or satisfied all of the covenants and other agreements, and satisfied every condition in the Credit Agreement to be observed, performed or satisfied by Holdings and its Subsidiaries, and the undersigned has no knowledge of any Default or Event of Default.

(d) The representations and warranties of Holdings contained in Article VI of the Credit Agreement qualified as to materiality are true and correct, and those not so qualified are true and correct in all material respects, as though made on and as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they shall be true and correct as of such earlier date; and except that this notice shall be deemed instead to refer to the last day of the most recent year and fiscal quarter for which financial statements have then been

delivered in respect of the representation and warranty made in Section 6.11(a) of the Credit Agreement).

(e) The financial covenant analyses and information set forth on Schedule 1 attached hereto are true and accurate on and as of the date of this Certificate.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as the _____ of Holdings as of _____.

BUILDING MATERIALS HOLDING CORPORATION

By: _____
Name: _____
Title: _____

Schedule 1

to Compliance Certificate

Effective Date of Calculation:	_____	
A. Section 8.19(a) - Liquidity		
1. The maximum additional Revolving Loan amount that Holdings may borrow pursuant to Section 2.01(b) of the Credit Agreement	$_____	
2. Cash Balance	$_____	
3. Anticipated net proceeds from pending sales, or the remaining surrender value, of life insurance policies related to the prepetition supplemental employee retirement plans (without duplication) (not to exceed $16,300,000 in the aggregate for all periods; $0 if 180 days or more since Plan Effective Date)	$_____	
4. Anticipated net proceeds from the liquidation of prepetition deferred compensation accounts (not to exceed $1,300,000 in the aggregate for all periods; $0 if 180 days or more since Plan Effective Date)	$_____	
5. Pre-payments of Prepetition Tax Liabilities (relative to an assumed five-year level payment schedule commencing on the Plan Effective Date) (not to exceed $7,100,000 in the aggregate for all periods)	$_____	
6. Professional fees and costs of counsel and other advisors and consultants paid from and after the Plan Effective Date (in an aggregate amount consented to by the Majority Lenders)	$_____	
Liquidity *(Item A.1 plus Item A.2 plus Item A.3 plus Item A.4 plus Item A.5 plus Item A.6)* shall not be less than the amount set forth in Section 8.19(a) of the Credit Agreement for the applicable period		$_____
B. Section 8.19(b) – EBITDA		
1. Total Sales for the applicable period	$_____	
2. Costs of Goods Sold for the applicable period	$_____	

3. Gross Profit for the applicable period *(Item B.1 minus Item B.2)*		$_____
4. Selling, General and Administrative Expenses for the applicable period		$_____
5. Other Cash Expenses for the applicable period		$_____
6. Gain realized on the disposition of real estate or equipment for the applicable period	$_____	
7. Depreciation expense and amortization expense for the applicable period	$_____	
8. Loss realized on the disposition of real estate or equipment for the applicable period	$_____	
9. Non-cash expenses or charges for the applicable period (excluding any such non-cash expense or charge to the extent that it represents an accrual of or reserve for cash expenditures in any future period)	$_____	
10. Non-recurring costs, expenses and charges for the applicable period incurred in connection with the restructuring of Holdings' consolidated operations (as approved by the Majority Lenders)	$_____	
11. Costs, expenses and charges for the applicable period associated with Permitted Acquisitions (in an aggregate amount consented to by the Majority Lenders)	$_____	
12. Fees and costs of attorneys and other advisors and consultants for the applicable period attributable to (a) the restructuring of Holdings' consolidated operations (as approved by the Majority Lenders) and (b) the negotiation, documentation, implementation and closing of the Reorganization Plan, the Loan Documents in existence as of the Effective Date and the Second Lien Term Loan Documents in existence as of the Effective Date	$_____	
13. Sum of Items B.7, B.8, B.9, B.10, B.11 and B.12 (to the extent included in Item B.2, B.4 or B.5, and without duplication)		$_____
14. Item B.6 (to the extent included in Item B.1)		$_____

EBITDA (*Item B.3 minus Item B.4 minus B.5 minus B.14 plus Item B.13, and excluding all non-cash income other than accruals of revenue in the Ordinary Course of Business*) shall not be less than the amount set forth in Section 8.19(b) of the Credit Agreement for the applicable period		$_____
C. Section 8.08(e) – Contingent Obligations		
Contingent Obligations with respect to Surety Instruments incurred in the Ordinary Course of Business; shall not exceed $60,000,000 in aggregate principal amount		$_____
D. Section 8.21 – Capital Expenditures		
Capital Expenditures (excluding Capital Expenditures to the extent made using insurance or condemnation proceeds paid on account of an Event of Loss and applied to repair, reconstruct or replace the affected property); shall not be greater than $7,500,000 for Fiscal 2010, $10,000,000 for Fiscal 2011 or $10,000,000 for Fiscal 2012		$_____
E. Section 8.10 – Lease Obligations		
Obligations for payment of rent for any property under Operating Leases since beginning of current fiscal year; shall not exceed $35,000,000 in any fiscal year		$_____

EXHIBIT C

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between the each Assignor identified in item 1 below (the "Assignor") and the Assignee identified in item 2 below (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit and guarantees included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____

_____

2. Assignee: _____

_____

[for Assignee, indicate [Affiliate][Approved Fund] of [*identify Lender*]

3. Borrower(s): Building Materials Holding Corporation

4. Administrative Agent: Wells Fargo Bank, National Association, as the administrative agent under the Credit Agreement

5. Credit Agreement: The Senior Secured Credit Agreement, dated as of [_____], 2009, by and among Borrower, certain subsidiaries of Borrower, as guarantors, the financial institutions from time to time party thereto and Wells Fargo Bank, National Association, as issuing bank of certain letters of credit and as Administrative Agent.

6. Assigned Interest:

Facility Assigned[1]	Aggregate Amount of Commitment/ Loans for all Lenders[2]	Amount of Commitment/ Loans Assigned	Percentage Assigned of Commitment/ Loans[3]	CUSIP Number
	$	$	%	
	$	$	%	
	$	$	%	

[7. Trade Date: _____][4]

[Page break]

[1] Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Revolving Commitment," "Term Loan," etc.)

[2] Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

[3] Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

[4] To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

Effective Date: _____ ___, 20___ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____
Name: _____
Title: _____

ASSIGNEE

[NAME OF ASSIGNEE]

By: _____
Name: _____
Title: _____

[Consented to and][5] Accepted:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent

By: _____
Name: _____
Title: _____

[Consented to:][6]

BUILDING MATERIALS HOLDING CORPORATION

By: _____
Name: _____
Title: _____

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Issuing Bank

By: _____
Name: _____
Title: _____

[5] To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.
[6] To be added only if the consent of the Borrower and/or other parties (e.g., Issuing Bank) is required by the terms of the Credit Agreement.

ANNEX 1

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 11.06(b) of the Credit Agreement (subject to such consents, if any, as may be required under Section 11.06(b) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 7.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, and (vii) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of California.

EXHIBIT D-1

FORM OF REVOLVING NOTE

U.S. $_____

FOR VALUE RECEIVED, the undersigned, BUILDING MATERIALS HOLDING CORPORATION, a Delaware corporation ("Holdings"), hereby promises to pay to the order of _____ (the "Lender") the principal sum of _____ Dollars ($_____) or, if different, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to Holdings pursuant to the Senior Secured Credit Agreement, dated as of [_____], 2009 (as extended, renewed, amended or restated from time to time, the "Credit Agreement"), by and among Holdings, as borrower, certain subsidiaries of Holdings, as guarantors, the financial institutions from time to time party thereto (the "Lenders") and Wells Fargo Bank, National Association, as issuing bank of certain letters of credit (in such capacity, the "L/C Issuer") and as administrative agent (in such capacity, the "Administrative Agent"), on the dates and in the amounts provided in the Credit Agreement. Holdings further promises to pay interest on the unpaid principal amount of the Revolving Loans evidenced hereby from time to time at the rates, on the dates, and otherwise as provided in the Credit Agreement.

The Lender is authorized to endorse the amount of each Revolving Loan, the date on which each Revolving Loan is made, and each payment of principal with respect thereto on the schedule annexed hereto and made a part hereof, or on continuations thereof which shall be attached hereto and made a part hereof; provided that any failure to endorse such information on such schedule or continuation thereof shall not in any manner affect any obligation of Holdings under the Credit Agreement and this promissory note (this "Note").

This Note is one of the Notes referred to in, and is entitled to the benefits of, the Credit Agreement, which Credit Agreement, among other things, contains provisions for acceleration of the maturity hereof upon the happening of certain stated events and also for prepayments on account of principal hereof prior to the maturity hereof upon the terms and conditions therein specified.

This Note is secured by certain Collateral more specifically described in the Credit Agreement and the Collateral Documents.

Terms defined in the Credit Agreement are used herein with their defined meanings therein unless otherwise defined herein.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of California.

BUILDING MATERIALS HOLDING CORPORATION

By: _____
Name: _____
Title: _____

SCHEDULE
to Revolving Note

Date Loan Disbursed	Amount of Loan	Principal Payment	Date Principal Paid

EXHIBIT D-2

FORM OF TERM NOTE

U.S. $_____

FOR VALUE RECEIVED, the undersigned, BUILDING MATERIALS HOLDING CORPORATION, a Delaware corporation ("Holdings"), hereby promises to pay to the order of_____ (the "Lender") the principal sum of _____ Dollars ($_____) or, if different, the aggregate unpaid principal amount of the Term Loan made by the Lender to Holdings pursuant to the Credit Agreement referred to below and outstanding on the Term Loan Maturity Date. Holdings further promises to pay interest on the unpaid principal amount of the Term Loan evidenced hereby from time to time at the rates, on the dates, and otherwise as provided in the Credit Agreement.

The Lender is authorized to endorse the amount of and the date on which the Term Loan is made and each payment of principal with respect thereto on the schedule annexed hereto and made a part hereof, or on continuations thereof which shall be attached hereto and made a part hereof; provided that any failure to endorse such information on such schedule or continuation thereof shall not in any manner affect any obligation of Holdings under the Credit Agreement and this Promissory Note (this "Note").

This Note is one of the Notes referred to in, and is entitled to the benefits of, the Senior Secured Credit Agreement, dated as of [_____], 2009 (as extended, renewed, amended or restated from time to time, the "Credit Agreement"), by and among Holdings, as borrower, certain subsidiaries of Holdings, as guarantors, the financial institutions from time to time party thereto (the "Lenders") and Wells Fargo Bank, National Association, as issuing bank of certain letters of credit (in such capacity, the "L/C Issuer") and as administrative agent (in such capacity, the "Administrative Agent"), which Credit Agreement, among other things, contains provisions for acceleration of the maturity hereof upon the happening of certain stated events and also for payments and prepayments on account of principal hereof prior to the maturity hereof upon the terms and conditions therein specified.

This Note is secured by certain Collateral more specifically described in the Credit Agreement and the Collateral Documents.

Terms defined in the Credit Agreement are used herein with their defined meanings therein unless otherwise defined herein.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of California.

BUILDING MATERIALS HOLDING CORPORATION

By: _____

Name: _____

Title: _____

SCHEDULE
to Term Note

Date Loan Disbursed	Amount of Loan	Principal Payment	Date Principal Paid

EXHIBIT E

FORM OF ADDITIONAL GUARANTOR ASSUMPTION AGREEMENT

Date: _____

To each of the Lenders party to the Credit Agreement
referred to below, and to Wells Fargo Bank, National
Association, as Administrative Agent

Ladies and Gentlemen:

This Additional Guarantor Assumption Agreement, dated as of _____, is made and delivered pursuant to Section 7.13 of that certain Senior Secured Credit Agreement, dated as of [_____], 2009 (as extended, renewed, amended or restated from time to time, the "Credit Agreement"), by and among Holdings, as borrower, certain subsidiaries of Holdings, as guarantors, the financial institutions from time to time party thereto (the "Lenders") and Wells Fargo Bank, National Association, as issuing bank of certain letters of credit (in such capacity, the "L/C Issuer") and as administrative agent (in such capacity, the "Administrative Agent"). All capitalized terms used in this Additional Guarantor Assumption Agreement and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

_____ (the "Subsidiary") hereby confirms, represents and warrants to the Administrative Agent and the Lenders that the Subsidiary is a U.S. Subsidiary effective as of _____.

The documents required to be delivered to the Administrative Agent under clauses (ii), (iii) and (iv) of Section 7.13(a) of the Credit Agreement will be furnished to the Administrative Agent in accordance with the requirements of the Credit Agreement.

The parties hereto hereby confirm that with effect from the date hereof, the Subsidiary shall be a party to the Credit Agreement and a party to the Security Agreement (as amended), and shall have the obligations which the Subsidiary would have had if the Subsidiary had been an original party to the Credit Agreement as a Guarantor and the Security Agreement as a Grantor (and pursuant to Section 2(a) of the Security Agreement (and subject to Section 3(i) of the Security Agreement), the Subsidiary hereby grants to the Administrative Agent a security interest in all Collateral (as defined in the Security Agreement) in which Subsidiary has an interest to secure the Secured Obligations (as defined in the Security Agreement)). The Subsidiary confirms its acceptance of, and consents to, all terms and provisions of the Credit Agreement (including, without limitation, Section 11.10 thereof) and the Security Agreement applicable to the Guarantors or the Grantors, as the case may be, and to any other Loan Documents to which the Guarantors or Grantors are parties.

Without limiting the generality of the foregoing, the Subsidiary hereby (a) unconditionally and irrevocably guarantees to the Guaranteed Persons (as defined in Section 11.10 of the Credit Agreement), jointly and severally with each other Guarantor, the full and prompt payment when due (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise) and performance of all Guaranteed Obligations (as defined in Section 11.10 of the Credit Agreement) of Holdings to any such Guaranteed Person, whether arising out of or in connection with the Credit Agreement, any other Loan Document or otherwise, including all unpaid principal of the Loans, all L/C Obligations, all interest accrued thereon, all fees due under the Credit Agreement and all other amounts payable by Holdings to any such Guaranteed Person thereunder or in connection therewith; and (b) subject to Section 3(i) of the Security Agreement, pledges, assigns, transfers, hypothecates, sets over and grants to the Administrative Agent, for the benefit of itself and on behalf of and for the ratable benefit of the L/C Issuer, the Lenders and the other Secured Parties (as defined in the Security Agreement), and their respective successors, endorsers, transferees and assigns, a security interest in all of its right, title and interest in, to and under any Collateral (as defined in the Security Agreement) to secure the payment and performance of the Secured Obligations (as defined in the Security Agreement).

This Additional Guarantor Assumption Agreement shall constitute a Loan Document under the Credit Agreement.

THIS ADDITIONAL GUARANTOR ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA.

IN WITNESS WHEREOF, the Subsidiary has caused this Additional Guarantor Assumption Agreement to be duly executed and delivered in _____ by its proper and duly authorized officer as of the day and year first above written.

[SUBSIDIARY]

By: _____
Name: _____
Title: _____

EXHIBIT F

SECURITY AGREEMENT

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement"), dated as of _____, 2009, is made by and among Building Materials Holding Corporation, a Delaware corporation ("Holdings"), certain affiliates of Holdings signatories hereto or acceding hereto as provided in Section 25 hereof, and Wells Fargo Bank, National Association ("Wells Fargo"), as administrative agent for itself and the other Secured Parties (in such capacity, the "Administrative Agent").

RECITALS

WHEREAS, Holdings, the other Loan Parties named therein, certain lending institutions as lenders, the L/C Issuer and the Administrative Agent are parties to that certain Senior Secured Credit Agreement dated as of even date herewith (as amended, restated, modified, renewed or extended from time to time, the "Credit Agreement"); and

WHEREAS, it is a condition precedent to the borrowings under the Credit Agreement that the Grantors enter into this Agreement and grant to the Administrative Agent, for itself and for the ratable benefit of the other Secured Parties, the security interests hereinafter provided to secure the Secured Obligations described below.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1 Definitions; Interpretation.

(a) Terms Defined in Credit Agreement. All capitalized terms used in this Agreement (including in the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

(b) Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Accounts" means any and all of any Grantor's accounts, as such term is defined in Article 9 of the UCC.

"Bank Product" means any financial accommodation extended to Holdings or any other Grantor by a Bank Product Provider (other than pursuant to the Credit Agreement) including: (a) credit cards, (b) credit card processing services, (c) debit cards, (d) purchase cards, (e) ACH transactions, or (f) cash management, including controlled disbursement, accounts or services.

"Bank Product Agreements" means those agreements entered into from time to time by Holdings or any other Grantor with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

"Bank Product Obligations" means all obligations, liabilities, reimbursement obligations, fees, or expenses owing by Holdings or any other Grantor to any Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for

the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising.

"Bank Product Provider" means Wells Fargo or any of its Affiliates.

"Books" means all books, records and other written, electronic or other documentation in whatever form maintained now or hereafter by or for any Grantor in connection with the ownership of its assets or the conduct of its business or evidencing or containing information relating to the Collateral, including: (i) ledgers; (ii) records indicating, summarizing, or evidencing any Grantor's assets (including Inventory and Rights to Payment), business operations or financial condition; (iii) computer programs and software; (iv) computer discs, tapes, files, manuals, spreadsheets; (v) computer printouts and output of whatever kind; (vi) any other computer prepared or electronically stored, collected or reported information and equipment of any kind; and (vii) any and all other rights now or hereafter arising out of any contract or agreement between any Grantor and any service bureau, computer or data processing company or other Person charged with preparing or maintaining any of any Grantor's books or records or with credit reporting, including with regard to any Grantor's Accounts.

"Capital Stock" means and includes (a) any and all shares, interests, participations or other equivalents of or interests in (however designated) corporate stock, including shares of preferred or preference stock, (b) all partnership interests (whether general or limited) in any Person which is a partnership, (c) all membership interests or limited liability company interests in any limited liability company, and (d) all equity or ownership interests in any Person of any other type.

"Chattel Paper" means any and all of any Grantor's chattel paper, as such term is defined in Article 9 of the UCC, including all Electronic Chattel Paper.

"Collateral" has the meaning set forth in Section 2.

"Commercial Tort Claims" means any and all of any Grantor's commercial tort claims, as such term is defined in Article 9 of the UCC, including any described in Schedule 1.

"Control Agreement" means any control agreement or other agreement with any securities intermediary, bank or other Person establishing the Administrative Agent's control with respect to any Deposit Accounts, Letter-of-Credit Rights or Investment Property, for purposes of Article 9 of the UCC.

"Deposit Account" means any deposit account, as such term is defined in Article 9 of the UCC, maintained by or for the benefit of any Grantor, whether or not restricted or designated for a particular purpose.

"Documents" means any and all of any Grantor's documents, as such term is defined in Article 9 of the UCC.

"Electronic Chattel Paper" means any and all of any Grantor's electronic chattel paper, as such term is defined in Article 9 of the UCC.

"Equipment" means any and all of any Grantors' equipment, including any and all fixtures, as such terms are defined in Article 9 of the UCC.

"Filing Offices" has the meaning set forth in Section 3(a).

"General Intangibles" means any and all of any Grantor's general intangibles, as such term is defined in Article 9 of the UCC, including, without limitation, any and all tax refunds, tax credits, tax attributes, tax benefits and tax-related payments of any kind paid or owing to any Grantor by any Governmental Authority and all claims in respect of any of the foregoing.

"Grantors" means Holdings and the other Loan Parties.

"Instruments" means any and all of any Grantor's instruments, as such term is defined in Article 9 of the UCC.

"Intellectual Property Collateral" means the following properties and assets owned or held by any Grantor or in which any Grantor otherwise has any interest, now existing or hereafter acquired or arising:

(i) all patents and patent applications, domestic or foreign, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including such patents, patent applications and patent licenses as described in Schedule 2), all rights to sue for past, present or future infringement thereof, all rights arising therefrom and pertaining thereto and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof;

(ii) all copyrights and applications for copyright, domestic or foreign, together with the underlying works of authorship (including titles), whether or not the underlying works of authorship have been published and whether said copyrights are statutory or arise under the common law, and all other rights and works of authorship (including the copyrights and copyright applications described in Schedule 2), all computer programs, computer databases, computer program flow diagrams, source codes, object codes and all tangible property embodying or incorporating any copyrights, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses, and all other rights, claims and demands in any way relating to any such copyrights or works, including royalties and rights to sue for past, present or future infringement, and all rights of renewal and extension of copyright;

(iii) all state (including common law), federal and foreign trademarks, service marks and trade names, and applications for registration of such trademarks, service marks and trade names, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including such marks, names, applications and licenses as described in Schedule 2), whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented use thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof;

(iv) all trade secrets, trade dress, trade styles, logos, other source of business identifiers, mask-works, mask-work registrations, mask-work applications, software, confidential

information, customer lists, license rights, advertising materials, operating manuals, methods, processes, know-how, algorithms, formulae, databases, quality control procedures, product, service and technical specifications, operating, production and quality control manuals, sales literature, drawings, specifications, blue prints, descriptions, inventions, name plates and catalogs;

(v) the entire goodwill of or associated with the businesses now or hereafter conducted by such Grantor connected with and symbolized by any of the aforementioned properties and assets; and

(vi) all accounts, all intangible intellectual or other similar property and other general intangibles associated with or arising out of any of the aforementioned properties and assets and not otherwise described above.

"Intellectual Property Security Agreement" means each Patent and Trademark Security Agreement, each Copyright Security Agreement or any amendment thereto, in form and substance satisfactory to the Administrative Agent, supplementary to this Agreement and prepared for purposes of recordation with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable.

"Inventory" means any and all of any Grantor's inventory, as such term is defined in Article 9 of the UCC.

"Investment Property" means any and all of any Grantor's investment property, as such term is defined in Article 9 of the UCC.

"Lenders" has the meaning specified in the Credit Agreement, and includes the Revolving Lenders, the Term Lenders, the L/C Issuer and any Swap Providers.

"Letter-of-Credit Rights" means any and all of any Grantor's letter-of-credit rights, as such term is defined in Article 9 of the UCC.

"Partnership and LLC Collateral" means any and all limited, limited liability and general partnership interests and limited liability company interests of any type or nature, whether now existing or hereafter acquired or arising, including any more specifically described in Schedule 3.

"Pledged Collateral" means any and all (i) Pledged Shares; (ii) additional Capital Stock of the direct or indirect Subsidiaries of Holdings (other than Subsidiaries which are owned by Non-Wholly-Owned Subsidiaries), whether certificated or uncertificated; (iii) other Investment Property of any Grantor; (iv) warrants, options or other rights entitling any Grantor to acquire any interest in Capital Stock or other securities of such Subsidiaries or any other Person; (v) Partnership and LLC Collateral; (vi) Instruments; (vii) Pledged Debt; (viii) securities, property, interest, dividends and other payments and distributions issued as an addition to, in redemption of, in renewal or exchange for, in substitution or upon conversion of, or otherwise on account of, any of the foregoing; (ix) certificates and instruments now or hereafter representing or evidencing any of the foregoing; (x) rights, interests and claims with respect to the foregoing, including under any and all related agreements, instruments and other documents, and (xi) cash

and non-cash proceeds of any of the foregoing; in each case whether presently existing or owned or hereafter arising or acquired and wherever located, and as from time to time received or receivable by, or otherwise paid or distributed to or acquired by, any Grantor.

"Pledged Debt" means the indebtedness described in Schedule 3.

"Pledged Shares" means all of the issued and outstanding shares of Capital Stock, whether certificated or uncertificated, of Holdings' direct or indirect Subsidiaries (other than Subsidiaries which are owned by Non-Wholly-Owned Subsidiaries) now owned by any Grantor, as more specifically described in Schedule 3.

"Primary Account" means each Deposit Account for which a Control Agreement in form and substance reasonably satisfactory to the Administrative Agent has been executed and delivered to the Administrative Agent by the applicable Grantor and the bank or other depository institution at which such Deposit Account is maintained.

"Proceeds" means all proceeds, as such term is defined in Article 9 of the UCC.

"Rights to Payment" means any and all of any Grantor's Accounts and any and all of any Grantor's rights and claims to the payment or receipt of money or other forms of consideration of any kind in, to and under or with respect to its Chattel Paper, Documents, General Intangibles, Instruments, Investment Property, Letter-of-Credit Rights, Proceeds and Supporting Obligations.

"Second Lien Agent" has the meaning specified in the Intercreditor Agreement.

"Secured Obligations" means all indebtedness, liabilities and other obligations of the Grantors to the Secured Parties created under, or arising out of or in connection with, the Credit Agreement, the Notes, the Letters of Credit or any of the other Loan Documents, and any and all other indebtedness, liabilities and other obligations of the Grantors to the Administrative Agent, the Lenders or any Affiliate thereof, whether created under, arising out of or in connection with the Credit Agreement, the Notes, the Letters of Credit or any of the other Loan Documents or Bank Product Agreements or otherwise, including all unpaid principal of the Loans, all unpaid drawings under Letters of Credit, all interest accrued thereon, all fees due under the Credit Agreement, all Secured Swap Obligations, all Bank Product Obligations and all other amounts payable by the Grantors to any Secured Party thereunder or in connection therewith, whether now existing or hereafter arising, and whether due or to become due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and including interest that accrues after the commencement by or against any Grantor of any Insolvency Proceedings naming such Person as the debtor in such proceeding.

"Secured Parties" means the Lenders and the Administrative Agent and any Bank Product Provider, and each of their respective successors, transferees and assigns.

"Secured Swap Obligations" means all obligations and liabilities of any Grantor of any kind arising under all Specified Swap Contracts, including obligations and liabilities arising in connection with or as a result of early termination of a Swap Contract, whether or not occurring as a result of a default thereunder, and whether absolute or contingent, due or to

become due, now existing or hereafter created or incurred, liquidated or unliquidated, determined or undetermined.

"Supporting Obligations" means all supporting obligations, as such term is defined in Article 9 of the UCC.

"UCC" means the Uniform Commercial Code as the same may from time to time be in effect in the State of California.

"Zero Balance Account" means each Deposit Account designated as a "zero balance" account on Schedule 1 hereto and any other Deposit Account designated as a "zero balance" account in a written notice to the Administrative Agent pursuant to Section 5(m) hereof.

(c) Terms Defined in UCC. Where applicable and except as otherwise defined herein, terms used in this Agreement shall have the meanings assigned to them in the UCC.

(d) Interpretation. The rules of interpretation set forth in Section 1.02 of the Credit Agreement shall be applicable to this Agreement and are incorporated herein by this reference.

SECTION 2 Security Interest.

(a) Grant of Security Interest. As security for the payment and performance of the Secured Obligations, each Grantor hereby grants to the Administrative Agent, for itself and on behalf of and for the ratable benefit of the other Secured Parties, a security interest in all of such Grantor's right, title and interest in, to and under all of its personal property, wherever located and whether now existing or owned or hereafter acquired or arising, including the following property (collectively, the "Collateral"): (i) all Accounts; (ii) all Chattel Paper; (iii) all Commercial Tort Claims; (iv) all Deposit Accounts; (v) all Documents; (vi) all Equipment; (vii) all General Intangibles; (viii) all Instruments; (ix) all Inventory; (x) all Investment Property; (xi) all Letter-of-Credit Rights; and (xii) all money; and all products and Proceeds of any and all of the foregoing, and all Supporting Obligations of any and all of the foregoing. Notwithstanding the foregoing, except for fixtures (to the extent covered by Article 9 of the UCC), such grant of a security interest shall not extend to, and the term "Collateral" shall not include, (i) any agreements, contracts, permits or licenses only if and to the extent that the granting of a Lien as contemplated hereby would (A) constitute a violation of a restriction in favor of a third party on such grant, (B) give any other party to such contract, instrument, license, license agreement or other document the right to terminate its obligations thereunder, or (C) violate any law (other than (but only in respect of agreements or contracts not constituting a document evidencing a Capital Lease or purchase money obligation) to the extent that any such term described in the preceding clauses (A), (B) or (C) would be rendered ineffective pursuant to Section 9-406, 9-407 or 9-408 of the UCC (or any successor provision or provisions)) ("Excluded Contracts and Leases"); provided, however, that any agreement, contract, permit or license that does not constitute "Collateral" pursuant to this sentence shall immediately become "Collateral," and the Grantors, as applicable, shall be deemed to have granted a Lien therein,

from and after such time as the other party to such agreement, contract, permit or license consents to the grant of a Lien in such agreement, contract, permit or license in favor of the Administrative Agent or the prohibition against granting a Lien therein otherwise ceases to be effective; and provided, further, that with respect to Excluded Contracts and Leases, Collateral shall in any case include the proceeds from the disposition of Excluded Contracts and Leases whether now or hereafter arising, whether tangible or intangible, and wherever located; (ii) any equipment subject to certain long-term secured debt consisting of the term notes, equipment notes and capital leases set forth on Schedule 5 and any other equipment in which any Grantor has rights if and for so long as the grant of a security interest therein shall constitute or result in a breach or termination pursuant to the terms of, or a default under, any capital lease or purchase money agreement entered into in connection with the acquisition or financing of such equipment; provided, however, that such security interest shall attach immediately at such time as the term restricting the attachment of a security interest in such equipment is no longer operative or the attachment of a security interest in such equipment would not constitute or result in a breach or termination pursuant to the terms of, or a default under, the capital lease or purchase money agreement governing such equipment; (iii) any trademark applications filed in the United States Patent and Trademark Office on the basis of a Grantor's "intent-to-use" such trademark to the extent that granting a security interest in such trademark application prior to such filing would adversely affect the enforceability or validity or result in the voiding of such trademark application, unless and until acceptable evidence of use of the trademark has been filed with and accepted by the United States Patent and Trademark Office pursuant to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C. 1051, et seq.), whereupon such trademark application will be deemed automatically included in the Collateral; or (iv) the insurance-related cash collateral accounts set forth on Schedule 6, the aggregate balances of which shall not exceed $4,000,000 at any point in time without the prior written consent of the Administrative Agent.

(b) Grantors Remain Liable. Anything herein to the contrary notwithstanding, (i) each Grantor shall remain liable under any contracts, agreements and other documents included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Administrative Agent of any of the rights hereunder shall not release any Grantor from any of its duties or obligations under such contracts, agreements and other documents included in the Collateral, and (iii) neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any contracts, agreements and other documents included in the Collateral by reason of this Agreement, nor shall the Administrative Agent or any other Secured Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any such contract, agreement or other document included in the Collateral hereunder.

(c) Continuing Security Interest. Each Grantor agrees that this Agreement shall create a continuing security interest in the Collateral which shall remain in effect until terminated in accordance with Section 24.

SECTION 3 Perfection Procedures. Each Grantor shall (if necessary) execute and deliver to the Administrative Agent concurrently with the execution of this Agreement, and each Grantor hereby authorizes the Administrative Agent to file (with or without such Grantor's signature) at any time and from time to time thereafter, all financing statements, continuation

statements, termination statements, security agreements relating to the Intellectual Property Collateral, assignments, fixture filings, affidavits, reports, notices, and other documents and instruments, in form satisfactory to the Administrative Agent, and take all other action, as the Administrative Agent or the Majority Lenders may request, to perfect and continue perfected, maintain the priority of or provide notice of the Administrative Agent's security interest in the Collateral and to accomplish the purposes of this Agreement. Without limiting the generality of the foregoing, each Grantor (1) ratifies and authorizes the filing by the Administrative Agent of any financing statements filed prior to the date hereof, (2) authorizes the Administrative Agent to use the collateral description "all assets" or "all personal property now owned or hereafter acquired" or words of similar import in any financing statements and (3) shall take the following actions:

(a) Filing of Financing Statements. On or prior to the Effective Date each Grantor authorizes the Administrative Agent to file completed UCC-1 financing statements in the offices described in Schedule 4 (the "Filing Offices"), and after the Effective Date the applicable Grantor authorizes the Administrative Agent to file completed UCC-1 financing statements in the appropriate filing office or offices in any state identified by a Grantor in a notice delivered to the Administrative Agent pursuant to subsection 5(e).

(b) Delivery of Pledged Collateral. Each Grantor hereby agrees to deliver to or for the account of the Administrative Agent, at the address and to the Person to be designated by the Administrative Agent, the certificates, instruments and other writings representing any Pledged Collateral, which shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, in form satisfactory to the Administrative Agent. If any Grantor shall become entitled to receive or shall receive any Pledged Collateral after the date hereof, such Grantor shall accept the foregoing as the agent for the Administrative Agent, shall hold it in trust for the Administrative Agent, shall segregate it from other property or funds of such Grantor, and shall immediately deliver the same and all certificates, instruments and other writings representing such Pledged Collateral forthwith to or for the account of the Administrative Agent, at the address and to the Person to be designated by the Administrative Agent, which shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank in form satisfactory to the Administrative Agent. Anything to the contrary notwithstanding, so long as no Event of Default shall have occurred and be continuing, (i) each Grantor may retain for collection in the ordinary course any Instruments received by such Grantor in the ordinary course of business, and the Administrative Agent shall, promptly upon request of such Grantor, make appropriate arrangements for making any other Instruments and/or Pledged Debt pledged by such Grantor available to the payor of any such Instrument or Pledged Debt for purposes of presentation, collection or renewal (any such arrangement to be effected, to the extent required under applicable law to continue perfected the Administrative Agent's security interest hereunder in such Instruments or Pledged Debt, against trust receipt or like document), and (ii) each Grantor may retain any additional Pledged Collateral consisting of Instruments with a face value of less than $100,000 individually and $500,000 in the aggregate for all such Instruments or, in the case of any such additional Pledged Collateral with no face value, then such additional Pledged Collateral with a fair market value of less than $100,000 individually and $500,000 in the aggregate for all such Instruments, as determined by such Grantor in good faith.

(c) Transfer of Security Interest Other Than by Delivery. If for any reason Pledged Collateral cannot be delivered to or for the account of the Administrative Agent as provided in subsection 3(b), each Grantor shall promptly take such other steps as may be necessary or as shall be reasonably requested from time to time by the Administrative Agent to effect a transfer of a perfected first priority security interest in and pledge of the Pledged Collateral to the Administrative Agent for itself and on behalf of and for the ratable benefit of the other Secured Parties pursuant to the UCC. To the extent practicable, such Grantor shall thereafter deliver the Pledged Collateral to or for the account of the Administrative Agent as provided in subsection 3(b).

(d) Deposit Accounts. Each Grantor shall execute such notices, and shall take such other action, including delivery of Control Agreements, as the Administrative Agent may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the Administrative Agent's security interest in Collateral consisting of Deposit Accounts (other than any Zero Balance Accounts, unless the Administrative Agent determines in its reasonable discretion that obtaining a Control Agreement in respect of one or more Zero Balance Accounts is necessary or desirable) and to accomplish the purposes of this Agreement; provided, however, that in respect of the delivery of any Control Agreement requested by the Administrative Agent each Grantor shall only be required to use commercially reasonable efforts to cause any applicable depository to execute and deliver such Control Agreement; and provided, further, however, that in the event that notwithstanding such commercially reasonable efforts any depository refuses or otherwise fails to execute and deliver any Control Agreement requested by the Administrative Agent, then the Administrative Agent may require that the applicable Grantor promptly close the Deposit Account(s) that is the subject of such Control Agreement and transfer all funds therein to a Deposit Account maintained with the Administrative Agent or to another deposit account over which the Administrative Agent has "control" within the meaning of Section 9-104 of the UCC.

(e) Intellectual Property Collateral. (i) Each Grantor shall execute and deliver to the Administrative Agent, concurrently with the execution of this Agreement, such Intellectual Property Security Agreements as the Administrative Agent may reasonably request, and authorizes the Administrative Agent to record such Intellectual Property Security Agreements with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, and take such other action as may be necessary, or as the Administrative Agent may reasonably request, to perfect the Administrative Agent's security interest in such Intellectual Property Collateral. (ii) Following the creation or other acquisition of any Intellectual Property Collateral by any Grantor after the date hereof which is registered or becomes registered or the subject of an application for registration with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, such Grantor (A) shall reflect such Intellectual Property Collateral in the next Update Certificate delivered to the Administrative Agent under the Credit Agreement, (B) shall execute such Intellectual Property Security Agreement(s) as may be requested by the Administrative Agent in respect thereof and (C) authorizes the Administrative Agent to record any Intellectual Property Security Agreement related thereto with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, and take such other action as may be necessary, or as the Administrative Agent may reasonably request, to perfect the Administrative Agent's security interest in such Intellectual Property Collateral.

(f) Documents, Etc. Each Grantor shall deliver to the Administrative Agent, or an agent designated by it, appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, all Documents and Chattel Paper, and all other Rights to Payment at any time evidenced by promissory notes, trade acceptances or other instruments, not already delivered hereunder pursuant to this Section 3; provided, however, that unless an Event of Default shall have occurred and be continuing, such Grantor shall not be required to deliver any Document, Chattel Paper, promissory note, trade acceptance or other instrument having a face amount not in excess of $100,000 individually and $500,000 in the aggregate for all such items. Upon the request of the Administrative Agent, Grantors shall mark all Documents and Chattel Paper with such legends as the Administrative Agent shall reasonably specify.

(g) Bailees. At any time and from time to time, the Administrative Agent may give notice to any Person holding all or any portion of the Collateral that such Person is holding the Collateral as the agent and bailee of, and as pledge holder for, the Administrative Agent, and obtain such Person's written acknowledgment thereof. Without limiting the generality of the foregoing, each Grantor, upon the Administrative Agent's reasonable request, will join with the Administrative Agent in notifying any Person who has possession of any Collateral of the Administrative Agent's security interest therein and obtaining an acknowledgment from such Person that it is holding the Collateral for the benefit of the Administrative Agent.

(h) Control. Without limiting the foregoing provisions of this Section 3, each Grantor will cooperate with the Administrative Agent in obtaining control (as defined in the UCC) of Collateral consisting of any Deposit Accounts (other than any Zero Balance Account, unless the Administrative Agent determines in its reasonable discretion that obtaining control in respect of one or more Zero Balance Accounts is necessary or desirable), Electronic Chattel Paper, Investment Property or Letter-of-Credit Rights.

(i) Controlled Foreign Corporations. Notwithstanding anything herein to the contrary, in no event shall the Collateral include, and no Grantor shall be deemed to have granted a security interest in, any of such Grantor's right, title or interest in any of the outstanding capital stock or other ownership interests of a Controlled Foreign Corporation (as defined below) in excess of 65% of the voting power of all classes of capital stock or other ownership interests of such Controlled Foreign Corporation entitled to vote; provided that immediately upon the amendment of the Code to allow the pledge of a greater percentage of the voting power of capital stock or other ownership interests in a Controlled Foreign Corporation without adverse tax consequences, the Collateral shall include, and such Grantor shall be deemed to have granted a security interest in, such greater percentage of capital stock or other ownership interests of each Controlled Foreign Corporation. As used herein, "Controlled Foreign Corporation" shall mean a "controlled foreign corporation" as defined in the Code.

SECTION 4 Representations and Warranties. In addition to the representations and warranties of the Grantors set forth in the Credit Agreement, which are incorporated herein by this reference, each Grantor represents and warrants to each Lender and the Administrative Agent that:

(a) Location of Chief Executive Office. Each Grantor's chief executive office is set forth in Schedule 1.

(b) Locations of Books. All locations where Books pertaining to the Rights to Payment are kept, including all equipment necessary for accessing such Books and the names and addresses of all service bureaus, computer or data processing companies and other Persons keeping any Books or collecting Rights to Payment for any Grantor, are set forth in Schedule 1.

(c) Jurisdiction of Organization and Names. Each Grantor's jurisdiction of organization, as of the Effective Date, is set forth in Schedule 1; and each Grantor's exact legal name, as of the Effective Date, is as set forth on the signature pages of this Agreement. Except as set forth in Schedule 1, each Grantor has not, at any time in the past five years: (i) changed its name; (ii) been the surviving or resulting corporation in a merger or consolidation; or (iii) acquired through asset purchase or otherwise any business of any Person.

(d) Collateral. Each Grantor has rights in or the power to transfer the Collateral, and each Grantor is, and, except as permitted by Section 5(i), will continue to be, the sole and complete owner of the Collateral (or, in the case of after-acquired Collateral, at the time any Grantor acquires rights in such Collateral, will be the sole and complete owner thereof), free from any Lien other than Permitted Liens.

(e) Enforceability; Priority of Security Interest. (i) This Agreement creates a security interest which is enforceable against the Collateral in which each Grantor now has rights and will create a security interest which is enforceable against the Collateral in which such Grantor hereafter acquires rights at the time such Grantor acquires any such rights; and (ii) the Administrative Agent has a perfected and first priority security interest in the Collateral in which such Grantor now has rights, and will have a perfected and first priority security interest in the Collateral in which such Grantor hereafter acquires rights at the time such Grantor acquires any such rights, in each case for the Administrative Agent's own benefit and for the ratable benefit of the other Secured Parties and subject to Permitted Liens, securing the payment and performance of the Secured Obligations.

(f) Other Financing Statements. Other than (i) financing statements disclosed to the Administrative Agent and (ii) financing statements in favor of the Administrative Agent in its capacity as Administrative Agent for itself and the other Secured Parties under the Credit Agreement and any other Loan Documents, no effective financing statement naming the Grantor as debtor, assignor, grantor, mortgagor, pledgor or the like and covering all or any part of the Collateral is on file in any filing or recording office in any jurisdiction, except in respect of Permitted Liens.

(g) Rights to Payment.

(i) The Rights to Payment represent valid, binding and enforceable obligations of the account debtors or other Persons obligated thereon, representing undisputed, bona fide transactions completed in accordance with the terms and provisions contained in any documents related thereto, and are and will be genuine, free from Liens (other than Permitted Liens), and not subject to any adverse claims, counterclaims, setoffs, defaults, disputes, defenses,

discounts, retainages, holdbacks or conditions precedent of any kind of character, except to the extent reflected by the Grantors' reserves for uncollectible Rights to Payment or to the extent, if any, that such account debtors or other Persons may be entitled to normal and ordinary course trade discounts, returns, adjustments and allowances in accordance with Section 5(l), or as otherwise disclosed to the Administrative Agent in writing or occurring in the ordinary course of business;

(ii) to the best of each Grantor's knowledge, all account debtors and other obligors on the Rights to Payment are solvent and generally paying their debts as they come due, except to the extent that such Grantor has established adequate reserves therefor in accordance with GAAP;

(iii) all Rights to Payment comply in all material respects with all applicable laws concerning form, content and manner of preparation and execution, including where applicable any federal or state consumer credit laws;

(iv) no Grantor has assigned any of its rights under the Rights to Payment except as provided in this Agreement or as set forth in the other Loan Documents or the Second Lien Term Loan Documents;

(v) all statements made, all unpaid balances and all other information in the Books and other documentation relating to the Rights to Payment in all material respects are true and correct and what they purport to be; and

(vi) no Grantor has any knowledge of any fact or circumstance which would materially impair the validity or collectibility of any of the Rights to Payment, except to the extent that such Grantor has established adequate reserves therefor in accordance with GAAP;

(h) Inventory. No Inventory is stored with any bailee, warehouseman or similar Person, nor has any Inventory been consigned to any Grantor or consigned by any Grantor to any Person or is held by any Grantor for any Person under any "bill and hold" or other arrangement, except at locations listed, and as specified, in Schedule 1.

(i) Intellectual Property.

(i) Except as set forth in Schedule 2 or in an Update Certificate delivered under the Credit Agreement, no Grantor (directly or through any Subsidiary) owns, possesses or uses under any licensing arrangement any patents, copyrights, trademarks, service marks or trade names, nor is there currently pending before any Governmental Authority any application for registration of any patent, copyright, trademark, service mark or trade name material to its business and operations;

(ii) all of each Grantor's patents, copyrights, trademarks, service marks and trade names are subsisting and have not been adjudged invalid or unenforceable in whole or in part;

(iii) all maintenance fees required to be paid by any Grantor on account of any of its patents have been timely paid for maintaining such patents in force, and, to the best of such Grantor's knowledge, each of such patents is valid and enforceable;

(iv) to the best of each Grantor's knowledge, no infringement or unauthorized use presently is being made of any Intellectual Property Collateral by any Person that could reasonably be expected to have a Material Adverse Effect; and

(v) each Grantor owns, has material rights under, is a party to, or an assignee of a party to, all material licenses, patents, patent applications, copyrights, service marks, trademarks, trademark applications, trade names and all other Intellectual Property Collateral necessary to continue to conduct its business as heretofore conducted.

(j) Equipment. As of the Effective Date, none of the Equipment that is material to any Grantor is leased from any Person, except as set forth in UCC record searches delivered to the Administrative Agent or as otherwise disclosed in writing to the Administrative Agent.

(k) Deposit Accounts. The names and addresses of all financial institutions at which any Grantor maintains, as of the Effective Date, its Deposit Accounts, and the account numbers and account names of such Deposit Accounts, are set forth in Schedule 1.

(l) Pledged Debt and Instrument Collateral. (i) No Grantor has previously assigned any interest in the Pledged Debt or any Collateral consisting of Instruments (other than to the Administrative Agent, the Second Lien Agent, and such interests as will be released on or before the date hereof), (ii) no Person other than such Grantor owns an interest in the Pledged Debt or Instrument Collateral (whether as joint holders, participants or otherwise), and (iii) the entire Pledged Debt and Instrument Collateral is owing only to such Grantor.

(m) Pledged Shares, Partnership and LLC Collateral and other Pledged Collateral. (i) All the Pledged Shares and Partnership and LLC Collateral have been, and upon issuance any additional Pledged Collateral consisting of Pledged Shares, Partnership and LLC Collateral or any other Capital Stock, will be, duly and validly issued, and are and will be fully paid and non-assessable, subject in the case of Partnership and LLC Collateral to future assessments required under applicable law and any applicable partnership agreement or limited liability company agreement, (ii) the applicable Grantor is or, in the case of any such additional Pledged Collateral will be, the legal record and beneficial owner thereof, (iii) there are no restrictions on the transferability of the Pledged Collateral or such additional Pledged Collateral to the Administrative Agent or with respect to the foreclosure, transfer or disposition thereof by the Administrative Agent, except as provided under applicable securities or "Blue Sky" laws or in connection with any limitation imposed by joint venture agreements, (iv) as of the Effective Date, except as set forth in Schedule 3, the Pledged Shares and Partnership and LLC Collateral constitute 100% of the issued and outstanding shares of capital stock, membership interests and partnership interests of Holdings' direct and indirect Subsidiaries (other than Subsidiaries which are owned by Non-Wholly-Owned Subsidiaries), and no securities convertible into or exchangeable for any shares of capital stock, membership interests and partnership interests of any such Subsidiary, or any options, warrants or other commitments entitling any Person to

purchase or otherwise acquire any shares of capital stock, membership interests and partnership interests of any such Subsidiary, are issued and outstanding, and (v) any and all shareholders agreements, voting trusts, proxy agreements or other agreements or understandings which affect or relate to the voting or giving of written consents with respect to any of the Pledged Shares, and any and all partnership agreements, operating agreements and other agreements relating to the Partnership and LLC Collateral, have been disclosed in writing to the Administrative Agent.

(n) Other Investment Property; Instruments; and Chattel Paper. All securities accounts of the Grantors and other Investment Property of the Grantors, as of the Effective Date, are set forth in Schedule 1, and all Instruments and Chattel Paper held, as of the Effective Date, by Grantors are also set forth in Schedule 1.

(o) Control Agreements. No Control Agreements exist with respect to any Collateral other than any Control Agreements in favor of the Administrative Agent.

(p) Letter-of-Credit Rights. None of the Grantors have any Letter-of-Credit Rights, as of the Effective Date, except as set forth in Schedule 1.

(q) Commercial Tort Claims. None of the Grantors have any Commercial Tort Claims, as of the Effective Date, except as set forth in Schedule 1.

SECTION 5 Covenants. In addition to the covenants of the Grantors set forth in the Credit Agreement, which are incorporated herein by this reference, so long as any of the Secured Obligations remain unsatisfied or any Lender shall have any Commitment or any Letter of Credit shall be outstanding or any Specified Swap Contract shall be in effect, each Grantor agrees that:

(a) Defense of Collateral. Each Grantor shall appear in and defend any action, suit or proceeding which may affect to a material extent its title to, or right or interest in, or the Administrative Agent's right or interest in, the Collateral.

(b) Preservation of Collateral. Each Grantor shall do and perform all reasonable acts that may be necessary and appropriate to maintain, preserve and protect the Collateral.

(c) Compliance with Laws, Etc. Each Grantor shall comply in all material respects with all laws, regulations and ordinances, and all policies of insurance, relating in a material way to the possession, operation, maintenance and control of the Collateral.

(d) Location of Books and Chief Executive Office. Each Grantor shall: (i) keep all Books (other than copies) pertaining to the Rights to Payment at the locations set forth in Schedule 1 or at such other locations as may be specified in a written notice to the Administrative Agent as provided in this Section 5(d); and (ii) give prompt written notice to the Administrative Agent, but in any event within 30 days, of (a) any changes in any such location where Books pertaining to the Rights to Payment are kept, including any change of name or address of any service bureau, computer or data processing company or other Person preparing or maintaining any Books or collecting Rights to Payment for such Grantor or (b) any changes in the location of such Grantor's chief executive office or principal place of business.

(e) Change in Name, Identity or Structure. Each Grantor shall give prompt written notice to the Administrative Agent, but in any event within 10 days, of (i) any change in name, (ii) any change in its jurisdiction of organization, (iii) any change in its registration as an organization (or any new such registration); and (iv) any changes in its identity or structure in any manner which might make any financing statement filed hereunder incorrect or misleading; provided that no Grantor shall change its jurisdiction of organization to a jurisdiction outside of the United States.

(f) Maintenance of Records. Each Grantor shall keep accurate and complete Books with respect to the Collateral, disclosing the Administrative Agent's security interest hereunder.

(g) Invoicing of Sales. The Grantor will invoice all of its sales upon forms customary in the industry and maintain proof of delivery and customer acceptance of goods.

(h) Disposition of Collateral. Each Grantor shall not surrender or lose possession of (other than to the Administrative Agent), sell, lease, rent, or otherwise dispose of or transfer any of the Collateral or any right or interest therein, except to the extent permitted by the Loan Documents (including disposition permitted under Section 8.02 of the Credit Agreement).

(i) Liens. Each Grantor shall keep the Collateral free of all Liens except Permitted Liens.

(j) Expenses. The Grantor (or purchaser of Inventory) will pay all expenses of protecting, storing, warehousing, insuring, handling and shipping the Collateral.

(k) Leased Premises. At the Administrative Agent's request, each Grantor shall use commercially reasonable efforts to obtain from each Person from whom such Grantor leases any premises at which any Collateral is at any time present such collateral access, subordination, waiver, consent and estoppel agreements as the Administrative Agent may reasonably require, in form and substance satisfactory to the Administrative Agent.

(l) Rights to Payment. Each Grantor shall:

(i) with such frequency as the Administrative Agent may require, furnish to the Administrative Agent such information relating to the Accounts as the Administrative Agent shall from time to time reasonably request;

(ii) give only normal discounts, allowances and credits as to Accounts and other Rights to Payment, in the ordinary course of business, according to normal trade practices, and enforce all Accounts and other Rights to Payment strictly in accordance with their terms, and during the existence of an Event of Default, take all such action to such end as may from time to time be reasonably requested by the Administrative Agent, except that such Grantor may at any time grant any extension of the time for payment or enter into any agreement to make a rebate or otherwise to reduce the amount owing on or with respect to, or compromise or settle for less than the full amount thereof, any Account or other Right to Payment, in the ordinary course of business, according to normal trade practices;

(iii) if any discount, allowance, credit, extension of time for payment, agreement to make a rebate or otherwise to reduce the amount owing on, or compromise or settle, an Account or other Right to Payment exists or occurs, or if, to the knowledge of any Grantor, any dispute, setoff, claim, counterclaim or defense exists or has been asserted or threatened with respect to an Account or other Right to Payment, disclose such fact to the Administrative Agent in the Books relating to such Account or other Right to Payment when such Books are requested for inspection by the Administrative Agent, and in connection with any invoice or report furnished by any Grantor to the Administrative Agent relating to such Account or other Right to Payment;

(iv) if any Accounts arise from contracts with the United States or any department, agency or instrumentality thereof, promptly notify the Administrative Agent thereof and execute any documents and instruments and take any other steps reasonably requested by the Administrative Agent in order that all monies due and to become due thereunder shall be assigned to the Administrative Agent and notice thereof given to the Federal authorities under the Federal Assignment of Claims Act;

(v) in accordance with its sound business judgment perform and comply in all material respects with its obligations in respect of the Accounts and other Rights to Payment;

(vi) upon the request of the Administrative Agent (a) at any time, notify all or any designated portion of the account debtors and other obligors on the Rights to Payment of the security interest hereunder, and (b) during the continuance of an Event of Default notify the account debtors and other obligors on the Rights to Payment or any designated portion thereof that payment shall be made directly to the Administrative Agent or to such other Person or location as the Administrative Agent shall specify; and

(vii) upon the occurrence of any Event of Default, establish such lockbox or similar arrangements for the payment of the Accounts and other Rights to Payment as the Administrative Agent shall require.

(m) Deposit Accounts and Securities Accounts. Each Grantor shall give the Administrative Agent prompt written notice of the establishment of (i) any new Deposit Account and whether such Deposit Account is designated a Zero Balance Account, and (ii) any new securities account with respect to any Investment Property.

(n) Inventory. Each Grantor shall:

(i) at such times as the Administrative Agent shall request, prepare and deliver to the Administrative Agent a report of all Inventory, in form and substance reasonably satisfactory to the Administrative Agent;

(ii) upon the request of the Administrative Agent, take a physical listing of the Inventory and promptly deliver a copy of such physical listing to the Administrative Agent; and

(iii) not store any Inventory with a bailee, warehouseman or similar Person or on premises leased to any Grantor, nor dispose of any Inventory on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment or similar basis, nor acquire any Inventory from any Person on any such basis, except in the ordinary course of business and in accordance with its normal practices.

(o) Equipment. Each Grantor shall, upon the Administrative Agent's request, deliver to the Administrative Agent a report of each item of Equipment, in form and substance reasonably satisfactory to the Administrative Agent.

(p) Intellectual Property Collateral. Each Grantor shall:

(i) not allow or suffer any Intellectual Property Collateral to become abandoned, nor any registration thereof to be terminated, forfeited, expired or dedicated to the public, except for Intellectual Property Collateral having negligible commercial value;

(ii) not enter into any agreements or transactions (including any license, sublicense or royalty agreement) pertaining to any Intellectual Property Collateral outside of the ordinary course of business, or enter into any exclusive license or sublicense of any Intellectual Property Collateral, except in a transaction permitted under the Loan Documents;

(iii) give the Administrative Agent notice in the next Update Certificate delivered under the Credit Agreement of any rights any Grantor may obtain to any new patentable inventions, copyrightable works or other new Intellectual Property Collateral which such Grantor has registered or intends to register; and

(iv) diligently prosecute all applications for patents, copyrights and trademarks, and file and prosecute any and all continuations, continuations-in-part, applications for reissue, applications for certificate of correction and like matters as shall be reasonable and appropriate in accordance with prudent business practice, and promptly and timely pay any and all maintenance, license, registration and other fees, taxes and expenses incurred in connection with any Intellectual Property Collateral, subject to clause (i) above.

(q) Notices, Reports and Information. Each Grantor shall (i) notify the Administrative Agent of any material claim made or asserted against the Collateral by any Person and of any change in the composition of the Collateral or other event which could materially adversely affect the value of the Collateral or the Administrative Agent's Lien thereon; (ii) furnish to the Administrative Agent such statements and schedules further identifying and describing the Collateral and such other reports and other information in connection with the Collateral as the Administrative Agent may reasonably request, all in reasonable detail; and (iii) upon reasonable request of the Administrative Agent make such demands and requests for information and reports as any Grantor is entitled to make in respect of the Collateral.

(r) Commercial Tort Claims. Each Grantor will give the Administrative Agent prompt written notice if such Grantor shall at any time hold or acquire any Commercial Tort Claim.

(s) Letter-of-Credit Rights. Each Grantor will give the Administrative Agent immediate notice if such Grantor shall at any time hold or acquire any Letter-of-Credit Rights.

(t) Shareholder Agreements and Other Agreements. (i) Each Grantor shall comply with all of its obligations under any shareholders agreement, operating agreement, partnership agreement, voting trust, proxy agreement or other agreement or understanding (collectively, the "Pledged Collateral Agreements") to which it is a party and shall enforce all of its rights thereunder.

(ii) No Grantor shall vote to enable or take any other action to amend or terminate, or waive compliance with any of the terms of, any Pledged Collateral Agreement, certificate or articles of incorporation, bylaws or other organizational documents in any way that materially changes the rights of such Grantor with respect to any Pledged Collateral in a manner adverse to the Administrative Agent or the Lenders or that adversely affects the validity, perfection or priority of the Administrative Agent's security interest therein.

(u) Insurance. (i) Each Grantor shall carry and maintain in full force and effect, at the expense of the Grantors and with financially sound and reputable insurance companies, insurance with respect to the Collateral in such amounts, with such deductibles and covering such risks as shall be specified in the Credit Agreement. Upon the request of the Administrative Agent, and in any event not less often than annually, each Grantor shall furnish the Administrative Agent with full information as to the insurance carried by it and, if so requested, copies of all such insurance policies. All insurance policies required under this subsection 5(u) shall provide that they shall not be terminated or cancelled nor shall any such policy be materially changed without at least 30 days' prior written notice to the Grantor and the Administrative Agent (or 10 days' prior written notice if the Administrative Agent consents to such shorter notice). Receipt of notice of termination or cancellation of any such insurance policies or reduction of coverages or amounts thereunder shall entitle the Administrative Agent to renew any such policies, cause the coverages and amounts thereof to be maintained at levels required pursuant to the first sentence of this subsection 5(u) or otherwise to obtain similar insurance in place of such policies, in each case at the expense of the Grantors.

(ii) If Collateral with a value exceeding $100,000 of any Grantor shall be materially damaged or destroyed, in whole or in part, by fire or other casualty, such Grantor shall give prompt notice thereof to the Administrative Agent. No settlement on account of any loss on any such Collateral covered by insurance shall be made for less than insured value without the consent of the Administrative Agent. After the occurrence and during the continuance of an Event of Default, or as otherwise required under the Loan Documents, all sums payable to any Grantor by any insurer with respect to a casualty relating to all or any part of the Collateral shall be paid to the Administrative Agent. If any Grantor shall receive any insurance proceeds which are to be paid to the Administrative Agent pursuant to the previous sentence, such Grantor shall hold such proceeds in trust for the Administrative Agent, shall segregate such proceeds from other funds of such Grantor, and shall immediately forward such proceeds in the form received to the Administrative Agent (appropriately indorsed by such Grantor to the order of the Administrative Agent or in such other manner as shall be satisfactory to the Administrative Agent). All such insurance proceeds may be retained by the Administrative Agent as part of Collateral hereunder and held in the Cash Collateral Account,

applied by the Administrative Agent toward payment of all or part of the Secured Obligations in such order as is provided herein, or released to such Grantor upon its request with the consent of the Administrative Agent.

(v) Zero Balance Accounts. Each Grantor shall take all steps necessary to ensure that (i) each Zero Balance Account is swept into a Primary Account no less frequently than every other day, and (ii) no Zero Balance Account shall maintain a balance in excess of $5,000 for a period in excess of two consecutive Business Days.

SECTION 6 Administration of the Rights to Payment and Pledged Collateral.

(a) Collection of Rights to Payment. Until the Administrative Agent exercises its rights hereunder to collect Rights to Payment, each Grantor shall endeavor in the first instance diligently to collect all amounts due or to become due on or with respect to the Rights to Payment. At the request of the Administrative Agent, during the continuance of any Event of Default, all remittances received by any Grantor shall be held in trust for the Administrative Agent and, in accordance with the Administrative Agent's instructions, remitted to the Administrative Agent or deposited to an account with the Administrative Agent in the form received (with any necessary endorsements or instruments of assignment or transfer).

(b) Investment Property and Instruments. Unless and until an Event of Default shall have occurred and be continuing, each Grantor shall be entitled to receive and retain for its own account any cash dividend on or other cash distribution, if any, in respect of the Pledged Collateral, to the extent consistent with the Credit Agreement; provided, however, that, except in connection with transactions permitted under Section 8.02 or Section 8.03 of the Credit Agreement, such Grantor shall not be entitled to receive (i) cash paid, payable or otherwise distributed in redemption of, or in exchange for or in substitution of, any Pledged Collateral, or (ii) dividends and other distributions paid or payable in cash in respect of any Pledged Collateral in connection with a partial or total liquidation or dissolution of such Grantor or in connection with a reduction of capital, capital surplus or paid-in-surplus or any other type of recapitalization. At the request of the Administrative Agent, during the continuance of any Event of Default, the Administrative Agent shall be entitled to receive all distributions and payments of any nature with respect to any Investment Property or Instruments, and all such distributions or payments received by any Grantor shall be held in trust for the Administrative Agent and, in accordance with the Administrative Agent's instructions, remitted to the Administrative Agent or deposited to an account with the Administrative Agent in the form received (with any necessary endorsements or instruments of assignment or transfer). During the continuance of an Event of Default any such distributions and payments with respect to any Investment Property held in any securities account shall be held and retained in such securities account, in each case as part of the Collateral hereunder. Additionally, the Administrative Agent shall have the right, during the continuance of an Event of Default, following prior written notice to any Grantor, to vote and to give consents, ratifications and waivers with respect to any Investment Property, Pledged Debt and Instruments, and to exercise all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining thereto, as if the Administrative Agent were the absolute owner thereof; provided that the Administrative Agent shall have no duty to exercise any of the foregoing rights afforded to it and shall not be responsible to any Grantor or any other Person for any failure to do so or delay in doing so.

(c) Voting Prior to an Event of Default. Unless and until an Event of Default shall have occurred and be continuing, each Grantor shall have the right to vote the Pledged Collateral and to give consents, ratifications and waivers in respect thereof, and shall retain the power to control the direction, management and policies of any Person comprising the Pledged Collateral to the same extent as such Grantor would if the Pledged Collateral were not pledged to the Administrative Agent pursuant to this Agreement; provided, however, that no vote shall be cast or consent, waiver or ratification given or action taken which would have the effect of materially impairing the position or interest of the Administrative Agent and the Secured Parties in respect of the Pledged Collateral or which would alter the voting rights with respect to the stock or other ownership interest in or of any such Person or be inconsistent with or violate any provision of this Agreement, the Credit Agreement, or any other Loan Documents. If applicable, such Grantor shall be deemed the beneficial owner of all Pledged Collateral for purposes of Sections 13 and 16 of the Exchange Act and agrees to file all reports required to be filed by beneficial owners of securities thereunder. The Administrative Agent shall execute and deliver (or cause to be executed and delivered) to each Grantor all such proxies and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and other rights which it is entitled to exercise pursuant to this subsection (c) and to receive the distributions which it is authorized to receive and retain pursuant to this subsection (c).

(d) General Authority upon an Event of Default. During the continuance of any Event of Default:

(i) the Administrative Agent shall be entitled to receive all distributions and payments of any nature with respect to the Pledged Collateral, to be held by the Administrative Agent as part of the Collateral; and

(ii) the Administrative Agent shall have the right following prior written notice to the Grantor to vote or consent to take any action with respect to the Pledged Collateral and exercise all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to the Pledged Collateral, as if the Administrative Agent were the absolute owner thereof.

(e) Distributions to Be Held for Administrative Agent. Distributions and other payments which are received by the Grantor but which it is not entitled to retain as a result of the operation of this Section 6 shall be held in trust for the benefit of the Administrative Agent, be segregated from the other property or funds of such Grantor, and be forthwith paid over or delivered to the Administrative Agent in the same form as so received.

(f) Certain Other Administrative Matters. The Administrative Agent may cause any of the Pledged Collateral to be transferred into its name or into the name of its nominee or nominees (subject to the revocable rights specified in this Section 6) if, in the Administrative Agent's reasonable discretion, such action is necessary or desirable to protect or exercise the Administrative Agent's rights and interests hereunder. The Administrative Agent shall at all times have the right to exchange uncertificated Pledged Collateral for certificated Pledged Collateral, and to exchange certificated Pledged Collateral for certificates of larger or smaller denominations, for any purpose consistent with this Agreement.

SECTION 7 Authorization; Administrative Agent Appointed Attorney-in-Fact. The Administrative Agent shall have the right to, in the name of any Grantor, or in the name of the Administrative Agent or otherwise, without notice to or assent by such Grantor, and each Grantor hereby constitutes and appoints the Administrative Agent (and any of the Administrative Agent's officers or employees or agents designated by the Administrative Agent) as such Grantor's true and lawful attorney-in-fact, with full power and authority to:

(a) sign and file any of the financing statements which must be executed or filed to perfect or continue perfected, maintain the priority of or provide notice of the Administrative Agent's security interest in the Collateral and file any such financing statements by electronic means with or without a signature as authorized or required by applicable law or filing procedures;

(b) take possession of and endorse any notes, acceptances, checks, drafts, money orders or other forms of payment or security and collect any Proceeds of any Collateral;

(c) sign and endorse any invoice or bill of lading relating to any of the Collateral, warehouse or storage receipts, drafts against customers or other obligors, assignments, notices of assignment, verifications and notices to customers or other obligors;

(d) notify the U.S. Postal Service and other postal authorities to change the address for delivery of mail addressed to any Grantor to such address as the Administrative Agent may designate (provided that the Administrative Agent agrees it will promptly deliver over to such Grantors any mail that does not relate to the Collateral); and, without limiting the generality of the foregoing, establish with any Person lockbox or similar arrangements for the payment of the Rights to Payment;

(e) receive, open and dispose of all mail addressed to any Grantor (provided that the Administrative Agent agrees it will promptly deliver over to such Grantors any mail that does not relate to the Collateral);

(f) send requests for verification of Rights to Payment to the customers or other obligors of any Grantor;

(g) contact, or direct any Grantor to contact, all account debtors and other obligors on the Rights to Payment and instruct such account debtors and other obligors to make all payments directly to the Administrative Agent;

(h) assert, adjust, sue for, compromise or release any claims under any policies of insurance;

(i) exercise dominion and control over, and refuse to permit further withdrawals from, Deposit Accounts maintained with Wells Fargo or any other bank, financial institution or other Person;

(j) notify each Person maintaining lockbox or similar arrangements for the payment of the Rights to Payment to remit all amounts representing collections on the Rights to Payment directly to the Administrative Agent;

(k) ask, demand, collect, receive and give acquittances and receipts for any and all Rights to Payment, enforce payment or any other rights in respect of the Rights to Payment and other Collateral, grant consents, agree to any amendments, modifications or waivers of the agreements and documents governing the Rights to Payment and other Collateral, and otherwise file any claims, take any action or institute, defend, settle or adjust any actions, suits or proceedings with respect to the Collateral, as the Administrative Agent may deem necessary or desirable to maintain, preserve and protect the Collateral, to collect the Collateral or to enforce the rights of the Administrative Agent with respect to the Collateral;

(l) execute any and all applications, documents, papers and instruments necessary for the Administrative Agent to use the Intellectual Property Collateral and grant or issue any exclusive or non-exclusive license or sublicense with respect to any Intellectual Property Collateral;

(m) execute any and all endorsements, assignments or other documents and instruments necessary to sell, lease, assign, convey or otherwise transfer title in or dispose of the Collateral;

(n) execute and deliver to any securities intermediary or other Person any entitlement order or other notice, document or instrument which the Administrative Agent may deem necessary or advisable (A) to realize upon the Collateral, and (B) to maintain, protect and preserve the Deposit Accounts and Investment Property and the Administrative Agent's security interest therein; and

(o) execute any and all such other documents and instruments, and do any and all acts and things for and on behalf of any Grantor, which the Administrative Agent may deem necessary or advisable (A) to realize upon the Collateral, and (B) to maintain, protect and preserve the Collateral and the Administrative Agent's security interest therein and to accomplish the purposes of this Agreement.

The Administrative Agent agrees that, except during the continuance of an Event of Default, it shall not exercise the power of attorney, or any rights granted to the Administrative Agent, pursuant to clauses (b) through (m), (n)(A) and (o)(A) above. The foregoing power of attorney is coupled with an interest and irrevocable so long as the Lenders have any Commitments or any Letter of Credit remains outstanding or any Specified Swap Contract shall be in effect or the Secured Obligations have not been paid and performed in full. Each Grantor hereby ratifies, to the extent permitted by law, all that the Administrative Agent shall lawfully and in good faith do or cause to be done by virtue of and in compliance with this Section 7.

SECTION 8 Administrative Agent Performance of Company Obligations. The Administrative Agent may perform or pay any obligation which any Grantor has agreed to perform or pay under or in connection with this Agreement, and which such Grantor has failed to perform or pay as and when due, and such Grantor shall reimburse the Administrative Agent on demand for any amounts paid by the Administrative Agent pursuant to this Section 8.

SECTION 9 Administrative Agent's Duties. Notwithstanding any provision contained in this Agreement, the Administrative Agent shall have no duty to exercise any of the

rights, privileges or powers afforded to it and shall not be responsible to any Grantor or any other Person for any failure to do so or delay in doing so. Beyond the exercise of reasonable care to assure the safe custody of Collateral in the Administrative Agent's possession and the accounting for moneys actually received by the Administrative Agent hereunder, the Administrative Agent shall have no duty or liability to exercise or preserve any rights, privileges or powers pertaining to the Collateral.

SECTION 10 Remedies.

(a) Remedies. During the continuance of any Event of Default, the Administrative Agent shall have, in addition to all other rights and remedies granted to it in this Agreement, the Credit Agreement or any other Loan Document, all rights and remedies of a secured party under the UCC and other applicable laws. Without limiting the generality of the foregoing, each Grantor agrees that:

(i) The Administrative Agent may peaceably and without notice enter any premises of any Grantor, take possession of any Collateral, remove or dispose of all or part of the Collateral on any premises of any Grantor or elsewhere, or, in the case of Equipment, render it nonfunctional, and otherwise collect, receive, appropriate and realize upon all or any part of the Collateral, and demand, give receipt for, settle, renew, extend, exchange, compromise, adjust, or sue for all or any part of the Collateral, as the Administrative Agent may determine.

(ii) The Administrative Agent may require any Grantor to assemble all or any part of the Collateral and make it available to the Administrative Agent, at any place and time designated by the Administrative Agent.

(iii) The Administrative Agent may use or transfer any of any Grantor's rights and interests in any Intellectual Property Collateral, by license, by sublicense (to the extent permitted by an applicable license) or otherwise, on such conditions and in such manner as the Administrative Agent may determine.

(iv) The Administrative Agent may secure the appointment of a receiver of the Collateral or any part thereof (to the extent and in the manner provided by applicable law).

(v) The Administrative Agent may withdraw (or cause to be withdrawn) any and all funds from any Deposit Accounts or securities accounts.

(vi) The Administrative Agent may sell, resell, lease, use, assign, transfer or otherwise dispose of any or all of the Collateral in its then condition or following any commercially reasonable preparation or processing (utilizing in connection therewith any of any Grantor's assets, without charge or liability to the Administrative Agent therefor) at public or private sale, by one or more contracts, in one or more parcels, at the same or different times, for cash or credit or for future delivery without assumption of any credit risk, all as the Administrative Agent deems advisable; provided, however, that such Grantor shall be credited with the net proceeds of sale only when such proceeds are finally collected by the Administrative Agent. The Administrative Agent and each of the Lenders shall have the right upon any such public sale, and, to the extent permitted by law, upon any such private sale, to purchase the

whole or any part of the Collateral so sold, free of any right or equity of redemption, which right or equity of redemption each Grantor hereby releases, to the extent permitted by law. The Administrative Agent shall give each Grantor such notice of any public or private sale as may be required by the UCC or other applicable law. Each Grantor recognizes that the Administrative Agent may be unable to make a public sale of any or all of the Pledged Collateral, by reason of prohibitions contained in applicable securities laws or otherwise, and expressly agrees that a private sale to a restricted group of purchasers for investment and not with a view to any distribution thereof shall be considered a commercially reasonable sale.

(b) Sale of Collateral; Administrative Agent's Obligations. Neither the Administrative Agent nor any Lender shall have any obligation to clean up or otherwise prepare the Collateral for sale. The Administrative Agent has no obligation to attempt to satisfy the Secured Obligations by collecting them from any other Person liable for them and the Administrative Agent and the Lenders may release, modify or waive any Collateral provided by any other Person to secure any of the Secured Obligations, all without affecting the Administrative Agent's or any Lender's rights against the Grantors. Each Grantor waives any right it may have to require the Administrative Agent or any Lender to pursue any third Person for any of the Secured Obligations. The Administrative Agent and the Lenders may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. The Administrative Agent may sell the Collateral without giving any warranties as to the Collateral. The Administrative Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. If the Administrative Agent sells any of the Collateral upon credit, the Grantors will be credited only with payments actually made by the purchaser, received by the Administrative Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Administrative Agent may resell the Collateral and the Grantors shall be credited only with the proceeds of such resale.

(c) License. For the purpose of enabling the Administrative Agent to exercise its rights and remedies under this Section 10 or otherwise in connection with this Agreement, each Grantor hereby grants to the Administrative Agent an irrevocable, non-exclusive and assignable license (exercisable without payment or royalty or other compensation to any Grantor) to use, license or sublicense any Intellectual Property Collateral.

(d) Proceeds Account. To the extent that any of the Secured Obligations may be contingent, unmatured or unliquidated at such time as there may exist an Event of Default (including with respect to undrawn amounts under any Letter of Credit or contingent amounts due under any Specified Swap Contract), the Administrative Agent may, at its election (or at the direction of the Majority Lenders), (i) retain the proceeds of any sale, collection, disposition or other realization upon the Collateral (or any portion thereof) in a special purpose non-interest-bearing restricted deposit account (the "Proceeds Account") created and maintained by the Administrative Agent for such purpose (which shall constitute a Deposit Account included within the Collateral hereunder) until such time as the Administrative Agent may elect to apply such proceeds to the Secured Obligations, and each Grantor agrees that such retention of such proceeds by the Administrative Agent shall not be deemed strict foreclosure with respect thereto; (ii) in any manner elected by the Administrative Agent, estimate the liquidated amount of any

such contingent, unmatured or unliquidated claims and apply the proceeds of the Collateral against such amount; or (iii) otherwise proceed in any manner permitted by applicable law. Each Grantor agrees that the Proceeds Account shall be a blocked account and that upon the irrevocable deposit of funds into the Proceeds Account, such Grantor shall not have any right of withdrawal with respect to such funds without the consent of the Administrative Agent. Accordingly, each Grantor irrevocably waives until the termination of the security interests granted under this Agreement in accordance with Section 24 the right, without the consent of the Administrative Agent, to make any withdrawal from the Proceeds Account and the right, without the consent of the Administrative Agent, to instruct the Administrative Agent to honor drafts against the Proceeds Account.

(e) Application of Proceeds. Subject to subsection 10(d), cash proceeds actually received from the sale or other disposition or collection of Collateral, and any other amounts received in respect of the Collateral the application of which is not otherwise provided for herein, shall be applied in the order specified in Section 9.03 of the Credit Agreement. Any surplus thereof which exists after payment and performance in full of the Secured Obligations shall be promptly paid over to the Grantors entitled thereto or otherwise disposed of in accordance with the UCC or other applicable law. Each Grantor shall remain liable to the Administrative Agent and other Secured Parties for any deficiency which exists after any sale or other disposition or collection of Collateral.

SECTION 11 Certain Waivers. Each Grantor waives, to the fullest extent permitted by law, (i) any right of redemption with respect to the Collateral, whether before or after sale hereunder, and all rights, if any, of marshalling of the Collateral or other collateral or security for the Secured Obligations; (ii) any right to require the Administrative Agent or the Lenders (a) to proceed against any Person, (b) to exhaust any other collateral or security for any of the Secured Obligations, (c) to pursue any remedy in the Administrative Agent's or any of the Lenders' power, or (d) to make or give any presentments, demands for performance, notices of nonperformance, protests, notices of protests or notices of dishonor in connection with any of the Collateral; and (iii) all claims, damages, and demands against the Administrative Agent or the Lenders arising out of the repossession, retention, sale or application of the proceeds of any sale of the Collateral.

SECTION 12 Notices. All notices or other communications hereunder shall be given in the manner and to the addresses specified in, and shall be effective as provided in, the Credit Agreement.

SECTION 13 No Waiver; Cumulative Remedies. No failure on the part of the Administrative Agent or any Lender to exercise, and no delay in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to the Administrative Agent or any Lender.

SECTION 14 Costs and Expenses; Indemnification; Other Charges.

(a) Costs and Expenses. The Grantors jointly and severally agree to pay on demand:

(i) the reasonable out-of-pocket costs and expenses of the Administrative Agent and any of its Affiliates, and the Administrative Agent's reasonable Attorney Costs, in connection with the negotiation, preparation, execution, delivery and administration of this Agreement, and any amendments, modifications or waivers of the terms thereof, any releases of Collateral, and the custody of the Collateral;

(ii) all reasonable title, appraisal (including the allocated costs of internal appraisal services), survey, audit, consulting, search, recording, filing and similar fees, costs and expenses incurred or sustained by the Administrative Agent or any of its Affiliates in connection with this Agreement or the Collateral; and

(iii) all costs and expenses of the Administrative Agent and its Affiliates, including all Attorney Costs, in connection with the enforcement or attempted enforcement of, and preservation of any rights or interests under, this Agreement, any out-of-court workout or other refinancing or restructuring or in any bankruptcy case, and the protection, sale or collection of, or other realization upon, any of the Collateral, including all expenses of taking, collecting, holding, sorting, handling, preparing for sale, selling, or the like, and other such expenses of sales and collections of Collateral, and any and all losses, costs and expenses sustained by the Administrative Agent and any Lender as a result of any failure by any Grantor to perform or observe its obligations contained herein.

(b) Indemnification. The Grantors jointly and severally hereby agree to indemnify, defend and hold the Administrative Agent Related Persons and each Secured Party and their respective Affiliates, directors, officers, employees, counsel, agents and attorneys-in-fact (collectively the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including Attorney Costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of this Agreement or other Loan Document to which any Grantor is a party or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, or (ii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "Indemnified Liabilities"), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by Holdings or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if Holdings or such Loan

Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement, except to the extent such damages are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, nor shall any Indemnitee have any liability for any indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Effective Date).

(c) Other Charges. The Grantors jointly and severally agree to indemnify the Administrative Agent and each of the other Secured Parties against and hold each of them harmless from any and all present and future stamp, transfer, documentary and other such taxes, levies, fees, assessments and other charges made by any jurisdiction by reason of the execution, delivery, performance and enforcement of this Agreement.

(d) Interest. Any amounts payable to the Administrative Agent or any Secured Party under this Section 14 or otherwise under this Agreement if not paid upon demand shall bear interest from the date of such demand until paid in full, at a fluctuating interest rate per annum at all times equal to the default rate of interest applicable to Loans specified in Section 2.08(c) of the Credit Agreement to the fullest extent permitted by applicable Law. Any such interest shall be due and payable upon demand and shall be calculated on the basis of a year of 365 or 366 days, as the case may be, and the actual number of days elapsed.

(e) Payment. Any amounts due under this Section 14 shall be payable within ten Business Days after demand therefor.

(f) Survival. The agreements in this Section 14 shall survive the termination of the Commitments and repayment of all Secured Obligations.

SECTION 15 Binding Effect. This Agreement shall be binding upon, inure to the benefit of and be enforceable by any Grantor, the Administrative Agent , each Secured Party, each Indemnified Person referred to in Section 14 and their respective successors and assigns and shall bind any Person who becomes bound as a debtor to this Agreement.

SECTION 16 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA, EXCEPT AS REQUIRED BY MANDATORY PROVISIONS OF LAW AND TO THE EXTENT THE VALIDITY OR PERFECTION OF THE SECURITY INTERESTS HEREUNDER, OR THE REMEDIES HEREUNDER, IN RESPECT OF ANY COLLATERAL ARE GOVERNED BY THE LAW OF A JURISDICTION OTHER THAN CALIFORNIA; PROVIDED THAT THE ADMINISTRATIVE AGENT SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW (INCLUDING THE BANKRUPTCY CODE).

SECTION 17 Forum Selection and Consent to Jurisdiction.

(a) SUBMISSION TO JURISDICTION. IN THE EVENT THE BANKRUPTCY COURT DOES NOT HAVE OR REFUSES TO EXERCISE JURISDICTION

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

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

(c) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02 OF THE CREDIT AGREEMENT. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

SECTION 18 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS

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

SECTION 19 Entire Agreement; Amendment. This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the Grantors, the Lenders and the Administrative Agent, and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof and shall not be amended except by the written agreement of the parties as provided in the Credit Agreement.

SECTION 20 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 21 Counterparts. This Agreement may be executed in one or more counterparts, and by different parties on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 22 Incorporation of Provisions of the Credit Agreement. To the extent the Credit Agreement contains provisions of general applicability to the Loan Documents, including any such provisions contained in Article XI thereof, such provisions are incorporated herein by this reference.

SECTION 23 No Inconsistent Requirements. Each Grantor acknowledges that this Agreement and the other Loan Documents may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and agrees that all such covenants, terms and provisions are cumulative and all shall be performed and satisfied in accordance with their respective terms.

SECTION 24 Termination; Releases. (i) Upon the termination of the Commitments of the Lenders, the surrender of any Letters of Credit issued for the account of any Grantor under the Credit Agreement, the termination of all Specified Swap Contracts and payment and performance in full of all Secured Obligations, the security interests granted under this Agreement shall terminate and the Administrative Agent shall promptly execute and deliver to each Grantor such documents and instruments reasonably requested by such Grantor as shall be necessary to evidence termination of all security interests given by any Grantor to the

Administrative Agent hereunder; (ii) concurrently with any permitted disposition of Collateral under the Loan Documents, the security interest hereunder shall automatically be released from the Collateral so disposed of; provided, however, that the security interest shall continue in the Proceeds thereof. Upon satisfaction of all conditions precedent to any permitted disposition set forth herein or in the other Loan Documents, at the expense of the Grantors, the Administrative Agent shall execute and deliver any releases or other documents reasonably requested by the relevant Grantor to accomplish or confirm the release of Collateral provided by this Section. Any such release shall specifically describe the portion of the Collateral to be released and shall be without recourse or warranty (other than a warranty that the Administrative Agent has not assigned its rights and interests to any other Person).

SECTION 25 Accession. Upon execution and delivery to the Administrative Agent of an Additional Guarantor Assumption Agreement by a Subsidiary of Holdings as provided in Section 7.13 of the Credit Agreement, effective as of the Additional Guarantor Accession Date applicable thereto, such Guarantor shall be deemed a Grantor party hereto, and this Agreement shall be deemed amended to include any amendments to the Schedules provided by such Subsidiary in connection therewith.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered in San Francisco, California, by their proper and duly authorized officers as of the day and year first above written.

GRANTORS:

BUILDING MATERIALS HOLDING CORPORATION

By _____
Name: Paul Street
Title: Chief Executive Officer

BMC WEST CORPORATION

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD CONSTRUCTION, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD NORTHERN CALIFORNIA, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

C CONSTRUCTION, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

TWF CONSTRUCTION, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

H.N.R. FRAMING SYSTEMS INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD SOUTHERN CALIFORNIA, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD NEVADA, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD ARIZONA, LLC

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD ILLINOIS, LLC

By _____
Name: Paul Street
Title: Chief Executive Officer

ILLINOIS FRAMING, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

ADMINISTRATIVE AGENT:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By _____

Name:

Title:

SCHEDULE 1
to the Security Agreement

1. **Locations of Chief Executive Office and other Locations, including of Collateral**

   a. Chief Executive Office and Principal Place of Business:

   b. Other locations where any Grantor conducts business or Collateral is kept:

2. **Locations of Books Pertaining to Rights to Payment**

3. **Jurisdiction of Organization**

4. **Trade Names and Trade Styles; Other Corporate, Trade or Fictitious Names; Etc.**

5. **Deposit Accounts**

6. **Investment Property**

7. **Instruments and Chattel Paper**

8. **Leased Equipment**

9. **Commercial Tort Claims**

10. **Letter-of-Credit Rights**

SCHEDULE 2
to the Security Agreement

1. Patents, Trademarks, Copyrights, Etc.

SCHEDULE 3
to the Security Agreement

1. Pledged LLC Interests. Interests in each limited liability company that is a Subsidiary as follows:

Subsidiary and Percentage Ownership Interest	Number of Units	Date of Issuance of Units

2. Pledged Partnership Interests. Interests in each general partnership, limited partnership, limited liability partnership or other partnership that is a Subsidiary as follows:

Subsidiary and Percentage Ownership Interest	Type of Partnership Interest (*e.g.*, general, limited)	Date of Issuance or Formation	Number of Units or Other Ownership Interests

3. Pledged Shares. Capital stock of each Subsidiary being represented by stock certificates as follows:

Subsidiary and Percentage Ownership Interest	Certificate No.	Certificate Date	No. and Class of Shares

4. Pledged Debt.

SCHEDULE 4
to the Security Agreement

Filing Offices

SCHEDULE 5
to the Security Agreement

SCHEDULE 6
to the Security Agreement

EXHIBIT G

FORM OF UPDATE CERTIFICATE

for the Reporting Period ended _____, 20__

TO: Wells Fargo Bank, National Association, as Administrative Agent

Reference is made to the Senior Secured Credit Agreement, dated as of [_____], 2009 (as extended, renewed, amended or restated from time to time, the "Credit Agreement"), by and among Holdings, as borrower, certain subsidiaries of Holdings, as guarantors, the financial institutions from time to time party thereto (the "Lenders") and Wells Fargo Bank, National Association, as issuing bank of certain letters of credit (in such capacity, the "L/C Issuer") and as administrative agent (in such capacity, the "Administrative Agent"). Capitalized terms used and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

This Update Certificate is provided pursuant to Section 7.02(g) of the Credit Agreement without limiting the ongoing reporting obligations of the Loan Parties under the Credit Agreement and the Security Agreement (as amended) with respect to the matters covered by this Update Certificate.

The undersigned hereby certifies to the Administrative Agent and the Lenders on behalf of each Loan Party that, during the fiscal quarter ended _____, 20_ (the "Reporting Period"), there has not been (i) any change in its corporate name or in its jurisdiction of organization, (ii) any change in the location of its chief executive office or (iii) the creation or acquisition of any Subsidiary by a Loan Party, except as follows:

1. Names.

(a) During the Reporting Period, each Loan Party identified below changed its corporate name as follows:

(b) During the Reporting Period, each Loan Party identified below changed its jurisdiction of organization as follows:

2. Locations. During the Reporting Period, each Loan Party identified below changed the location of its chief executive office as follows:

3. Subsidiaries. During the Reporting Period, each Loan Party identified below created or acquired the following direct or indirect Subsidiaries:

The undersigned hereby certifies to the Administrative Agent and the Lenders on behalf of each Loan Party that, during the Reporting Period, no new (i) Deposit Account or (ii) securities account with respect to any Investment Property (as such terms are defined in the Security Agreement) has been established, except as follows:

1. Deposit Accounts. During the Reporting Period, each Loan Party identified below established one or more Deposit Accounts as follows:

2. Securities Accounts. During the Reporting Period, each Loan Party identified below established one or more securities accounts as follows:

The undersigned hereby certifies to the Administrative Agent and the Lenders on behalf of each Loan Party that, during the Reporting Period, no new (i) Instruments, (ii) Chattel Paper, (iii) Letter-of-Credit Rights or (iv) Commercial Tort Claims (as such terms are defined in the Security Agreement) were acquired or otherwise arose, except as follows:

1. Instruments. During the Reporting Period, each Loan Party identified below acquired Instruments as follows:

2. Chattel Paper. During the Reporting Period, each Loan Party identified below acquired Chattel Paper as follows:

3. Letter-of-Credit Rights. During the Reporting Period, each Loan Party identified below acquired Letter-of-Credit Rights as follows:

4. Commercial Tort Claims. During the Reporting Period, each Loan Party identified below acquired rights in Commercial Tort Claims as follows:

Consistent with the provisions of revised Article 9 of the Uniform Commercial Code of the relevant jurisdiction(s), the Loan Parties hereby authorize the Administrative Agent to file (with or without a Loan Party's signature), at any time and from time to time thereafter, all financing statements, assignments, continuation financing statements, financing statement amendments, termination statements and other documents and instruments, in form reasonably satisfactory to the Administrative Agent, and take all other action, as the Administrative Agent may deem reasonable, to perfect and continue perfected, maintain the priority of or provide notice of any security interest of the Administrative Agent in the Collateral and to accomplish the purposes of the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Update Certificate on behalf of itself and each other Loan Party this _____ day of _____.

BUILDING MATERIALS HOLDING CORPORATION

By: _____
Name: _____
Title: _____

EXHIBIT H

FORM OF BORROWING BASE CERTIFICATE

[DATE]

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent
201 3rd Street, 8th Floor
San Francisco, CA 94103
Attention: Records Management MAC #A0187-084

Ladies and Gentlemen:

The undersigned Responsible Officer of Holdings, pursuant to Section 7.02(h) of that certain Senior Secured Credit Agreement, dated as of [_____], 2009 (as extended, renewed, amended or restated from time to time, the "Credit Agreement"), by and among Holdings, as borrower, certain subsidiaries of Holdings, as guarantors, the financial institutions from time to time party thereto (the "Lenders") and Wells Fargo Bank, National Association, as issuing bank of certain letters of credit (in such capacity, the "L/C Issuer") and as administrative agent (in such capacity, the "Administrative Agent"), hereby certifies, solely in such capacity, to the Administrative Agent that (1) the information attached hereto as Exhibit A is true and correct as of the effective date of the calculation set forth thereon and (2) no Event of Default has occurred and is continuing on such date.

All initially capitalized terms used in this Borrowing Base Certificate have the meanings set forth in the Credit Agreement unless specifically defined herein.

BUILDING MATERIALS HOLDING
CORPORATION

By: _____
Name: _____
Title: _____

EXHIBIT A

BORROWING BASE CALCULATION
(BUILDING MATERIALS HOLDING CORPORATION)

Building Materials Holding Corporation
Borrowing Base Certificate
As of _____, 20__

Borrowing Base	*From Schedule A*	_____
Less:		
Revolving Loan Balance		_____
Letters of Credit Outstanding		_____
Term Loan Balance		_____
Borrowing Base Availability		_____
Revolver Availability	*Lesser of (i) Borrowing Base and (ii) Aggregate Revolving Commitment*	_____
Less:		
Revolving Loan Balance		_____
Letters of Credit Outstanding		_____
Revolver Availability		_____

Schedule A

Building Materials Holding Corporation
Borrowing Base Certificate
As of _____, 20__

Gross Trade Accounts Receivable		_____	
Less: Ineligible Accounts and Applicable Reserves		_____	See Schedule A.1
Eligible Accounts		_____	
Advance Rate		70%	
Accounts Receivable Availability	A	_____	
Gross Inventory (excluding Truss & Millwork Inventory)		_____	
Less: Ineligible Inventory and Applicable Reserves		_____	See Schedule A.2
Eligible Inventory		_____	
Advance Rate		50%	
		_____	
Gross Truss & Millwork Inventory		_____	
Less: Ineligible Inventory and Applicable Reserves		_____	See Schedule A.3
Eligible Truss & Millwork Inventory		_____	
Advance Rate		25%	
		_____	
Inventory Availability	B	_____	
Appraised Value of Land & Buildings		_____	
Less: Dispositions from Prior Borrowing Base		_____	See Schedule A.4
Eligible Land & Buildings		_____	
Advance Rate		50%	
Land & Building Availability	C	_____	
Fixed Asset Orderly Liquidation Value		_____	
Advance Rate		75%	
Fixed Asset Availability	D	_____	

Other Reserves	E	
Borrowing Base	A+B+C+D-E=F	

EXHIBIT I

FORM OF ROLLING 13-WEEK CONSOLIDATED CASH FLOW FORECAST

EXHIBIT J

FORM OF ANNUAL FINANCIAL FORECAST AND RECONCILIATION

EXHIBIT D
[Term Loan Credit Agreement]

TERM LOAN CREDIT AGREEMENT

Dated as of [_____], 2009

among

BUILDING MATERIALS HOLDING CORPORATION,
as Borrower,

CERTAIN SUBSIDIARIES OF BORROWER,
as Guarantors,

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent,

and

THE FINANCIAL INSTITUTIONS PARTY HERETO,
as Lenders

CREDIT AGREEMENT

This TERM LOAN CREDIT AGREEMENT (this "Agreement"), dated as of [_____], 2009, is made and entered into by and among (i) BUILDING MATERIALS HOLDING CORPORATION, a Delaware corporation, as borrower ("Holdings"), (ii) certain subsidiaries of Holdings, as Guarantors (as defined herein), (iii) WELLS FARGO BANK, NATIONAL ASSOCIATION ("Wells Fargo"), as administrative agent for the Lenders (in such capacity, the "Administrative Agent"), and (iv) the various financial institutions from time to time party to this Agreement (collectively, the "Lenders").

RECITALS

A. WHEREAS, Holdings and its subsidiaries (collectively, the "Debtors") are debtors and debtors-in-possession in jointly administered cases, Case No. 09-12074 (collectively, the "Cases"), pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") in In re: Building Materials Holding Corporation, et al. under Chapter 11 of the Bankruptcy Code (as defined herein). The Debtors will be reorganized pursuant to the Reorganization Plan (as defined herein) and subject to the Confirmation Order (as defined herein).

B. WHEREAS, in partial satisfaction of the Lenders' Claims (as defined in the Reorganization Plan Documents (as defined herein)), and in accordance with the terms of the Reorganization Plan, the parties hereto desire to enter into this Agreement, evidencing a secured second-lien term loan facility in an original principal amount equal to the Original Loan Amount (as defined herein).

C. WHEREAS, the parties hereto are willing to enter into this Agreement upon the terms and subject to the conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the above Recitals and the mutual agreements, provisions and covenants contained herein, the parties hereto hereby agree as follows:

ARTICLE I.

DEFINITIONS

1.01 Certain Defined Terms. The following terms have the following meanings when used herein (including in the Recitals hereof):

"Acquisition" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (i) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (ii) the acquisition of in excess of 50% of the capital stock, partnership interests, membership interests or equity of any Person, or

otherwise causing any Person to become a Subsidiary, or (iii) a merger or consolidation or any other combination with another Person (other than a Person that is a Subsidiary).

"Additional Guarantor Accession Date" has the meaning specified in Section 6.12(a)(ii).

"Additional Guarantor Assumption Agreement" has the meaning specified in Section 6.12(a)(i).

"Administrative Agent" has the meaning specified in the preamble, and any successor Administrative Agent arising under Section 9.06.

"Administrative Agent Related Persons" means Wells Fargo and any successor Administrative Agent arising under Section 9.06, together with their respective Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

"Administrative Agent's Payment Office" means the address for payments set forth on Schedule 10.02 or such other address as the Administrative Agent may from time to time specify in the manner provided by Section 10.02.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, however, that no Lender or Affiliate thereof shall constitute an Affiliate of Holdings or any of its Subsidiaries.

"Agreement" means this Term Loan Credit Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the Intercreditor Agreement and the terms hereof.

"Alternative Base Rate" means, for any day, a fluctuating rate equal to the highest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Rate plus 0.50%, and (iii) 3.00%.

"Applicable Fee Amount" means, for any day, (i) cash pay fees equal to 2.50% per annum or (ii) during the PIK Period and at Holdings' election pursuant to Section 2.10(b), payment-in-kind fees equal to 2.50% per annum.

"Applicable Margin" means, for any day, (i) cash pay interest equal to 5.00% per annum or (ii) during the PIK Period and at Holdings' election pursuant to Section 2.09(e), payment-in-kind interest equal to 5.00% per annum.

"Approved Fund" means any Fund that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers or manages a Lender.

"Assignee Group" means two (2) or more Eligible Assignees that are Affiliates of one another or two (2) or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06), and accepted by the Administrative Agent, in substantially the form of Exhibit B or any other form approved by the Administrative Agent.

"Attorney Costs" means and includes all fees and disbursements of any law firm or other external counsel, the allocated cost of internal legal services and all disbursements of internal counsel.

"Bankruptcy Code" means the Bankruptcy Code of the United States (11 U.S.C. §101, et seq.).

"Bankruptcy Court" has the meaning specified in Recital A.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in New York City or San Francisco are authorized or required by law to close.

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

"Capital Lease" means, for any Person, any lease of property (whether real, personal or mixed) which, in accordance with GAAP, would, at the time a determination is made, be required to be recorded as a capital lease in respect of which such Person is liable as lessee.

"Cases" has the meaning specified in Recital A.

"Cash Balance" means, at any time, the aggregate Dollar amount of all cash and cash equivalents, as determined in accordance with GAAP, of Holdings and its Subsidiaries held in deposit accounts, securities accounts or otherwise, including any cash or cash equivalents held in a Cash Collateral Account without regard to how the account balance is accounted for on Holdings' financial statements.

"Cash Collateral Account", as further defined in the First Lien Credit Agreement, means that certain deposit account in which cash shall from time to time be deposited pursuant to the First Lien Loan Documents as additional collateral for Holdings' and the Guarantors' obligations thereunder and, on a subordinated basis, the Obligations.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty, (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation or application

thereof by any Governmental Authority or (iii) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"Change of Control" means:

(i) The consummation of a merger or consolidation of Holdings with or into another entity or any other corporate reorganization, if more than 50% of the combined voting power of the continuing or surviving entity's securities outstanding immediately after such merger, consolidation or other reorganization is owned by Persons who were not stockholders of Holdings holding more than 50% of the combined voting power of Holdings immediately prior to such merger, consolidation or other reorganization;

(ii) The sale, transfer or other disposition of 50% or more of Holdings' or any Guarantor's consolidated assets in a single transaction or series of related transactions, except as permitted under Section 7.02 or Section 7.03;

(iii) During any period of 12 consecutive calendar months, individuals who at the beginning of such period constituted the board of directors of Holdings (together with any new directors whose election by the board of directors of Holdings or whose nomination for election by the stockholders of Holdings was approved by a vote of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors then in office;

(iv) A transaction or series of transactions following which Holdings ceases to beneficially own, directly or indirectly, all of the combined voting power of the capital stock of each Guarantor, except as permitted under Section 7.02 or Section 7.03; or

(v) Any Person or two or more Persons acting together after the Effective Date as a "group" as such term is used in Section 13(d) of the Securities Exchange Act of 1934 and the rules promulgated thereunder, together with their respective Affiliates, become the beneficial owner, directly or indirectly, of more than 50% of the combined voting power of Holdings' capital stock.

The foregoing notwithstanding, a transaction shall not constitute a Change of Control if its sole purpose is to change the state of Holdings' incorporation or to create a holding company that will be owned in substantially the same proportions by the Persons who held Holdings' securities immediately prior to such transaction.

"Code" means the Internal Revenue Code of 1986.

"Collateral" means all tangible and intangible property and interests in property and proceeds thereof now owned or hereafter acquired by Holdings or any Guarantor in or upon which a Lien now or hereafter exists in favor of the Lenders, or the Administrative Agent on behalf of the Lenders and the other Secured Parties, on and after the Effective Date, whether under this Agreement or under any other Collateral Document.

"Collateral Documents" mean, collectively, (i) the Security Agreement, the Intellectual Property Security Agreements, the Mortgages and all other mortgages, deeds of trust, security agreements, patent and trademark assignments, lease assignments, control agreements and other similar agreements between Holdings or any Guarantor and the Lenders, or the Administrative Agent for the benefit of the Lenders and the other Secured Parties, now or hereafter delivered to the Lenders or the Administrative 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 Uniform Commercial Code or comparable law) against Holdings or any Guarantor as debtor in favor of the Lenders, or the Administrative Agent for the benefit of the Lenders and the other Secured Parties, as secured party, and (ii) any amendments, supplements, modifications, renewals, replacements, consolidations, substitutions and extensions of any of the foregoing.

"Compliance Certificate" means a certificate substantially in the form of Exhibit A.

"Confirmation Order" means a final non-appealable (other than with respect to any appeals reasonably consented to by the Administrative Agent) order entered by the Bankruptcy Court confirming the Reorganization Plan in accordance with Section 1129 of the Bankruptcy Code, in the form of the Confirmation Order approved by the Administrative Agent prior to the Effective Date, with any amendments, supplements and modifications to such approved form of Confirmation Order that are not materially adverse to the rights or interests of the Lenders or the Administrative Agent in the Administrative Agent's reasonable discretion.

"Contingent Obligation" means (without duplication), as to any Person, any direct or indirect liability of that Person, whether or not contingent, with or without recourse, (i) with respect to any Indebtedness, lease, dividend, letter of credit or other obligation (the "primary obligations") of another Person (the "primary obligor"), including any obligation of that Person (a) to purchase, repurchase or otherwise acquire such primary obligations or any security therefor, (b) to advance or provide funds for the payment or discharge of any such primary obligation, or to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (d) in connection with any synthetic lease or other similar off balance sheet lease transaction, or (e) otherwise to assure or hold harmless the holder of any such primary obligation against loss in respect thereof (each a "Guaranty Obligation"); (ii) with respect to any Surety Instrument issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings or payments; (iii) to purchase any materials, supplies or other property from, or to obtain the services of, another Person if the relevant contract or other related document or obligation requires that payment for such materials, supplies or other property, or for such services, shall be made regardless of whether delivery of such materials, supplies or other property is ever made or tendered, or such services are ever performed or tendered; (iv) in respect of Earn-Out Obligations; and (v) in respect of any Swap Contract. The amount of any Contingent Obligation shall, in the case of Guaranty Obligations, be deemed equal to the stated or determinable amount of the primary obligation in respect of which such Guaranty Obligation is made or, if not stated or if

indeterminable, the maximum reasonably anticipated liability in respect thereof, and in the case of other Contingent Obligations other than in respect of Swap Contracts, shall be equal to the maximum reasonably anticipated liability in respect thereof and, in the case of Contingent Obligations in respect of Swap Contracts, shall be equal to the Swap Termination Value.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, undertaking, contract, indenture, mortgage, deed of trust or other instrument, document or agreement to which such Person is a party or by which it or any of its property is bound.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Costs of Goods Sold" means, for any period, costs of goods sold of Holdings and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but exclusive of the costs of goods sold of the Wind-Down Business Units.

"Daily One Month LIBOR" means, for any day, the rate of interest equal to LIBOR then in effect for delivery for a one (1) month period.

"Debtors" has the meaning specified in Recital A.

"Default" means any Event of Default and any event or circumstance which, with the giving of notice, the lapse of time, or both, would constitute an Event of Default.

"Disposition" means the sale, lease, conveyance or other disposition of property, including the sale, spinoff or other disposition of any division, business unit, business line, captive insurer or cell captive insurer, other than sales or other dispositions expressly permitted under Sections 7.02(a) through 7.02(e); provided, however, that "Disposition" shall not include the issuance and sale of Equity Securities by Holdings.

"Disposition Value" means the aggregate net book value of all assets sold, transferred, leased or otherwise disposed of in any transaction, determined as of the date of such disposition or proposed disposition thereof.

"Dollars," "dollars" and "$" each mean lawful money of the United States.

"Earn-out Obligations" means any obligations, whether contingent or matured, to pay additional consideration in connection with the Acquisition by Holdings or any Subsidiary of any capital stock or assets of any Person.

"EBITDA" means, for any period, the sum of (a) Gross Profit for such period minus (b) Selling, General and Administrative Expenses for such period minus (c) Other Cash Expenses for such period minus (d) (to the extent included in determining Gross Profit pursuant to clause (i) of the definition thereof) the gain realized on the disposition of real estate or equipment for such period plus (e) (to the extent deducted in determining Gross Profit pursuant

to clause (ii) of the definition thereof or to the extent included in Selling, General and Administrative Expenses or Other Cash Expenses, and without duplication) (i) depreciation expense and amortization expense for such period; (ii) the loss realized on the disposition of real estate or equipment for such period; (iii) non-cash expenses or charges for such period (excluding any such non-cash expense or charge to the extent that it represents an accrual of or reserve for cash expenditures in any future period); (iv) non-recurring costs, expenses and charges for such period incurred in connection with the restructuring of Holdings' consolidated operations, with the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed); (v) costs, expenses and charges for such period associated with Permitted Acquisitions (in an aggregate amount consented to by the Administrative Agent, such consent not to be unreasonably withheld or delayed); and (vi) fees and costs of attorneys and other advisors and consultants for such period attributable to (A) the restructuring of Holdings' consolidated operations, with the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed), and (B) the negotiation, documentation, implementation and closing of the Reorganization Plan, the Loan Documents in existence as of the Effective Date and the First Lien Loan Documents in existence as of the Effective Date. Elements of EBITDA will be calculated for Holdings and its Subsidiaries on a consolidated basis for such period in accordance with GAAP, without any duplication or double-counting of amounts. For purposes of clarification, the parties agree that "EBITDA" shall in no event include any non-cash income (other than accruals of revenue in the Ordinary Course of Business).

"Effective Amount" means, with respect to any Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any prepayments or repayments thereof occurring on such date; provided that for purposes of determining if any mandatory prepayments are required to be made under Section 2.05, the Effective Amount shall be determined without giving effect to any such mandatory prepayments.

"Effective Date" means the "Effective Date" under and as defined in the Reorganization Plan.

"Eligible Assignee" means (i) a Lender; (ii) an Affiliate of a Lender; (iii) an Approved Fund; and (iv) any other Person (other than a natural person) approved by (a) the Administrative Agent, and (b) unless an Event of Default has occurred and is continuing, Holdings (each such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, "Eligible Assignee" shall not include Holdings, or any of Holdings' Affiliates or Subsidiaries.

"Environmental Claims" means all claims, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the environment or threat to public health, personal injury (including sickness, disease or death), property damage, natural resources damage, or otherwise alleging liability or responsibility for damages (punitive or otherwise), cleanup, removal, remedial or response costs, restitution, civil or criminal penalties, injunctive relief, or other type of relief, resulting from or based upon the presence, placement, discharge, emission or release (including intentional and unintentional, negligent and non-negligent, sudden or non-sudden, accidental or non-accidental, placement, spills, leaks, discharges, emissions or

releases) of any Hazardous Material at, in, or from any property, whether or not owned by Holdings or any Subsidiary.

"Environmental Laws" means all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authorities, in each case relating to environmental, health, safety and land use matters; including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Solid Waste Disposal Act, the Federal Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Emergency Planning and Community Right-to-Know Act, the California Hazardous Waste Control Law, the California Solid Waste Management, Resource, Recovery and Recycling Act, the California Water Code and the California Health and Safety Code.

"Equity Securities" of any Person shall mean (i) all common stock, preferred stock, participations, shares, partnership interests, limited liability company interests or other equity interests in and of such Person (regardless of how designated and whether or not voting or non-voting) and (ii) all warrants, options and other rights to acquire any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with Holdings within the meaning of section 414(b) or (c) of the Code (and sections 414(m) and (o) of the Code for purposes of provisions relating to section 412 of the Code).

"ERISA Event" means (i) a Reportable Event with respect to a Pension Plan; (ii) a withdrawal by Holdings or any ERISA Affiliate from a Pension 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) or a cessation of operations which is treated as such a withdrawal under section 4062(e) of ERISA; (iii) a complete or partial withdrawal by Holdings or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (iv) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (v) an event or condition which 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 Pension Plan or Multiemployer Plan; or (vi) the imposition of any liability under Title IV of ERISA, other than PBGC premiums due but not delinquent under section 4007 of ERISA, upon Holdings or any ERISA Affiliate.

"Event of Default" means any of the events or circumstances specified in Section 8.01.

"Event of Loss" means, with respect to any property, any of the following: (i) any loss, destruction or damage of such property; (ii) any pending or threatened institution of

any proceedings for the condemnation or seizure of such property or for the exercise of any right of eminent domain; or (iii) 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.

"Excess Cash Flow" means, for any period, (i) EBITDA for such period minus (ii) the sum of (A) Capital Expenditures for such period to the extent permitted under Section 7.20, except to the extent attributable to the incurrence of obligations under a Capital Lease, (B) taxes paid in cash during such period, (C) payments of interest and principal paid in cash during such period in respect of Indebtedness permitted under Section 7.05, excluding (1) Loans prepaid pursuant to Section 2.05 and (2) repayments or prepayments of Indebtedness financed by incurring other Indebtedness, (D) the amount, if any, by which net working capital increased during such period, and (E) other extraordinary, unusual or non-recurring cash expenditures (i.e., cash expenditures occurring outside of the Ordinary Course of Business) for such period, in each case, for Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP; provided, however, that each of (A) through (E) shall be as set forth in the financial statements supplied to the Administrative Agent pursuant to Section 6.01(a) if the applicable date range is a fiscal year of Holdings.

"Excess Real Estate" means, as of the Effective Date, the real property assets set forth on Schedule 1.01A.

"Exchange Act" means the Securities Exchange Act of 1934.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of Holdings hereunder, (i) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (ii) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which Holdings is located and (iii) in the case of a Foreign Lender (other than an assignee pursuant to a request by Holdings under Section 3.07), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.01(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from Holdings with respect to such withholding tax pursuant to Section 3.01(a).

"Fair Market Value" means, in respect of any asset, the price at which the asset would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers for the immediately preceding day, as

published by the Federal Reserve Bank of New York; provided that if no such rate is so published on any day, then the Federal Funds Rate for such day shall be the rate most recently published.

"Fee Letter" has the meaning specified in Section 2.10(a).

"First Lien Credit Agreement" means that certain Senior Secured Credit Agreement dated evenly herewith by and among Holdings, as borrower, the financial institutions party thereto, as lenders, and Wells Fargo, as administrative agent.

"First Lien Loan Documents" means the First Lien Credit Agreement and related documentation evidencing those certain senior secured credit facilities described in the Reorganization Plan, as such documents may be amended, restated, supplemented or otherwise modified from time to time in accordance with the Intercreditor Agreement and the terms of this Agreement.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which Holdings is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"FRB" means the Board of Governors of the Federal Reserve System, and any Governmental Authority succeeding to any of its principal functions.

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

"GAAP" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination, subject to Section 1.03.

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

"Gross Profit" means, for any period, (i) Total Sales for such period minus (ii) Costs of Goods Sold for such period.

"Guarantor" means each direct or indirect Subsidiary of Holdings that currently exists or is hereafter acquired or created and which is a party to a Guaranty in its capacity as a guarantor of any of the Obligations, and shall include each Subsidiary of Holdings party hereto;

provided, however, that in no event shall any Guarantor be released of its obligations under any Guaranty in the event such Guarantor ceases to be a Subsidiary, by operation of any disposition of the equity thereof or otherwise, except as permitted under this Agreement.

"Guaranty" means the guaranty of each Guarantor made pursuant to Section 10.10 and any other guaranty under any separate agreement executed by any Guarantor pursuant to which it guarantees any of the Obligations.

"Guaranty Obligation" has the meaning specified in the definition of "Contingent Obligation."

"Hazardous Materials" means all those substances that are regulated by, or which may form the basis of liability under, any Environmental Law, including any substance identified under any Environmental Law as a pollutant, contaminant, hazardous waste, hazardous constituent, special waste, hazardous substance, hazardous material, or toxic substance, or petroleum or petroleum derived substance or waste.

"Holdings" has the meaning specified in the preamble.

"Indebtedness" of any Person means, without duplication, (i) all indebtedness for borrowed money; (ii) 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 on ordinary terms and (a) not past due for more than 120 days or (b) if past due for more than 120 days, are being contested in good faith with any reserves as may be required by GAAP made therefor, but including all non-contingent Earn-Out Obligations); (iii) all reimbursement or payment obligations with respect to Surety Instruments (contingent or otherwise); (iv) 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; (v) 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 the 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); (vi) all obligations with respect to Capital Leases; (vii) all indebtedness referred to in clauses (i) through (vi) 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 contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness; and (viii) all Guaranty Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (i) through (vii) above. For all purposes of this Agreement, the Indebtedness of any Person shall include all recourse Indebtedness of any partnership or joint venture or limited liability company in which such Person is a general partner or a joint venturer or a member.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Independent Auditor" has the meaning specified in Section 6.01(a).

"Insolvency Proceeding" means, with respect to any Person, (i) any case, action or proceeding with respect to such Person before any court or other Governmental Authority

relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in either case undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

"Intellectual Property Security Agreement" has the meaning specified in the Security Agreement.

"Intercreditor Agreement" means that certain Intercreditor Agreement dated evenly herewith by and between Wells Fargo, in its capacity as First Lien Agent (as defined therein) with respect to the First Lien Loan Documents, and Wells Fargo, in its capacity as Second Lien Agent (as defined therein) with respect to the Loan Documents, as such Intercreditor Agreement may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and this Agreement.

"Interest Payment Date" means the last Business Day of each calendar month and the Maturity Date.

"Internal Control Event" means a material weakness in, or material fraud that involves management or other employees who have a significant role in, Holdings' internal controls over financial reporting, in each case relating to such financial reporting and as described in the Securities Laws.

"Inventory" means inventory (as that term is defined in the UCC).

"Investment" has the meaning specified in Section 7.04.

"IRS" means the Internal Revenue Service, and any Governmental Authority succeeding to any of its principal functions under the Code.

"L/C Draw Date" has the meaning specified in Section 2.02.

"L/C Loan" has the meaning specified in Section 2.02.

"L/C Loan Amount" means, with respect to any given drawing under a Prepetition Letter of Credit, the product of (i) the amount of such drawing, multiplied by (ii) the Prepetition Lender Recovery Percentage; provided, however, that the L/C Loan Amount with respect to the aggregate amount of all drawings under Prepetition Letters of Credit that occur on or after the Petition Date and prior to Effective Date (if any such drawings occur during such period of time) shall be reduced by that portion of the Sale Cash Collateral Excess Proceeds Account Effective Date Amount (as defined in the Reorganization Plan Documents) payable in cash to the Prepetition L/C Lenders pursuant to the Reorganization Plan in respect of such drawings.

"Lender" has the meaning specified in the preamble.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify Holdings and the Administrative Agent in the manner provided by Section 10.02.

"LIBOR" means the rate per annum (rounded upward, if necessary, to the nearest whole 1/8 of 1%) and determined pursuant to the following formula:

$$\text{LIBOR} = \frac{\text{Base LIBOR}}{100\% - \text{LIBOR Reserve Percentage}}$$

"Base LIBOR" means the rate per annum for United States dollar deposits quoted by Wells Fargo, for the purpose of calculating effective rates of interest for loans making reference to Daily One Month LIBOR, as the interbank market offered rate in effect from time to time for delivery of funds for one (1) month in amounts approximately equal to the principal amount of such loans. Holdings understands and agrees that Wells Fargo may base its quotation of the interbank market offered rate upon such offers or other market indicators of the interbank market as Wells Fargo in its discretion deems appropriate including, but not limited to, the rate offered for U.S. dollar deposits on the London interbank market.

"LIBOR Reserve Percentage" means the reserve percentage prescribed by the FRB (or any successor) for "Eurocurrency Liabilities" (as defined in "Regulation D", as amended, of the FRB), adjusted by Wells Fargo for expected changes in such reserve percentage during the applicable term of this Agreement.

"LIBOR Rate" means, for any day, a fluctuating rate equal to the higher of (i) Daily One Month LIBOR in effect on such day and (ii) 3.00%.

"Lien" means any security interest, mortgage, deed of trust, pledge, hypothecation, assignment, charge or deposit arrangement, encumbrance, lien (statutory or other) or preferential arrangement of any kind or nature whatsoever in respect of any property (including those created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a Capital Lease, any financing lease having substantially the same economic effect as any of the foregoing, or the authorized filing of any financing statement naming the owner of the asset to which such lien relates as debtor, under the Uniform Commercial Code or any comparable law) and any contingent or other agreement to provide any of the foregoing.

"Liquidity" means, at any time, a Dollar amount equal to the sum of:

(i) the Cash Balance at such time; plus

(ii) the maximum additional Revolving Loan amount that Holdings may borrow at such time pursuant to Section 2.01(b) of the First Lien Credit Agreement; plus

(iii) the aggregate amount at such time of (without duplication) the net proceeds that Holdings reasonably anticipates that Holdings and its Subsidiaries will receive from pending sales, or the remaining surrender value, of those certain life insurance policies related to the supplemental employee retirement plans of Holdings and its Subsidiaries in existence on the Petition Date (provided, however, that the add-back in this clause (iii) shall not exceed $16,300,000 in the aggregate for all periods and shall be zero from and after the date that is 180 days after the Effective Date); plus

(iv) the aggregate amount at such time of (without duplication) the net proceeds that Holdings reasonably anticipates that Holdings and its Subsidiaries will receive from the liquidation of those certain deferred compensation accounts of Holdings and its Subsidiaries in existence on the Petition Date (provided, however, that the add-back in this clause (iv) shall not exceed $1,300,000 in the aggregate for all periods and shall be zero from and after the date that is 180 days after the Effective Date); plus

(v) the aggregate amount at such time of (without duplication) those portions (if any) of the Prepetition Tax Liabilities that have been paid (as required by the Bankruptcy Court) by Holdings and its Subsidiaries, to the extent such payments were anticipated to have been made after such time based on a five (5) year level payment schedule commencing on the Effective Date (provided, however, that the add-back in this clause (v) shall not exceed $7,100,000 in the aggregate for all periods); plus

(vi) the aggregate amount at such time of all professional fees and costs of counsel and other advisors and consultants that have been paid by Holdings and its Subsidiaries from and after the Effective Date (in an aggregate amount consented to by the Administrative Agent, such consent not to be unreasonably withheld or delayed).

"Loan" means each term loan deemed made under Article II and shall include each Original Loan and any L/C Loan.

"Loan Date" means the Effective Date and any L/C Draw Date, as applicable.

"Loan Documents" means this Agreement, the Notes, each Guaranty, the Collateral Documents, the Fee Letter, the Intercreditor Agreement and all other documents delivered to the Administrative Agent or any Lender in connection herewith.

"Loan Party" means Holdings and each Guarantor.

"Majority Lenders" means two (2) or more Lenders whose outstanding Loans exceed 50% of the sum of the Effective Amount of all Loans.

"Material Adverse Effect" means (i) a material adverse change in, or a material adverse effect upon, the operations, business, properties or condition (financial or otherwise) of Holdings or Holdings and its Subsidiaries taken as a whole; (ii) a material impairment of the ability of the Loan Parties to perform under the Loan Documents; or (iii) a material adverse effect upon (a) the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document or (b) the perfection or priority of any Lien granted under the Collateral Documents.

"Maturity Date" means the fifth (5th) anniversary of the Effective Date.

"Minimum Amount" means $5,000,000 or any integral multiple of $1,000,000 in excess thereof.

"Mortgage" means any deed of trust, mortgage, assignment of rents or other document, in each case as amended, creating a Lien on real property or any interest in real property owned by any Loan Party.

"Mortgaged Property" means all real property set forth on Schedule 5.19 hereto, as such Schedule may be amended from time to time in accordance with Section 6.14.

"Multiemployer Plan" means a "multiemployer plan," within the meaning of section 4001(a)(3) of ERISA, to which Holdings or any ERISA Affiliate makes, is making, or is obligated to make contributions or, during the preceding three (3) calendar years, has made, or been obligated to make, contributions.

"Net Issuance Proceeds" means, as to any issuance of debt or equity by any Person, cash proceeds received or receivable by such Person in connection therewith, net of costs and expenses paid or incurred in connection therewith in favor of any Person not an Affiliate of such Person.

"Net Proceeds" means, as to any Disposition by a Person, proceeds in cash, checks or other cash equivalent financial instruments as and when received by such Person, net of: (i) the direct costs relating to such Disposition excluding amounts payable to such Person or any Affiliate of such Person, (ii) sale, use or other transaction taxes and capital gains taxes paid or payable by such Person as a direct result thereof, and (iii) amounts required to be applied to repay principal, interest and prepayment premiums and penalties on Indebtedness secured by a purchase money security interest on any asset which is the subject of such Disposition. "Net Proceeds" shall also include proceeds paid on account of any Event of Loss, net of (a) all money actually applied to repair or reconstruct the damaged property or property affected by the condemnation or taking, (b) all of the direct costs and expenses incurred in connection with the collection of such proceeds, award or other payments, and (c) any amounts retained by or paid to parties having superior rights to such proceeds, awards or other payments.

"NOL Carry-back Tax Refund" means any federal tax refund received by Holdings or any Subsidiary as a result of the expanded, five (5) year carry-back of net operating losses for tax year 2008 or 2009, as the case may be, in accordance with the Worker, Homeownership and Business Assistance Act of 2009 (HR 3548).

"Non-Excess Real Estate Disposition" means a Disposition other than a Disposition of Excess Real Estate.

"Non-Wholly-Owned Subsidiaries" means all direct and indirect Subsidiaries of Holdings which are not Wholly-Owned Subsidiaries.

"Note" means a promissory note executed by Holdings in favor of a Lender pursuant to Section 2.03(b) in substantially the form of Exhibit C.

"Obligations" means all advances to, and debts and liabilities of, any Loan Party arising under any Loan Document, or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party of any Insolvency Proceeding naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"OFAC" means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Operating Lease" means, for any Person, any lease of property (whether real, personal or mixed) which, in accordance with GAAP, would, at the time a determination is made, be required to be recorded as an operating lease in respect of which such Person is liable as lessee.

"Ordinary Course of Business" means, in respect of any transaction involving a Loan Party, the ordinary course of such Loan Party's business, and undertaken by such Loan Party in good faith and not for purposes of evading any covenant or restriction in any Loan Document.

"Organization Documents" means, (i) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (ii) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (iii) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Original Loan" has the meaning specified in Section 2.01.

"Original Loan Amount" means an amount equal to $135,000,000 less that portion of the Sale Cash Collateral Excess Proceeds Account Effective Date Amount (as defined in the Reorganization Plan Documents) payable in cash on account of Funded Lender Claims (as defined in the Reorganization Plan Documents) pursuant to the Reorganization Plan.

"Other Cash Expenses" means, for any period, cash expenses not otherwise included in Costs of Goods Sold or Selling, General and Administrative Expenses of Holdings and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but exclusive of (i) such cash expenses of the Wind-Down Business Units, (ii) tax expense and (iii) interest expense.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made

hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Participant" has the meaning specified in Section 10.06(d).

"PBGC" means the Pension Benefit Guaranty Corporation, or any Governmental Authority succeeding to any of its principal functions under ERISA.

"PCAOB" means the Public Company Accounting Oversight Board.

"Pension Plan" means a pension plan (as defined in section 3(2) of ERISA) subject to Title IV of ERISA which Holdings sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, or in the case of a multiple employer plan (as described in section 4064(a) of ERISA) has made contributions at any time during the immediately preceding five (5) plan years.

"Permitted Acquisition" means any Acquisition approved by the Administrative Agent in writing prior to the consummation of such Acquisition.

"Permitted Discretion" means a determination made in the exercise of reasonable (from the perspective of a secured lender) business judgment.

"Permitted Liens" has the meaning specified in Section 7.01.

"Permitted Refinancing Indebtedness" means, in respect of any Indebtedness, any refinancings, refundings, renewals or extensions thereof; provided that, except as otherwise permitted under the Intercreditor Agreement, (i) the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a premium or other amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any capitalized interest paid in kind and any existing commitments unutilized and available for borrowing thereunder and (ii) the direct or any contingent obligor with respect thereto is not changed, as a result of or in connection with such refinancing, refunding, renewal or extension; and provided further that, except as otherwise permitted under the Intercreditor Agreement, (i) such refinancing, refunding, renewing or extending Indebtedness has a final maturity that is no sooner than the final maturity of, and a weighted average life to maturity that is no shorter than the remaining weighted average life of, such Indebtedness, (ii) if such Indebtedness or any guaranties thereof are subordinated to the Obligations, such refinancing, refunding, renewing or extending Indebtedness and any guaranties thereof remain so subordinated on terms no less favorable to the Lenders, (iii) the material terms taken as a whole of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Loan Parties or the Lenders than the terms, taken as a whole, of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended, and (iv) the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate.

"Permitted Subordinated Debt" has the meaning specified in Section 7.05(i).

"Permitted Swap Obligations" means all obligations (contingent or otherwise) of Holdings or any Subsidiary existing or arising under Swap Contracts, provided that each of the following criteria is satisfied: (i) such obligations are (or were) entered into by such Person in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments or assets held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person in conjunction with a securities repurchase program not otherwise prohibited hereunder, and not for purposes of speculation or taking a "market view; and (ii) such Swap Contracts do not contain (a) any provision ("walk-away" provision) exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party, or (b) any provision creating or permitting the declaration of an event of default, termination event or similar event upon the occurrence of an Event of Default hereunder (other than an Event of Default under Section 8.01(a)).

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Petition Date" means June 16, 2009.

"Plan" means an employee benefit plan (as defined in section 3(3) of ERISA) which Holdings sponsors or maintains or to which Holdings makes, is making, or is obligated to make contributions and includes any Pension Plan.

"PIK Period" means the period commencing on Effective Date and ending on the second anniversary of the Effective Date.

"Pledged Collateral" means the "Pledged Collateral" as defined in the Security Agreement and shall include all products and Proceeds (as defined in the Security Agreement) of the Pledged Collateral.

"Prepetition Credit Agreement" means that certain Second Amended and Restated Credit Agreement dated as of November 10, 2006, by and among Holdings, as borrower, the financial institutions party thereto, as lenders, and Wells Fargo, as administrative agent, as amended by that certain First Amendment to Second Amended and Restated Credit Agreement dated as of February 29, 2008 and that certain Second Amendment to Second Amended and Restated Credit Agreement dated as of September 30, 2008.

"Prepetition Funded Debt" means [$_____].

"Prepetition Letter of Credit" means any letter of credit that was issued prior to the Petition Date pursuant to the Prepetition Credit Agreement and was outstanding as of the Petition Date, as such letter of credit may have been or may be renewed from time to time on or after the Petition Date, and as such letter of credit may have been or may be increased in amount pursuant to its terms or reduced in amount from time to time on or after the Petition Date.

"Prepetition L/C Lender" means any Lender that has a pro rata share of L/C Obligations (as defined in the Prepetition Credit Agreement) in connection with the Prepetition Letters of Credit.

"Prepetition Lender Recovery Percentage" means the percentage equivalent (expressed as a decimal, rounded to the ninth decimal place) of (i) $135,000,000, divided by (ii) the Prepetition Funded Debt.

"Prepetition Tax Liabilities" means those certain outstanding federal and state tax liabilities of Holdings and its Subsidiaries relating to periods prior to the Petition Date, which liabilities are approximately equal to $7,100,000 in the aggregate as of the date of this Agreement.

"Prime Rate" means at any time the rate of interest most recently announced within Wells Fargo at its principal office as its Prime Rate, with the understanding that the Prime Rate is one of Wells Fargo's base rates and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto, and is evidenced by the recording thereof after its announcement in such internal publication or publications as Wells Fargo may designate.

"Proportionate Share" means, as to any Lender at any time, the percentage equivalent (expressed as a decimal, rounded to the ninth decimal place) at such time of:

(a) in the case of the Original Loan Amount, the Effective Amount of such Lender's Original Loans, as set forth on a schedule maintained by the Administrative Agent, divided by the Effective Amount of all Original Loans;

(b) in the case of any L/C Loan Amount, the Effective Amount of such Lender's L/C Loans divided by the Effective Amount of all L/C Loans; and

(c) in all other cases, (i) the sum of (A) the Effective Amount of such Lender's Original Loans and (B) the Effective Amount of such Lender's L/C Loans, divided by (ii) the Effective Amount of all Loans.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

"Reorganization Plan" means the Chapter 11 plan of reorganization in respect of the Cases, in the form of the Reorganization Plan approved by the Administrative Agent prior to the Effective Date, with any amendments, supplements and modifications to such approved form of Reorganization Plan that are not materially adverse to the rights or interests of the Lenders or the Administrative Agent in the Administrative Agent's reasonable discretion or otherwise reasonably satisfactory to the Administrative Agent.

"Reorganization Plan Documents" means the Reorganization Plan together with all exhibits and other attachments thereto, as any of the foregoing shall be duly amended, modified or supplemented from time to time or any of the terms or conditions thereof waived.

"Reportable Event" means any of the events set forth in section 4043(c) of ERISA or the regulations thereunder, other than any such event for which the 30-day notice requirement under ERISA has been waived in regulations issued by the PBGC.

"Requirement of Law" means, as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

"Responsible Officer" means as to any Person, the chief executive officer or the president of such Person, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants, the chief financial officer or the treasurer of such Person, or any other officer having substantially the same authority and responsibility.

"Restricted Payments" has the meaning specified in Section 7.10.

"Sanctioned Entity" means (i) a country or a government of a country, (ii) an agency of the government of a country, (iii) an organization directly or indirectly controlled by a country or its government, (iv) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OFAC.

"Sanctioned Person" means a person named on the list of Specially Designated Nationals maintained by OFAC.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Secured Parties" has the meaning specified in the Security Agreement.

"Securities Laws" means the Securities Act of 1933, the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002, and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the PCAOB.

"Security Agreement" means that certain Security Agreement, dated as of the Effective Date, among Holdings, the Guarantors and the Administrative Agent for the benefit of the Lenders and the other Secured Parties in substantially the form of Exhibit E.

"Selling, General and Administrative Expenses" means, for any period, selling, general and administrative expenses of Holdings and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but exclusive of selling, general and administrative expenses of the Wind-Down Business Units.

"Solvent" means, with respect to any Person on a particular date, that, at fair valuations, the sum of such Person's assets is greater than all of such Person's debts.

"Subordinated Debt Documents" means any documents and instruments evidencing any Permitted Subordinated Debt.

"Subsidiary" of a Person means any corporation, association, partnership, limited liability company, joint venture or other business entity of which more than 50% of the voting stock, membership interests or other equity interests, is owned or controlled directly or indirectly

by the Person, or one or more of the Subsidiaries of the Person, or a combination thereof. Unless the context otherwise clearly requires, references herein to a "Subsidiary" refer to a Subsidiary of Holdings.

"Surety Instruments" means all letters of credit (including standby and commercial), banker's acceptances, bank guaranties, shipside bonds, surety bonds and similar instruments.

"Swap Contract" means any agreement, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, swaption, currency option or any other, similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any master agreement relating to or governing any or all of the foregoing.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (i) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (ii) for any date prior to the date referenced in clause (i) the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined by Holdings based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include any Lender).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Total Sales" means, for any period, total sales of Holdings and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but exclusive of total sales of the Wind-Down Business Units.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of California.

"Unfunded Pension Liability" means the excess of a Plan's benefit liabilities under section 4001(a)(16) of ERISA, over the current value of that Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to section 412 of the Code for the applicable plan year.

"United States" and "U.S." each means the United States of America.

"Update Certificate" means a certificate in substantially the form of Exhibit F.

"U.S. Subsidiary" means a Subsidiary that is located in and a resident of the United States.

"Wells Fargo" has the meaning specified in the preamble, or any successor thereto by merger.

"Wholly-Owned Subsidiary" means any Person in which (other than directors' qualifying shares required by law) 100% of the capital stock or similar equity interest of each class having ordinary voting power, and 100% of the capital stock or similar equity interest of every other class, in each case, at the time as of which any determination is being made, is owned, beneficially and of record, by Holdings, or by one or more of the other Wholly-Owned Subsidiaries, or both.

"Wind-Down Business Units" means those business units designated as such (i) on Schedule 1.01B and (ii) by Holdings from time to time after the Effective Date with the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed).

1.02 Other Interpretive Provisions.

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, and (vii) the term "documents" includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.

(b) 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."

(c) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(d) This Agreement and other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms. Unless otherwise expressly provided, any reference to any action of the Administrative Agent or the Lenders by way of consent, approval or waiver shall be deemed modified by the phrase "in its/their sole discretion."

(e) This Agreement and the other Loan Documents are the result of negotiations among the Administrative Agent, Holdings and the other parties, have been reviewed by counsel to the Administrative Agent, Holdings and such other parties, and are the products of all parties. Accordingly, they shall not be construed against the Lenders or the Administrative Agent merely because of the Administrative Agent's or Lenders' involvement in their preparation.

1.03 Accounting Principles.

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein shall be construed, and all financial computations required under this Agreement shall be made, in accordance with GAAP, consistently applied; provided, however, that if GAAP shall have been modified after the Effective Date and the application of such modified GAAP shall have a material effect on such financial computations (including the computations required for the purpose of determining compliance with the covenants set forth in Article VI), then such computations shall be made and such financial statements, certificates and reports shall be prepared, and all accounting terms not otherwise defined herein shall be construed, in accordance with GAAP as in effect prior to such modification, unless and until the Administrative Agent and Holdings shall have agreed upon the terms of the application of such modified GAAP.

(b) References herein to "fiscal year", "fiscal quarter" and "fiscal month" refer to such fiscal periods of Holdings.

ARTICLE II.

THE LOANS

2.01 Original Loans. On the terms and subject to the conditions of this Agreement, each Lender shall be deemed to have made a term loan (each an "Original Loan" and, collectively, the "Original Loans") to Holdings on the Effective Date denominated in Dollars, in a principal amount equal to such Lender's Proportionate Share of the Original Loan Amount. Any amount of the Loans repaid or prepaid may not be reborrowed.

2.02 L/C Loans. In the event, from time to time on or after the Petition Date, of any drawing under a Prepetition Letter of Credit by the beneficiary thereof, each Prepetition L/C Lender shall be deemed to have made an additional term loan to Holdings (each an "L/C Loan" and, collectively, the "L/C Loans") on the later to occur of the Effective Date or the date of such drawing (each, an "L/C Draw Date"), in an amount equal to such Prepetition L/C Lender's Proportionate Share of the L/C Loan Amount with respect to such drawing. Prior to the Maturity

Date, unless all of the Prepetition L/C Lenders waive compliance in writing, Holdings shall cause each of the Prepetition Letters of Credit then outstanding to be cancelled or refinanced such that the Prepetition L/C Lenders have no further liability or obligation thereafter with respect to such Prepetition Letters of Credit.

2.03 Loan Accounts.

(a) The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to Holdings and the interest and payments thereon. Any failure so to record or any error in doing so shall not, however, limit or otherwise affect the obligation of Holdings hereunder to pay any amount owing with respect to the Loans.

(b) Upon the request of any Lender made through the Administrative Agent, the Loans made by such Lender may be evidenced by one or more Notes, instead of or in addition to loan accounts. Each such Lender shall endorse on the schedules annexed to its Note(s) the date, amount and maturity of each Loan made by it and the amount of each payment of principal made by Holdings with respect thereto. Each such Lender is irrevocably authorized by Holdings to endorse its Note(s), and each Lender's record shall be conclusive absent manifest error; provided, however, that the failure of a Lender to make, or an error in making, a notation thereon with respect to any Loan shall not limit or otherwise affect the obligations of Holdings hereunder or under any such Note to such Lender.

2.04 Optional Prepayments of Loans. Subject to Section 3.04, Holdings may, at any time or from time to time, upon irrevocable written notice to the Administrative Agent provided prior to 11:00 a.m. (San Francisco time) on the day of such prepayment, ratably prepay Loans in whole or in part, in Minimum Amounts without penalty; provided, however, that such notice may state that it is conditioned upon the consummation of a refinancing or other transaction, in which case such notice may be revoked by Holdings (by written notice to the Administrative Agent on or prior to the specified prepayment date), subject to Section 3.04, if such condition is not satisfied. Such notice of prepayment shall specify the date and amount of such prepayment. The Administrative Agent will promptly notify the Lenders of its receipt of any such notice and of such prepayment. If such notice is given by Holdings, Holdings shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein, together with accrued interest to each such date on the amount prepaid and any amounts required pursuant to Section 3.04.

2.05 Mandatory Prepayments of Loans.

(a) Dispositions of Excess Real Estate. If Holdings or any Subsidiary shall at any time make or agree to make a Disposition of any Excess Real Estate, then (A) Holdings shall promptly notify the Administrative Agent of such Disposition (including notice of the amount of the estimated Net Proceeds to be received by Holdings or such Subsidiary in respect thereof), and (B) if after giving effect to such Disposition the Net Proceeds of all Dispositions (i.e., Non-Excess Real Estate Dispositions and Dispositions of Excess Real Estate)

consummated from and after the Effective Date are greater than $5,000,000 in the aggregate, and unless an Event of Default under and as defined in the First Lien Credit Agreement has occurred and is continuing at the time of such Disposition, then promptly upon, and in no event later than one (1) Business Day after, receipt by Holdings or such Subsidiary of the Net Proceeds of such Disposition, Holdings shall prepay the Loans in an amount equal to 100% of the Net Proceeds of such Disposition (or, if less, the amount by which such Net Proceeds when added to the Net Proceeds of all Dispositions consummated from and after the Effective Date exceed $5,000,000); provided, however, that with respect to any Non-Wholly-Owned Subsidiary, Holdings shall only be required to make the payments provided above in an amount equal to the ratable portion of the Net Proceeds received by such Non-Wholly-Owned Subsidiary based on Holdings' direct or indirect interest in such Non-Wholly-Owned Subsidiary.

(b) Equity Issuances. Unless waived by the Majority Lenders in each instance, upon the receipt of Net Issuance Proceeds in respect of the issuance and sale of any Equity Securities by Holdings or any Subsidiary, Holdings shall, within one (1) Business Day of Holdings' or such Subsidiary's receipt of the proceeds thereof, prepay, unless an Event of Default under and as defined in the First Lien Credit Agreement has occurred and is continuing at the time of such payment, the Loans in an amount equal to 50% of such Net Issuance Proceeds.

(c) Excess Cash Flow. Following the end of each fiscal year of Holdings, commencing with the fiscal year ending December 31, 2010, Holdings shall prepay, unless an Event of Default under and as defined in the First Lien Credit Agreement has occurred and is continuing at the time of such payment, the Loans in an aggregate amount equal to 100% of Excess Cash Flow for such fiscal year. Each prepayment pursuant to this Section 2.05(c) shall be made on or prior to the date that is five (5) Business Days after the date on which financial statements are delivered pursuant to Section 6.01(a) with respect to the fiscal year for which Excess Cash Flow is being calculated.

(d) Excess Tax Refunds. If Holdings or any Subsidiary shall at any time receive cash, checks or other cash equivalent financial instruments from any Governmental Authority in respect of federal or state tax refunds for any tax year (including a NOL Carry-back Tax Refund) (all such amounts, "Tax Refund Proceeds"), and if the amount of such Tax Refund Proceeds (or, if less, the portion thereof to which Borrower or the Lenders are entitled under the Reorganization Plan) exceeds the amount required to be paid by Holdings to the First Lien Agent (as defined in the Intercreditor Agreement) pursuant to Section 2.06(a)(v) of the First Lien Credit Agreement, then promptly upon, and in no event later than one (1) Business Day after, receipt by Holdings or such Subsidiary of such Tax Refund Proceeds, Holdings shall prepay the Loans in an amount equal to such excess.

(e) Holdings shall pay, together with each prepayment under this Section 2.05, accrued interest (other than interest paid in kind, except in respect of any prepayment in full of the Loans) on the amount of any Loans prepaid and any amounts required pursuant to Section 3.04.

2.06 L/C Catch Up. In the event from time to time of any drawing under a Prepetition Letter of Credit resulting in L/C Loans hereunder, which drawing occurs after the

Effective Date and after one or more payments or prepayments have been made pursuant to Section 2.04 or 2.05, 100% of all payments and prepayments made thereafter pursuant to Sections 2.04 and 2.05 (notwithstanding contrary allocations of such payments and prepayments set forth in such sections) shall be applied to repay such L/C Loans until the earlier to occur of (i) repayment in full of such L/C Loans or (ii) receipt by the Prepetition L/C Lenders of the amount of payments or prepayments that they would have received on account of all L/C Loans pursuant to Sections 2.04 and 2.05 had such drawing occurred prior to the Effective Date.

2.07 Optional Waiver of Prepayments. Any Lender may elect, by notice to the Administrative Agent at or prior to the time and in the manner specified by the Administrative Agent, prior to any mandatory prepayment required to be made by Holdings under Section 2.05, to decline all (but not a portion) of its pro rata share of such prepayment (such declined amounts, the "Declined Proceeds"). Any Declined Proceeds shall be offered to the Lenders not so declining such prepayment, with such Lenders having the right to decline any prepayment with Declined Proceeds at the time and in the manner specified by the Administrative Agent. Any Declined Proceeds rejected by such Lenders may be retained by Holdings.

2.08 Repayment of Loans. Holdings shall repay to the Administrative Agent for the account of the Lenders on the Maturity Date the aggregate principal amount of the Loans outstanding on such date.

2.09 Interest.

(a) Subject to Section 2.09(c) below, each Loan shall bear interest on the outstanding principal amount thereof from the applicable Loan Date at a rate per annum equal to the LIBOR Rate plus the Applicable Margin.

(b) (i) Accrued cash pay interest on each Loan shall be due and payable in arrears on each Interest Payment Date for such Loan, (ii) accrued payment-in-kind interest on each Loan shall capitalize on each Interest Payment Date, and (iii) all accrued and unpaid interest shall be due and payable in cash in arrears at final maturity of the Loans (whether at stated maturity, upon acceleration or otherwise) and upon payment (including prepayment) in full of the Loans; provided that (A) additional interest accrued pursuant to Section 2.09(c) shall be due and payable in cash upon demand of the Administrative Agent, and (B) in the event of any repayment or prepayment of any Loan, accrued cash pay interest on the principal amount repaid or prepaid shall be due and payable on the date of such repayment or prepayment; and provided, further, that in lieu of and in substitution for payment-in-kind interest, each Lender may, by irrevocable written election made to the Administrative Agent on or prior to the date that is 30 days after the Effective Date, elect to have its Loans accrue a daily fee at an equivalent rate per annum, it being understood that such accrued fee shall be payable by Holdings and shall capitalize at the same times and in the same manner as accrued payment-in-kind interest as described in clause (b)(ii) of this Section above. During the existence of any Event of Default, all interest accruing hereunder shall be payable in cash on demand of the Administrative Agent.

(c) Notwithstanding Section 2.09(a), (i) at the election of the Administrative Agent while any Event of Default exists or (ii) after acceleration, Holdings shall pay interest (after as well as before entry of judgment thereon to the extent permitted by law) on

the principal amount of all outstanding Loans and other Obligations of Holdings, at a rate per annum which is determined by adding 4.00% per annum to the Applicable Margin and, in the case of Obligations not subject to the Applicable Margin, at a rate per annum equal to the LIBOR Rate plus the Applicable Margin plus 4.00% per annum.

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

(e) Holdings may elect to treat the accrued interest due and payable with respect to each Loan on any given Interest Payment Date (i) as all cash pay interest in accordance with clause (i) of the definition of "Applicable Margin" or (ii) during the PIK Period, as a combination of cash pay interest and payment-in-kind interest in accordance with clause (ii) of such definition; provided, however, that Holdings may elect to pay any portion of such payment-in-kind interest in cash. During the PIK Period, Holdings shall provide notice of its election to the Administrative Agent at least three (3) Business Days before such Interest Payment Date (or by such other time acceptable to the Administrative Agent). During the PIK Period, if such notice is not timely provided, Holdings shall be deemed to have elected to treat such accrued interest as a combination of cash pay interest and payment-in-kind interest in accordance with clause (ii) of the definition of "Applicable Margin".

2.10 Fees.

(a) Agency Fees. Holdings shall pay the fees specified in that certain letter agreement between Holdings and Wells Fargo dated as of the Effective Date (the "Fee Letter").

(b) Letter of Credit Fee.

(i) Holdings shall pay to the Administrative Agent for the account of each of the Prepetition L/C Lenders in accordance with its respective Proportionate Share a letter of credit fee with respect to the Prepetition Letters of Credit equal to the rate per annum equal to the Applicable Fee Amount of the actual daily maximum amount available to be drawn of the outstanding Prepetition Letters of Credit, computed on a quarterly basis in arrears on the last Business Day of each calendar quarter based upon Prepetition Letters of Credit outstanding for that quarter as calculated by the Administrative Agent. Such letter of credit fees shall be due and payable as follows: (i) accrued cash pay letter of credit fees shall be payable quarterly in arrears on the last Business Day of each calendar quarter during which Prepetition Letters of Credit are outstanding, and (ii) accrued payment-in-kind letter of credit fees shall

capitalize on the last Business Day of each calendar quarter during which Prepetition Letters of Credit are outstanding, in each case commencing on the first such quarterly date to occur after the Effective Date, to the Maturity Date (or such later date upon which the outstanding Prepetition Letters of Credit shall expire), with the final payment to be made on the Maturity Date (or such later expiration date). Such fees are fully earned when due and, once paid, are non-refundable.

(ii) Notwithstanding Section 2.10(b)(i), (A) at the election of the Administrative Agent while any Event of Default exists or (B) after acceleration, Holdings shall pay a letter of credit fee (after as well as before entry of judgment thereon to the extent permitted by law) in cash on the actual daily maximum amount available to be drawn of the outstanding Prepetition Letters of Credit, at a rate per annum which is determined by adding 4.00% per annum to the rate otherwise then in effect hereunder for such Prepetition Letters of Credit.

(iii) Holdings may elect to treat the accrued letter of credit fees due and payable under Section 2.10(b)(i) with respect to each Prepetition Letter of Credit on the last Business Day of any given calendar quarter for which letter of credit fees are due therefor (i) as cash pay fees in accordance with clause (i) of the definition of "Applicable Fee Amount" or (ii) during the PIK Period, as payment-in-kind fees in accordance with clause (ii) of such definition; provided, however, that Holdings may elect to pay any portion of such payment-in-kind fees in cash. During the PIK Period, Holdings shall provide notice of its election to the Administrative Agent at least three (3) Business Days before the last Business Day of such calendar quarter (or by such other time acceptable to the Administrative Agent). During the PIK Period, if such notice is not timely provided, Holdings shall be deemed to have elected to treat such accrued letter of credit fees as payment-in-kind fees in accordance with clause (ii) of the definition of "Applicable Fee Amount".

2.11 Computation of Fees and Interest.

(a) All computations of fees and interest 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) Each determination of an interest rate by the Administrative Agent shall be conclusive and binding on Holdings and the Lenders in the absence of manifest error. The Administrative Agent will, at the request of Holdings or any Lender, deliver to Holdings or the Lender, as the case may be, a statement showing the quotations used by the Administrative Agent in determining any interest rate and the resulting interest rate.

2.12 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by Holdings shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by Holdings hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Payment Office in Dollars and in immediately available funds not

later than 11:00 a.m. (San Francisco time) on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Proportionate Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 11:00 a.m. (San Francisco time) shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by Holdings shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Payments by Holdings; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from Holdings prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that Holdings will not make such payment, the Administrative Agent may assume that Holdings has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if Holdings has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of the Administrative Agent to any Lender or Holdings with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

2.13 Sharing of Payments, Etc.

(a) Except as otherwise provided herein:

(i) Each Loan shall be made or shared among the Lenders pro rata according to their respective Proportionate Shares;

(ii) Each payment of principal on Loans shall be shared among the Lenders which made such Loans pro rata according to the respective unpaid principal amounts of such Loans then owed to such Lenders;

(iii) Each payment of interest on Loans shall be shared among the Lenders that made such Loans pro rata according to (A) the respective unpaid principal amounts of such Loans so made by such Lenders and (B) the dates on which such Lenders so made such Loans;

(iv) Each payment of any fees due in connection with any amendment hereto or any waiver of or forbearance from any Event of Default existing hereunder shall be shared among those Lenders consenting to such amendment, waiver or forbearance or as otherwise agreed to by such Lenders;

(v) Each payment of interest (other than interest on Loans) and fees shall be shared among the Lenders and the Administrative Agent owed the amount upon

which such interest or fee accrues pro rata according to (A) the respective amounts so owed such Lenders and the Administrative Agent and (B) the dates on which such amounts became owing to such Lenders and the Administrative Agent; and

(vi) All other payments under this Agreement and the other Loan Documents shall be for the benefit of the Person or Persons specified.

(b) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it or other obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and participations in such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section 2.13(b) shall not be construed to apply to (x) any payment made by Holdings pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to Holdings or any Subsidiary thereof (as to which the provisions of this Section 2.13(b) shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13(b) and will in each case notify the applicable Lenders following any such purchases or repayments.

2.14 Security and Guaranty.

(a) All Obligations under this Agreement, the Notes and all other Loan Documents shall be secured in accordance with the Collateral Documents.

(b) All Obligations of Holdings under this Agreement, each of the Notes and all other Loan Documents to which it is a party shall be unconditionally guaranteed by each Guarantor pursuant to its Guaranty.

ARTICLE III.

TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of Holdings hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if Holdings shall be required by applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) Holdings shall make such deductions and (iii) Holdings shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by Holdings. Without limiting the provisions of subsection (a) above, Holdings shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by Holdings. Holdings shall indemnify the Administrative Agent and each Lender, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent or such Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Holdings by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by Holdings to a Governmental Authority, Holdings shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which Holdings is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to Holdings (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by Holdings or the Administrative Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by Holdings or the Administrative Agent, shall deliver such other documentation prescribed by

applicable law or reasonably requested by Holdings or the Administrative Agent as will enable Holdings or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, in the event that Holdings is resident for tax purposes in the United States, any Foreign Lender shall deliver to Holdings and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of Holdings or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party;

(ii) duly completed copies of Internal Revenue Service Form W-8ECI;

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

(iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit Holdings to determine the withholding or deduction required to be made.

(f) Treatment of Certain Refunds. If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by Holdings or with respect to which Holdings has paid additional amounts pursuant to this Section, it shall pay to Holdings an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Holdings under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that Holdings, upon the request of the Administrative Agent or such Lender agrees to repay the amount paid over to Holdings (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Holdings or any other Person.

3.02 Illegality.

(a) If any Lender determines that the introduction of any Requirement of Law, or any change in any Requirement of Law, or in the interpretation or administration of any Requirement of Law, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make or maintain Loans priced by reference to LIBOR, then, on notice thereof by such Lender to Holdings through the Administrative Agent, and solely with respect to such Lender's Loans, the Alternative Base Rate shall apply instead of the LIBOR Rate and all references in this Agreement to "LIBOR Rate" shall instead be deemed to refer to "Alternative Base Rate" until such Lender notifies the Administrative Agent and Holdings that the circumstances giving rise to such determination no longer exist.

(b) Before giving any notice to the Administrative Agent under this Section 3.02, the affected Lender shall designate a different Lending Office if such designation will avoid the need for giving such notice or making such demand and will not, in the judgment of such Lender, be illegal or otherwise disadvantageous to such Lender.

3.03 Increased Costs.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Lender to any tax of any kind whatsoever with respect to this Agreement or any Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, Holdings will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time Holdings will pay to such

Lender such additional amount or amounts as will compensate such Lender or such Lender's or holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender delivered pursuant to Section 3.06 setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to Holdings shall be conclusive absent manifest error. Holdings shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that Holdings shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender notifies Holdings of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

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

(a) any failure by Holdings (for a reason other than the failure of such Lender to make a Loan) to prepay on the date or in the amount notified by Holdings; or

(b) any assignment of a Loan as a result of a request by Holdings pursuant to Section 10.11;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained.

For purposes of calculating amounts payable by Holdings to the Lenders under this Section 3.04, each Lender shall be deemed to have funded each Loan made by it by a matching deposit or other borrowing in the London interbank market for a comparable amount and for a comparable period, whether or not such Loan was in fact so funded.

3.05 Inability to Determine Rates. If the Administrative Agent determines that for any reason adequate and reasonable means do not exist for determining LIBOR with respect to any Loans, the Administrative Agent will promptly so notify Holdings and each Lender. Thereafter, until the Administrative Agent revokes such notice in writing, the Alternative Base Rate shall apply instead of the LIBOR Rate and all references in this Agreement to "LIBOR Rate" shall instead be needed to refer to "Alternative Base Rate".

3.06 Certificates of Lenders. Any Lender claiming reimbursement or compensation under this Article III shall deliver to Holdings (with a copy to the Administrative Agent) a certificate setting forth in reasonable detail the amount payable to such Lender hereunder, and the basis for calculation of such amount, and such certificate shall be conclusive and binding on Holdings in the absence of manifest error.

3.07 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.03, or Holdings is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.03, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Holdings hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.03, or if Holdings is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, Holdings may replace such Lender in accordance with Section 10.11.

3.08 Survival. The agreements and obligations of Holdings in this Article III shall survive the payment of all Obligations.

ARTICLE IV.

CLOSING OBLIGATIONS

On or before the Effective Date, Holdings shall perform or cause to be performed all of the obligations set forth in this Article IV.

4.01 Deliverables. Holdings shall deliver or cause to be delivered to the Administrative Agent all of the following, in form and substance reasonably satisfactory to the Administrative Agent:

(a) Credit Agreement. This Agreement executed by (i) Holdings and each direct or indirect Subsidiary of Holdings and (ii) the Administrative Agent;

(b) Resolutions; Incumbency.

(i) Copies of the resolutions of the board of directors of each Loan Party (or other similar enabling action of each Loan Party that is not a corporation)

authorizing the transactions contemplated hereby, certified as of the Effective Date by the Secretary or an Assistant Secretary of such Person; and

(ii) a certificate of the Secretary or Assistant Secretary of each Loan Party, dated as of the Effective Date, certifying the names, titles and true signatures of the officers of such Person authorized to execute, deliver and perform, as applicable, this Agreement and all other Loan Documents to be delivered by it hereunder;

(c) Financial Statements. The unaudited consolidated balance sheet of Holdings and its Subsidiaries as at October 31, 2009, and the related consolidated statements of income or operations and cash flows for the fiscal month and year-to-date period then ended, certified by a Responsible Officer of Holdings;

(d) Organization Documents; Good Standing. Each of the following documents:

(i) the Organization Documents of each Loan Party as in effect on the Effective Date, certified by the Secretary or Assistant Secretary of such Person as of the Effective Date; and

(ii) a good standing certificate, as of a recent date, for each Loan Party from the Secretary of State (or similar, applicable Governmental Authority) of its state of incorporation or formation and each state where its ownership, lease or operation of property or the conduct of its business requires such Loan Party be qualified or otherwise licensed to do business;

(e) Legal Opinion. An opinion of Gibson, Dunn & Crutcher LLP, counsel to the Loan Parties and addressed to the Administrative Agent and the Lenders, dated the Effective Date, in form and substance reasonably acceptable to the Administrative Agent;

(f) Payment of Fees. Evidence of payment by Holdings of all accrued and unpaid fees, costs and expenses to the extent then due and payable on the Effective Date, together with reasonable Attorney Costs of the Administrative Agent to the extent invoiced prior to or on the Effective Date, plus such additional amounts of reasonable Attorney Costs of the Administrative Agent as shall constitute the Administrative Agent's reasonable estimate of Attorney Costs incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude final settling of accounts between Holdings and the Administrative Agent); including any such costs, fees and expenses arising under or referenced in Section 2.10;

(g) Officer's Certificate. A certificate signed by a Responsible Officer of Holdings, dated as of the Effective Date, stating that:

(i) the representations and warranties contained in Article V are true and correct on and as of such date, as though made on and as of such date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date; and

(ii) no Default exists or would exist immediately following the Effective Date;

(h) Collateral Documents. The Collateral Documents, executed by each applicable Loan Party, in appropriate form for recording, where necessary, together with:

(i) copies of all UCC-l financing statements to be filed to perfect the security interests of the Administrative Agent for the benefit of the Lenders, or other evidence satisfactory to the Administrative Agent that there have been filed, registered or recorded all financing statements and other filings, registrations and recordings necessary and advisable to perfect the Liens of the Administrative Agent for the benefit of the Lenders in accordance with applicable law, including evidence of recordation of the Mortgages in respect of the Mortgaged Property (which may consist of a written or telephonic confirmation from the title insurance company) or issuance of gap coverage reasonably satisfactory to the Administrative Agent;

(ii) funds sufficient to pay any filing or recording tax or fee in connection with any and all UCC-1 financing statements and Mortgages;

(iii) title insurance policies (or a binding commitment therefor) for the Mortgages in respect of the Mortgaged Property (A) issued by a title insurance company of recognized standing satisfactory to the Administrative Agent, (B) on an ALTA lender's extended coverage policy, in an amount and form reasonably satisfactory to the Administrative Agent, (C) naming the Administrative Agent, for the ratable benefit of the Lenders, as the insured thereunder, (D) insuring that each Mortgage insured thereby creates a valid second priority Lien (subject and subordinate only to the Liens securing Holdings' obligations under the First Lien Credit Agreement) on the property covered by such Mortgage, subject to no other Liens, other than Permitted Liens, and to no other exceptions, other than those satisfactory to the Administrative Agent, and (E) containing such endorsements and affirmative coverage as the Administrative Agent may reasonably request; and

(iv) such surveys and appraisals and other documents and instruments in connection with the Mortgages as shall reasonably be deemed necessary by the Administrative Agent;

(i) Insurance Policies. Evidence that the Administrative Agent has been named as loss payee under all policies of casualty insurance under a standard lender's loss payable endorsement and as additional insured under all policies of liability insurance required in accordance with Section 6.06 and the Collateral Documents, together with a certificate of insurance as to all insurance coverage on the properties of Holdings and its Subsidiaries;

(j) Assignments of Trademarks. Evidence that such actions have been taken as the Administrative Agent deems necessary to ensure the Administrative Agent's and the Lenders' rights as secured party with respect to any trademarks of Holdings or any Guarantor party hereto;

(k) Notes. Notes executed by Holdings for the Lenders requesting Notes; and

(l) Reorganization. Evidence that (A) the Bankruptcy Court has entered the Confirmation Order, which shall not have been stayed, reversed, vacated or otherwise modified in any manner that is materially adverse to the rights or interests of the Lenders or the Administrative Agent or is otherwise satisfactory to the Administrative Agent, and (B) the Reorganization Plan has become effective.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES

Holdings represents and warrants to the Administrative Agent and each Lender that:

5.01 Corporate Existence and Power. Holdings and each of its Subsidiaries:

(a) is a corporation, limited liability company or partnership duly organized or formed, as the case may be, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation;

(b) has the power and authority and all governmental licenses, authorizations, consents and approvals (i) to own its assets and carry on its business and (ii) in the case of any Loan Party, to execute, deliver, and perform its obligations under the Loan Documents;

(c) is duly qualified, 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, license or good standing; and

(d) is in compliance with all Requirements of Law;

except, in each case referred to in clauses (b)(i), (c) or (d) of this Section 5.01, to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

5.02 Corporate Authorization; No Contravention. The execution, delivery and performance by each Loan Party of this Agreement and each other Loan Document to which such Loan Party is party, have been duly authorized by all necessary corporate, limited liability company or other applicable organizational action, and do not and will not:

(a) contravene the terms of any of that Person's Organization Documents;

(b) conflict with or result in any breach or contravention of, or the creation of any Lien under, any document evidencing any Indebtedness or any material 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; or

(c) violate any Requirement of Law.

5.03 Governmental Authorization. Except for the Confirmation Order, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority (except for recordings or filings in connection with the Liens granted to the Administrative Agent under the Collateral Documents and any filings that may be required under Securities Laws in connection with the enforcement of such Liens) is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document.

5.04 Binding Effect. This Agreement and each other Loan Document to which any Loan Party is a party constitute the legal, valid and binding obligations of such Loan Party, enforceable against such Loan Party in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

5.05 Litigation. Except as specifically disclosed in Schedule 5.05, there are no actions, suits, proceedings, claims or disputes pending, or to the best knowledge of Holdings, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, against Holdings or any of its Subsidiaries 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) are reasonably likely to result in an adverse result for Holdings or any of its Subsidiaries, which adverse result would reasonably be expected to have a Material Adverse Effect. 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 or any other Loan Document, or directing that the transactions provided for herein or therein not be consummated as herein or therein provided.

5.06 No Defaults. No Default exists or would result from the incurring of any Obligations by any Loan Party or from the grant or perfection of the Liens in favor of the Administrative Agent and the Lenders on the Collateral. Neither Holdings nor any Subsidiary is in default under or with respect to any Contractual Obligation in any respect which, individually or together with all such defaults, could reasonably be expected to have a Material Adverse Effect, or that would create an Event of Default under Section 8.01(e).

5.07 ERISA Compliance. Except as specifically disclosed in Schedule 5.07:

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state law. Each Plan which is intended to qualify under section 401(a) of the Code has received a favorable determination letter from the IRS and to the best knowledge of Holdings, nothing has occurred which would cause the loss of such qualification. Holdings and each ERISA Affiliate have made all required contributions to any Plan subject to section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the best knowledge of Holdings, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan which has resulted or would reasonably be expected to result in a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except as would not reasonably be expected to have a Material Adverse Effect, (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither Holdings nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under section 4007 of ERISA); (iv) neither Holdings nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under section 4219 of ERISA, would result in such liability) under section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither Holdings nor any ERISA Affiliate has engaged in a transaction that could be subject to section 4069 or 4212(c) of ERISA.

5.08 Title to Properties; Liens. Holdings and each Subsidiary have good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of their respective businesses, except for such defects in title as could not, individually or in the aggregate, have a Material Adverse Effect. The real and personal property of Holdings and its Subsidiaries is subject to no Liens, other than Permitted Liens.

5.09 Taxes. Holdings and its Subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against Holdings or any Subsidiary that would, if made, have a Material Adverse Effect.

5.10 Financial Condition.

(a) The unaudited balance sheet of Holdings and its Subsidiaries for the fiscal month ended October 31, 2009 and the related consolidated statements of income or operations and cash flows for the fiscal month and year-to-date period ended on that date:

(i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, subject to year end audit adjustments, quarterly accounting adjustments and the absence of footnotes;

(ii) are complete and accurate in all material respects and fairly present the financial condition of Holdings and its Subsidiaries as of the date thereof and results of operations and cash flows for the period covered thereby; and

(iii) except as specifically disclosed in Schedule 5.10, show all material Indebtedness and other material liabilities, direct or contingent, of Holdings and its consolidated Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Contingent Obligations;

(b) Since the Effective Date, there has not been, nor is it reasonably likely that there will be, any Material Adverse Effect; and

(c) Any pro forma financial statements of Holdings and its Subsidiaries furnished by Holdings to the Administrative Agent hereunder, and any financial projections furnished to the Administrative Agent hereunder (including the consolidated forecasted balance sheet and statements of income and cash flows of Holdings and its Subsidiaries delivered pursuant to Section 6.01(d)), were prepared by Holdings based on estimates and assumptions believed to be reasonable and fair in light of current conditions and facts known to Holdings on the date such pro forma financial statements or projections, as the case may be, were furnished to the Administrative Agent, and as of the date so furnished reflect, in the case of pro forma financial statements, Holdings good faith representation of the pro forma financial condition of Holdings and its Subsidiaries as of the date thereof and, in the case of financial projections, Holdings good faith and reasonable estimates of the future financial performance of Holdings and its Subsidiaries for the periods set forth therein.

5.11 Environmental Matters. Holdings conducts in the Ordinary Course of Business a review of the effect of existing Environmental Laws and existing Environmental Claims on its business, operations and properties, and as a result thereof Holdings has reasonably concluded that, except as specifically disclosed in Schedule 5.11, such Environmental Laws and Environmental Claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(a) Except as specifically disclosed in Schedule 5.11, the ongoing operations of Holdings and each of its Subsidiaries comply in all respects with all Environmental Laws, except such non-compliance which would not (if enforced in accordance with applicable law) result in liability in excess of $5,000,000 in the aggregate.

(b) Holdings and each of its Subsidiaries have obtained all licenses, permits, authorizations and registrations required under any Environmental Law ("Environmental Permits") and necessary for their respective ordinary course operations, all such Environmental Permits are in good standing, and Holdings and each of its Subsidiaries are in compliance with all material terms and conditions of such Environmental Permits, except to the extent the failure to obtain any such Environmental Permit or to maintain any such Environmental Permit in good standing or otherwise to be in compliance with the material terms thereof could not reasonably be expected to have a Material Adverse Effect.

(c) Except as specifically disclosed in Schedule 5.11, none of Holdings, any of its Subsidiaries or any of their respective property or operations is subject to any outstanding written order from or agreement with any Governmental Authority, nor subject to any judicial or docketed administrative proceeding, respecting any Environmental Law,

Environmental Claim or Hazardous Material that would reasonably be expected to give rise to a potential liability of Holdings and its Subsidiaries in excess of $5,000,000 in the aggregate.

(d) Except as specifically disclosed in Schedule 5.11, there are no Hazardous Materials or other conditions or circumstances existing with respect to any property of Holdings or any Subsidiary, or arising from operations prior to the Effective Date of Holdings or any of its Subsidiaries, that would reasonably be expected to give rise to Environmental Claims with a potential liability of Holdings and its Subsidiaries in excess of $5,000,000 in the aggregate for all such conditions, circumstances or property. In addition, (i) neither Holdings nor any Subsidiary has any underground storage tanks (A) that are not properly registered or permitted under applicable Environmental Laws, or (B) that are leaking or disposing of Hazardous Materials off-site, in each case, that would reasonably be expected to give rise to a potential liability of Holdings and its Subsidiaries in excess of $5,000,000 in the aggregate and (ii) Holdings and its Subsidiaries have notified all of their employees of the existence, if any, of any health hazard arising from the conditions of their employment and have met all notification requirements under Title III of CERCLA and all other Environmental Laws.

5.12 Collateral Documents.

(a) (i) The provisions of each of the Collateral Documents are effective (and, in the case of the Mortgages, upon recordation thereof) to create in favor of the Administrative Agent on behalf of the Lenders and the other Secured Parties, a legal, valid and enforceable second priority Lien (subject and subordinate only to the Liens securing Holdings' obligations under the First Lien Credit Agreement) in all right, title and interest of Holdings, or the applicable Loan Party (as the case may be), in the Collateral described therein to secure the Obligations, subject only to Permitted Liens, (ii) all filings and other actions necessary or desirable to perfect and maintain the perfection and such second priority status of such Liens have been duly made or taken and remain in full force and effect and (iii) each Intellectual Property Security Agreement has been delivered to the Administrative Agent when required hereby or by the Security Agreement for filing in the U.S. Patent and Trademark Office and the U.S. Copyright Office.

(b) All representations and warranties of Holdings and each of its Subsidiaries party thereto contained in the Collateral Documents are true and correct.

(c) Each Mortgage, when delivered in accordance with Section 6.14 and recorded in the appropriate real property records, (i) is effective to grant to the Administrative Agent for the benefit of the Lenders a legal, valid and enforceable deed of trust/mortgage Lien on all the right, title and interest of the mortgagor under such Mortgage in the Mortgaged Property described therein, (ii) was duly recorded in the real property records of the county listed on the schedule to such Mortgage and the mortgage recording fees and taxes in respect thereof were paid and compliance was otherwise had with the formal requirements of state law applicable to the recording of real estate mortgages generally, and (iii) creates a legal, valid, enforceable and perfected second priority Lien (subject and subordinate only to the Liens securing Holdings' obligations under the First Lien Credit Agreement) on the Mortgaged Property encumbered thereby, subject to no other Liens, except as noted in the title policies in respect thereof delivered to the Administrative Agent pursuant to Section 6.14 and Permitted

Liens. In addition, financing statements have been filed in the offices specified in each such Mortgage thereby creating a legal, valid, enforceable and perfected Lien on all right, title and interest of Holdings or such Subsidiary under such Mortgage in all personal property and fixtures which is covered by such Mortgage, subject to no other Liens, except as noted in the title policies delivered to the Administrative Agent pursuant to Section 6.14 and Permitted Liens.

5.13 Regulated Entities. None of Holdings, any Person Controlling Holdings, or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.14 No Burdensome Restrictions. Neither Holdings nor any Subsidiary is a party to or bound by any Contractual Obligation, or subject to any restriction in any Organization Document, or any Requirement of Law, which could reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 5.14 or otherwise permitted hereunder, neither Holdings nor any Subsidiary is a party to or bound by any Contractual Obligation which restricts, limits or prohibits the payment of dividends by any Subsidiary or the making of any other distribution in respect of such Subsidiary's capital stock or other equity interests.

5.15 Copyrights, Patents, Trademarks and Licenses, Etc. Holdings or its Subsidiaries own or are licensed or otherwise have the right to use all of the patents, trademarks, service marks, trade names, copyrights, contractual franchises, authorizations and other rights that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except for such conflicts as would not reasonably be expected to have a Material Adverse Effect. To the best knowledge of Holdings, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by Holdings or any Subsidiary infringes upon any rights held by any other Person, except for those infringements that would, individually or in the aggregate, not reasonably be expected to have a Material Adverse Effect. Except as specifically disclosed in Schedule 5.05, no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of Holdings, threatened, and no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code is pending or, to the best knowledge of Holdings, proposed, which, in either case, could reasonably be expected to have a Material Adverse Effect.

5.16 Subsidiaries. As of the Effective Date, Holdings has no Subsidiaries other than those U.S. Wholly-Owned Subsidiaries specifically disclosed in part (a) of Schedule 5.16 and has no equity investments in any other Person other than those specifically disclosed in part (b) of Schedule 5.16. All of the outstanding equity interests in the Subsidiaries of Holdings which are owned directly or indirectly by Holdings have been validly issued, are fully paid and nonassessable and are owned, as of the Effective Date, in the amounts specified on Part (a) of Schedule 5.16, and all such equity interests are owned free and clear of all Liens, other than Liens granted to the Administrative Agent or pursuant to the First Lien Loan Documents.

5.17 Insurance. The properties of Holdings and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of Holdings, in such amounts, with such deductibles and covering such risks as are deemed to be appropriate by Holdings in the exercise of its reasonable business judgment.

5.18 Full Disclosure. None of the representations or warranties made by any Loan Party in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of any Loan Party in connection with the Loan Documents (including the offering and disclosure materials delivered by or on behalf of any Loan Party to the Lenders prior to the Effective Date), contains any untrue statement of a material fact (when taken as a whole) or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered; provided, however, that with respect to information relating to Holdings' industry generally and not to Holdings or its Subsidiaries specifically, the Loan Parties' represent and warrant only that such information was derived from sources the Loan Parties believe to be reliable and the Loan Parties have no reason to believe at the time such information was furnished or provided to the Administrative Agent or any Lender that such information was misleading; and provided further that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, such Loan Party represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule (it being understood that forecasts and projections by their nature involve approximations and uncertainties).

5.19 Real Property. Schedule 5.19 contains a complete listing of all real property owned in fee simple by Holdings and each other Loan Party as of the Effective Date.

5.20 Labor Matters. There are no strikes, lockouts or slowdowns against Holdings or any Subsidiary pending or, to the best knowledge of Holdings, threatened that could reasonably be expected to result in a Material Adverse Effect.

5.21 Solvency. Immediately after the consummation of the transactions to occur on the Effective Date of the First Lien Credit Agreement and immediately following the making of the Loans made thereunder on the Effective Date thereof and after giving effect to the application of the proceeds of such Loans, (a) the fair value of the consolidated assets of Holdings, at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the consolidated property of Holdings will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) Holdings will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) Holdings will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Effective Date of the First Lien Credit Agreement.

ARTICLE VI.

AFFIRMATIVE COVENANTS

So long as any Loan or other Obligation shall remain unpaid or unsatisfied, unless the Majority Lenders waive compliance in writing:

6.01 Financial Statements. Holdings shall deliver to the Administrative Agent (which will promptly deliver to each Lender):

(a) as soon as available, but not later than 90 days after the end of each fiscal year (or, in the case of the fiscal year ending December 31, 2009, not later than 150 days after the end of such fiscal year), a copy of the audited consolidated balance sheet of Holdings and its Subsidiaries as at the end of such year and the related consolidated statements of income or operations, shareholders' equity, retained earnings and cash flows for such year, setting forth in each case in comparative form the figures for the previous fiscal year, and accompanied by the report and opinion of KPMG or another nationally recognized registered public accounting firm (the "Independent Auditor") which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception (provided, however, that the report and opinion accompanying the financial statements for fiscal year 2009 may be subject to a "going concern" or like qualification or exception) or any qualification or exception as to the scope of such audit and which shall state that such consolidated financial statements present fairly the financial position and the results of operations and cash flows of Holdings and its Subsidiaries for the periods indicated in conformity with GAAP applied on a basis consistent with prior years;

(b) as soon as available, but not later than 45 days after the end of each of the first three fiscal quarters of each fiscal year, a copy of the unaudited consolidated balance sheet of Holdings and its Subsidiaries as of the end of such quarter and the related consolidated statements of income and cash flows for the period commencing on the first day and ending on the last day of such quarter, and certified by a Responsible Officer of Holdings as being complete and accurate in all material respects and fairly presenting in accordance with GAAP (subject to fresh start accounting adjustments through March 31, 2010, year-end audit adjustments and the absence of footnotes), the consolidated financial position and the results of operations and cash flows of Holdings and its Subsidiaries;

(c) as soon as available, but not later than 30 days after the end of each fiscal month, (i) a copy of the unaudited consolidated balance sheet of Holdings and its Subsidiaries as of the end of such month and the related consolidated statements of income and cash flows for the period commencing on the first day and ending on the last day of such month and the year-to-date period ending on the last day of such month, and certified by a Responsible Officer of Holdings as being complete and accurate in all material respects and fairly presenting in accordance with GAAP (subject to fresh start accounting adjustments through March 31, 2010, year-end audit adjustments, quarterly accounting adjustments and the absence of footnotes) the consolidated financial position and the results of operations and cash flows of Holdings and its Subsidiaries, (ii) a management commentary in respect of the financial condition and results of operations of Holdings and its Subsidiaries for such fiscal month for which financial statements have then been delivered in accordance with the preceding clause (i), which management commentary shall be accompanied by a comparison of the consolidated statements of income and cash flows for such fiscal month versus the forecasted consolidated income and cash flows for such fiscal month last delivered pursuant to the following clause (iii) or Section 6.01(d), as the case may be, and (iii) a rolling 13-week consolidated cash flow forecast, updated monthly, for Holdings and its Subsidiaries, which forecast shall (A) state the assumptions used in the preparation thereof, (B) be otherwise substantially in the form attached

hereto as Exhibit G, and (C) be accompanied by a certificate of a Responsible Officer of Holdings certifying that such cash flow forecast represents Holdings' reasonable good faith estimates and assumptions as to future performance, which Holdings believes to be fair and reasonable as of the time made in light of then current and reasonably foreseeable business conditions (it being understood that forecasts and projections by their nature involve approximations and uncertainties);

(d) as soon as available, but not later than 90 days after the end of each fiscal year (or, in the case of the fiscal year ending December 31, 2009, not later than 60 days after the end of such fiscal year) or as more frequently requested by the Administrative Agent from time to time, an updated consolidated financial forecast for Holdings and its Subsidiaries for the then current fiscal month and each fiscal month thereafter through the Maturity Date (provided, however, that such consolidated financial forecast may be presented on a quarterly basis for all or any portion of such period with the consent of the Administrative Agent), including forecasted consolidated balance sheets and consolidated statements of income and cash flows of Holdings and its Subsidiaries, which forecast shall (i) state the assumptions used in the preparation thereof, (ii) be accompanied by a comparison of Holdings' actual financial results versus the consolidated financial forecast last delivered by Holdings to the Administrative Agent and the Lenders, together with a statement of a Responsible Officer of Holdings explaining in reasonable detail any significant variances therein, (iii) be accompanied by a certificate of a Responsible Officer of Holdings certifying that such financial projections represent Holdings' reasonable good faith estimates and assumptions as to future performance, which Holdings believes to be fair and reasonable as of the time made in light of then current and reasonably foreseeable business conditions (it being understood that forecasts and projections by their nature involve approximations and uncertainties), and (iv) be otherwise substantially in the form attached hereto as Exhibit H; and

(e) promptly, such other financial statements and information as the Administrative Agent, at the request of any Lender, may from time to time request.

6.02 Certificates; Other Information. Holdings shall furnish to the Administrative Agent (which shall promptly furnish to each Lender), in form and detail satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a certificate of the Independent Auditor stating that in the course of the regular examination of the financial statements of Holdings and its Subsidiaries, which examination was conducted by such accounting firm in accordance with GAAP, nothing has come to the attention of the Independent Auditor which would cause it to believe that an Event of Default under Section 7.18 has occurred and is continuing, or if, in the opinion of the Independent Auditor, an Event of Default under Section 7.18 has occurred and is continuing, a statement as to the nature thereof (which certificate may be limited to the extent required by accounting rules or guidelines);

(b) concurrently with the delivery of the financial statements referred to in Section 6.01(a), Section 6.01(b) and Section 6.01(c), a completed Compliance Certificate certified by a Responsible Officer of Holdings;

(c) promptly, copies of all financial statements and reports that Holdings sends to its shareholders generally;

(d) promptly upon sending or receipt, copies of any and all management letters and correspondence relating to management letters, sent or received by Holdings or any of its Subsidiaries to or from the Independent Auditor;

(e) at the same time it is provided to the holders of any Permitted Subordinated Debt, any notices and other information provided to such holders pursuant to the reporting and notices provisions of the Subordinated Debt Documents (without duplication of any notices, financial statements and other information required hereunder);

(f) within 20 days of the Administrative Agent's request therefor, (i) a current list of the names, addresses and outstanding debts of all account debtors, and (ii) a current list of the names, addresses and outstanding amounts due all creditors of Holdings or any Subsidiary;

(g) concurrently with the delivery of the financial statements referred to in Section 6.01(a) and Section 6.01(b), a completed Update Certificate, certified by a Responsible Officer of Holdings;

(h) promptly upon the request from time to time of the Administrative Agent, a status report on (i) any federal or state tax audits of Holdings or any of its Subsidiaries, (ii) the filing of any federal or state tax returns, (iii) any anticipated tax refunds, tax abatements or other credits and (iv) such other tax-related matters as the Administrative Agent may reasonably request;

(i) promptly upon the reasonable request of the Administrative Agent from time to time, a report of all outstanding Surety Instruments;

(j) promptly, such additional information regarding the business, financial or corporate affairs of Holdings or any Subsidiary as the Administrative Agent, at the request of any Lender, may from time to time reasonably request; and

(k) not later than 30 days after the end of each fiscal month, a monthly status report on the Wind-Down Business Units, which report shall address such matters as may be reasonably requested from time to time by the Administrative Agent and shall otherwise be in a form satisfactory to the Administrative Agent.

6.03 Notices. Holdings shall promptly notify the Administrative Agent (which shall promptly notify each Lender):

(a) of the occurrence of any Default, and of the occurrence or existence of any event or circumstance that foreseeably will become a Default;

(b) of the occurrence of any event of default under the First Lien Credit Agreement;

(c) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) any breach or non-performance of, or any default under, any Contractual Obligation of Holdings or any of its Subsidiaries which has resulted or could result in a Material Adverse Effect; and (ii) any dispute, litigation, investigation, proceeding or suspension which may exist at any time between Holdings or any of its Subsidiaries and any Governmental Authority (including under or pursuant to any Environmental Laws) which has resulted or could reasonably be expected to result in a Material Adverse Effect;

(d) of the commencement of, or any material development in, any litigation or proceeding affecting Holdings or any Subsidiary (i) which, if adversely determined, would reasonably be expected to have a Material Adverse Effect, or (ii) in which the relief sought is an injunction or other stay of the performance of this Agreement or any Loan Document;

(e) upon, but in no event later than ten (10) days after, becoming aware of (i) any and all material enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Holdings or any Subsidiary or any of their respective properties pursuant to any applicable Environmental Laws, (ii) all other Environmental Claims, and (iii) any environmental or similar condition on any real property adjoining or in the vicinity of the property of Holdings or any Subsidiary that could reasonably be anticipated to cause such property or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use of such property under any Environmental Laws;

(f) of the occurrence of any of the following events affecting Holdings or any ERISA Affiliate (but in no event more than ten (10) days after such event), and deliver to the Administrative Agent and each Lender a copy of any notice with respect to such event that is filed with a Governmental Authority and any notice delivered by a Governmental Authority to Holdings or any ERISA Affiliate with respect to such event:

(i) an ERISA Event;

(ii) a material increase in the Unfunded Pension Liability of any Pension Plan;

(iii) the adoption of, or the commencement of contributions to, any Plan subject to section 412 of the Code by Holdings or any ERISA Affiliate; or

(iv) the adoption of any amendment to a Plan subject to section 412 of the Code, if such amendment results, or would reasonably be expected to result, in a material increase in contributions or Unfunded Pension Liability;

(g) of any material change in accounting policies or financial reporting practices by Holdings or any of its consolidated Subsidiaries;

(h) upon the request from time to time of the Administrative Agent, the Swap Termination Values, together with a description of the method by which such amounts

were determined, relating to any Swap Contracts to which Holdings or any of its Subsidiaries is party;

(i) the occurrence of any Event of Loss exceeding $5,000,000; and

(j) of the occurrence or existence of any Internal Control Event.

Each notice under this Section 6.03 shall be accompanied by a written statement by a Responsible Officer of Holdings setting forth details of the occurrence referred to therein, and stating what action Holdings or any affected Subsidiary proposes to take with respect thereto and at what time. Each notice under Section 6.03(a) shall describe with particularity any and all clauses or provisions of this Agreement or other Loan Document that have been (or foreseeably will be) breached or violated.

6.04 Preservation of Corporate Existence, Etc. Holdings shall, and shall cause each Subsidiary to, except in connection with transactions permitted by Section 7.03 and sales of assets permitted by Section 7.02:

(a) preserve and maintain in full force and effect its (i) legal existence and (ii) good standing under the laws of its state or jurisdiction of incorporation or formation;

(b) preserve and maintain in full force and effect all governmental rights, privileges, qualifications, permits, licenses and franchises necessary or desirable in the normal conduct of its business;

(c) use reasonable efforts, in the Ordinary Course of Business, to preserve its business organization and goodwill; and

(d) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non preservation of which could reasonably be expected to have a Material Adverse Effect.

6.05 Maintenance of Property. Holdings shall, and shall cause each Subsidiary to, maintain, and preserve all its property which is used or useful in its business in good repair and condition (ordinary wear and tear excepted), and from time to time make necessary repairs, renewals and replacements thereto so that its property shall be preserved and maintained consistent with Holdings' or such Subsidiary's past practice.

6.06 Insurance. In addition to insurance requirements set forth in the Collateral Documents, Holdings shall maintain, and shall cause each Subsidiary to maintain, with financially sound and reputable independent insurers, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, including workers' compensation insurance, public liability and property and casualty insurance. All such insurance shall name the Administrative Agent as loss payee and as additional insured, for the benefit of the Lenders, as their interests may appear. All casualty and key man insurance maintained by Holdings shall name the Administrative Agent as loss payee and all liability insurance shall name the Administrative

Agent as additional insured for the benefit of the Lenders, as their interests may appear. Upon the request of the Administrative Agent, Holdings shall furnish the Administrative Agent, with sufficient copies for each Lender, at reasonable intervals a certificate of a Responsible Officer of Holdings (and, if requested by the Administrative Agent, any insurance broker of Holdings) setting forth the nature and extent of all insurance maintained by Holdings and its Subsidiaries in accordance with this Section 6.06 or any Collateral Documents (and which, in the case of a certificate of a broker, were placed through such broker).

6.07 Payment of Obligations. Holdings shall, and shall cause each of its Subsidiaries to, pay and discharge as the same shall become due and payable, all their respective obligations and liabilities, including:

(a) all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings and adequate reserves in accordance with GAAP are being maintained by Holdings or such Subsidiary;

(b) all lawful claims which, if unpaid, would by law become a Lien upon its property not constituting a Permitted Lien; and

(c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness (except where failure to do so would not otherwise constitute a Default hereunder).

6.08 Compliance with Laws. Holdings shall comply, and shall cause each Subsidiary to comply, with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business (including the Federal Fair Labor Standards Act), except such as may be contested in good faith or as to which a bona fide dispute may exist or where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.09 Compliance with ERISA. Holdings shall, and shall cause each of its ERISA Affiliates to: (a) maintain each Plan in compliance with the applicable provisions of ERISA, the Code and other federal or state law except for any noncompliance that would not reasonably be expected to have a Material Adverse Effect; (b) cause each Plan which is qualified under section 401(a) of the Code to maintain such qualification; and (c) make all required contributions to any Plan subject to section 412 of the Code.

6.10 Inspection of Property and Books and Records.

(a) Holdings shall, and shall cause each Subsidiary 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 Holdings and such Subsidiary. Holdings shall permit, and shall cause each Subsidiary to permit, representatives and independent contractors of the Administrative Agent or any Lender to visit and inspect any of their respective properties, to examine their respective corporate, financial, operating and other records, and make copies thereof or abstracts therefrom, and to discuss their respective affairs, finances and accounts with their respective directors, officers, and independent public accountants, all at the expense of Holdings and at such

reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to Holdings; provided, however, when an Event of Default exists the Administrative Agent or any Lender may do any of the foregoing at any time during normal business hours and without advance notice.

(b) Without limiting the generality of Section 6.10(a), as frequently as the Administrative Agent may deem appropriate, Holdings will provide Administrative Agent or its designees access to Holdings' and its Subsidiaries' records and premises and allow auditors or appraisers to conduct audits and appraisals of Holdings' and its Subsidiaries' property, plant, equipment, inventory and accounts. Holdings shall pay all reasonable fees and expenses of each such audit and appraisal.

6.11 Environmental Laws.

(a) Holdings shall, and shall cause each Subsidiary to, conduct its operations and keep and maintain its property in compliance with all Environmental Laws, except to the extent the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

(b) Upon the written request of the Administrative Agent, Holdings shall submit and cause each of its Subsidiaries to submit, to the Administrative Agent, at Holdings' sole cost and expense, at reasonable intervals, a report providing an update of the status of any environmental, health or safety compliance, hazard or liability issue identified in any notice or report required pursuant to Section 6.03(e), that could, individually or in the aggregate, result in liability in excess of $1,000,000.

6.12 Additional Guarantors.

(a) If Holdings shall incorporate, create or acquire any direct or indirect Subsidiary, Holdings shall cause such Subsidiary to furnish promptly, but in no event more than 30 days thereafter (or, in the case of Section 6.12(a)(iv), within 90 days) or, in each case, such longer period as the Administrative Agent may approve in its discretion, each of the following to the Administrative Agent:

(i) a duly executed notice and agreement in substantially the form of Exhibit D (an "Additional Guarantor Assumption Agreement");

(ii) (A) copies of the resolutions of the board of directors (or equivalent governing body) of such Subsidiary approving and authorizing the execution, delivery and performance by such Subsidiary of its Additional Guarantor Assumption Agreement and this Agreement, certified as of the date of such Additional Guarantor Assumption Agreement (the "Additional Guarantor Accession Date") by the Secretary or an Assistant Secretary (or other appropriate officer) of such Subsidiary; (B) a certificate of the Secretary or Assistant Secretary (or other appropriate officer) of such Subsidiary certifying the names and true signatures of the officers of such Subsidiary authorized to execute and deliver and perform, as applicable, its Additional Guarantor Assumption Agreement, this Agreement and all other Loan Documents to be delivered hereunder; (C) copies of the articles or certificate of incorporation and bylaws (or other applicable Organization Documents) of such Subsidiary as in effect on the Additional

Guarantor Accession Date, certified by the Secretary or Assistant Secretary (or other appropriate officer) of such Subsidiary as of the Additional Guarantor Accession Date; and (D) an opinion of counsel to such Subsidiary and addressed to the Administrative Agent and the Lenders, in form and substance reasonably acceptable to the Administrative Agent;

(iii) (A) such amendments to the schedules to the Security Agreement as shall be required in connection with the accession of such Subsidiary thereto; and (B) UCC-1 financing statements for each jurisdiction in which such filing is necessary to perfect the security interest of the Administrative Agent on behalf of the Lenders in the Collateral of such Subsidiary and in which the Administrative Agent requests that such filing be made; and

(iv) if such Subsidiary owns any real property in fee simple, then Holdings shall promptly notify the Administrative Agent in writing of the fair market value and book value of such real property at the time of the incorporation, creation or acquisition of such Subsidiary. Thereafter, at the Administrative Agent's election, Holdings shall promptly cause such Subsidiary to deliver to the Administrative Agent a Mortgage, in form and substance reasonably satisfactory to the Administrative Agent, in respect of such real property, duly executed by the Administrative Agent and the record owner of the real property encumbered thereby (such execution to be duly acknowledged by a notary public) and in proper form for recording in the real estate records of the county in which such real property is located, together with such title insurance policies and endorsements, surveys, appraisals, consents, estoppels, subordination agreements and other documents and other instruments as the Administrative Agent may reasonably request. Schedule 5.19 shall be deemed amended to include as Mortgaged Property all real property as to which a Mortgage is delivered to the Administrative Agent as provided in this Section 6.12(a)(iv).

(b) Additionally, Holdings and such Subsidiary shall execute and deliver to the Administrative Agent such other items as reasonably requested by the Administrative Agent in connection with the foregoing, including officers' certificates, search reports, control agreements and other certificates and documents.

6.13 Additional Stock Pledges. If Holdings, directly or indirectly, incorporates, creates or acquires any additional Subsidiary, or otherwise acquires any capital stock, membership interests or other equity interests of any other Person, then within ten (10) days thereafter or such longer period as the Administrative Agent may approve in its discretion, Holdings shall (i) (A) pledge the capital stock, membership interests or other equity interests of such additional Subsidiary or other Person to the Administrative Agent pursuant to the Security Agreement, if such stock, membership interest or other interest is directly owned by Holdings, or (B) if such stock, membership interest or other interest is owned by a Guarantor, cause such Guarantor to pledge the capital stock, membership interest or other equity interest of such additional Subsidiary or other Person to the Administrative Agent pursuant to the Security Agreement, (ii) execute and deliver, or cause such Guarantor to have executed and delivered, to the Administrative Agent stock transfer powers executed in blank with signatures guaranteed as the Administrative Agent shall request, and such UCC-1 financing statements (as furnished by the Administrative Agent) in each jurisdiction in which such filing is necessary to perfect the security interest of the Administrative Agent in the Collateral with respect to Holdings or such Guarantor, and (iii) deliver such other items as reasonably requested by the Administrative Agent

in connection with the foregoing, including resolutions, incumbency and officers' certificates, opinions of counsel, search reports, control agreements and other certificates and documents.

6.14 Further Assurances.

(a) Holdings shall ensure that all written information, exhibits and reports furnished to the Administrative Agent or the Lenders do not and will not contain, when considered with all other information so furnished, 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 misleading in light of the circumstances in which made, and will promptly disclose to the Administrative Agent and the Lenders and correct any material defect or error that may be discovered therein or in any Loan Document or in the execution, acknowledgement or recordation thereof, provided that to the extent any such written information, exhibit or report was based upon or constitutes a forecast or projection, Holdings shall ensure only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, exhibit or report (it being understood that forecasts and projections by their nature involve approximations and uncertainties).

(b) If at any time after the Effective Date, Holdings or any other Loan Party shall become the owner in fee simple of any real property, then Holdings shall promptly notify the Administrative Agent in writing of the fair market value or book value of such real property at the time of its acquisition. Thereafter, at the Administrative Agent's election, Holdings shall promptly deliver to the Administrative Agent a Mortgage, in form and substance satisfactory to the Administrative Agent, in respect of such real property, duly executed by the Administrative Agent and the record owner of the real property encumbered thereby (such execution to be duly acknowledged by a notary public) and in proper form for recording in the real estate records of the county in which such real property is located, together with such title insurance policies and endorsements, surveys, appraisals, consents, estoppels, subordination agreements and other documents and other instruments as the Administrative Agent may reasonably request. Schedule 5.19 shall be deemed amended to include as Mortgaged Property all real property as to which a Mortgage is delivered to the Administrative Agent as provided in this Section 6.14(b).

(c) Promptly upon request by the Administrative Agent, Holdings shall (and shall cause any Guarantor to) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register (and, if requiring the execution by any third party, use commercially reasonable efforts to obtain), any and all such further acts, deeds, conveyances, security agreements, control agreements, assignments, estoppel certificates, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments the Administrative Agent, 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 Administrative Agent and Lenders the rights granted or now or

hereafter intended to be granted to the Lenders under any Loan Document or under any other document executed in connection therewith.

6.15 Tax Returns. Holdings shall, and shall cause its Subsidiaries to, timely file all federal and other material tax returns and reports required to be filed and to take all other steps necessary to ensure that Holdings and its Subsidiaries are paid all tax refunds to which Holdings and its Subsidiaries may be entitled as a result of net operating losses or otherwise in any applicable tax period.

ARTICLE VII.

NEGATIVE COVENANTS

So long as any Loan or other Obligation shall remain unpaid or unsatisfied, unless the Majority Lenders waive compliance in writing:

7.01 Limitation on Liens.

(a) Holdings shall not, and shall not suffer or permit any Subsidiary 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"):

(i) any Lien existing on the Effective Date and set forth in Schedule 7.01, provided that (a) such Lien (including any Lien securing Permitted Refinancing Indebtedness) shall not attach to any property or asset of Holdings or any Subsidiary other than the property or asset originally so encumbered on the Effective Date and (b) such Lien shall secure only those obligations that it secures on the Effective Date and Permitted Refinancing Indebtedness in respect thereof;

(ii) any Lien created under any Loan Document;

(iii) Liens securing Holdings' obligations under the First Lien Loan Documents (including any Liens securing Permitted Refinancing Indebtedness in respect thereof);

(iv) Liens for taxes, fees, assessments or other governmental charges which are not delinquent or remain payable without penalty, or which are being contested in good faith and by appropriate proceedings, if adequate reserves in accordance with GAAP are maintained by Holdings or such Subsidiary, which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(v) carriers', warehousemen's, mechanics', landlords', materialmen's, repairmen's or other similar Liens arising in the Ordinary Course of Business which are not delinquent or which are being contested in good faith and by appropriate proceedings, if adequate reserves in accordance with GAAP are maintained by Holdings or such Subsidiary, which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(vi) Liens (other than any Lien imposed by ERISA and other than on the Collateral) consisting of pledges or deposits required in the Ordinary Course of Business in connection with workers' compensation, unemployment insurance and other social security legislation;

(vii) Liens securing (A) the non-delinquent performance of bids, trade contracts (other than for borrowed money), leases (other than Capital Leases), statutory obligations, (B) contingent obligations on surety and appeal bonds, and (C) other non-delinquent obligations of a like nature; in each case, incurred in the Ordinary Course of Business, provided all such Liens in the aggregate would not (even if enforced) cause a Material Adverse Effect;

(viii) Liens consisting of judgment or judicial attachment liens with respect to any judgment that does not constitute an Event of Default under Section 8.01(i);

(ix) easements, rights of way, restrictions and other similar encumbrances incurred in the Ordinary Course of Business which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the businesses of Holdings and its Subsidiaries;

(x) Liens on specific tangible assets of Persons which become Subsidiaries after the date of this Agreement; provided, however, that (A) such Liens existed at the time the respective Persons became Subsidiaries and were not created in anticipation thereof, (B) any such Lien does not by its terms cover any assets after the time such Person becomes a Subsidiary which were not covered immediately prior thereto, (C) any such Lien does not by its terms secure any Indebtedness other than Indebtedness existing immediately prior to the time such Person becomes a Subsidiary and Permitted Refinancing Indebtedness in respect thereof, and (D) such Indebtedness is permitted by Section 7.05(d);

(xi) purchase money Liens on any property acquired or held by Holdings or its Subsidiaries in the Ordinary Course of Business, securing Indebtedness incurred or assumed for the purpose of financing all or any part of the cost of acquiring such property; provided that (A) any such Lien attaches to such property concurrently with or within 180 days after the acquisition thereof, (B) such Lien attaches solely to the property so acquired in such transaction, (C) the principal amount of the Indebtedness secured thereby does not exceed 100% of the cost of such property, and (D) such Indebtedness is permitted under Section 7.05(d);

(xii) Liens securing obligations in respect of Capital Leases on assets subject to such leases, provided that such Capital Leases are otherwise permitted hereunder;

(xiii) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; provided that (A) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by Holdings in excess of those set forth by regulations promulgated by

the FRB, and (B) such deposit account is not intended by Holdings or any Subsidiary to provide collateral to the depository institution; and

(xiv) precautionary Uniform Commercial Code financing statement filings in respect of Operating Leases entered into by Holdings or any of its Subsidiaries in the Ordinary Course of Business.

(b) Holdings shall not, and shall not permit any of its Subsidiaries to, enter into or suffer to exist any agreement (other than the Loan Documents and, subject to the provisions of the Intercreditor Agreement, the First Lien Loan Documents) prohibiting or conditioning the creation or assumption of any Lien upon any of its properties, revenues or assets, whether now owned or hereafter acquired, except (i) with respect to specific tangible assets subject to a Permitted Lien, (ii) agreements for the sale of a Subsidiary or assets, provided that (A) any such prohibition or condition on the creation or assumption of any Lien applies only to the Subsidiary or assets that are to be sold while such sale is pending and (B) such sale is permitted under Section 7.02, (iii) stockholders agreements, charter or other formation or joint venture documents relating to Non-Wholly-Owned Subsidiaries, and (iv) pursuant to customary anti-assignment or no-subletting clauses in leases, licenses or contracts entered into in the Ordinary Course of Business, which restrict only the assignment of such lease, license or contract, as applicable.

Notwithstanding the foregoing, no Liens may exist at any time on or with respect to the Pledged Collateral, except under the Loan Documents and, subject to the provisions of the Intercreditor Agreement, the First Lien Loan Documents.

7.02 Disposition of Assets. Holdings shall not, and shall not suffer or permit any Subsidiary to, directly or indirectly, sell, assign, lease, convey, transfer or otherwise dispose of (whether in one or a series of transactions) any property (including accounts and notes receivable, with or without recourse), except:

(a) dispositions of inventory, all in the Ordinary Course of Business;

(b) the sale of equipment to the extent that such equipment is exchanged for credit against the purchase price of similar replacement equipment, or the proceeds of such sale are reasonably promptly applied to the purchase price of such replacement equipment;

(c) dispositions of inventory and equipment by Holdings or any other Loan Party to Holdings or any other Loan Party pursuant to reasonable business requirements and in the Ordinary Course of Business;

(d) the lease or sublease of real property by Holdings or any Subsidiary to other Persons in the Ordinary Course of Business;

(e) the sale of cash equivalents and other short term money market investments in the Ordinary Course of Business pursuant to Holdings' usual and customary cash management policies and procedures; the use of cash and cash equivalents for purposes not prohibited hereby;

(f) dispositions pursuant to sales and leaseback transactions permitted under Section 7.12;

(g) dispositions of Excess Real Estate which are made for Fair Market Value (as determined in good faith by Holdings); provided that (i) not less than 75% of the aggregate purchase price for such disposition shall be paid in cash, and (ii) the Net Proceeds of such disposition shall be applied in accordance with Section 2.05(a); and

(h) dispositions not otherwise permitted hereunder which are made for Fair Market Value (as determined in good faith by Holdings); provided that (i) at the time of any disposition, no Event of Default shall exist or shall result from such disposition, (ii) not less than 75% of the aggregate purchase price for such disposition shall be paid in cash, (iii) no disposition by Holdings of any of its equity interest in BMC West Corporation or SelectBuild Construction, Inc. shall be permitted hereunder, and (iv) the aggregate purchase price for all such dispositions (exclusive of dispositions of the Wind-Down Business Units) shall not exceed $23,000,000.

7.03 Consolidations and Mergers. Holdings shall not, and shall not suffer or permit any Subsidiary 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, except:

(a) any Subsidiary may merge with Holdings, provided that Holdings shall be the continuing or surviving Person, or with any one or more Subsidiaries, provided that if any transaction shall be between a Subsidiary and a Wholly-Owned Subsidiary, the Wholly-Owned Subsidiary shall be the continuing or surviving Person, and provided further that if any transaction shall be between a Subsidiary and a Loan Party, the Loan Party shall be the continuing or surviving Person;

(b) as permitted by Section 7.02;

(c) any Subsidiary may distribute or sell all or substantially all of its assets (upon voluntary liquidation, dissolution or otherwise) to Holdings or to a Wholly-Owned Subsidiary, provided that if the Subsidiary distributing or selling its assets is a Loan Party, then the Person purchasing or otherwise receiving the assets must also be a Loan Party; and

(d) Holdings or any Subsidiary thereof may merge with or consolidate into any other Person that is not a Subsidiary, provided that (i) in the case of Holdings, Holdings shall be the continuing or surviving Person, (ii) if a Loan Party is a party to such merger, then the surviving or continuing entity must be a Loan Party or become a Loan Party in accordance with Section 6.12, (iii) such merger or consolidation is in connection with a Permitted Acquisition, and (iv) no such merger or consolidation shall be made while there exists a Default or if a Default would occur as a result thereof.

7.04 Loans and Investments. Holdings shall not purchase or acquire, or suffer or permit any Subsidiary to purchase or acquire, any capital stock, equity interest, or any obligations or other securities of, or any interest in, any Person, or make any Acquisitions, or make any advance, loan, extension of credit or capital contribution to or any other investment in, any Person including any Affiliate of Holdings (together, "Investments") except for:

(a) Investments held by Holdings or any Subsidiary in the form of cash equivalents and short term money market investments in the Ordinary Course of Business pursuant to Holdings' usual and customary cash management policies and procedures;

(b) extensions of credit in the nature of accounts receivable or notes receivable arising from the sale or lease of goods or services in the Ordinary Course of Business, together with investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(c) (i) Investments by Holdings and its Subsidiaries in the equity interests of their respective Subsidiaries outstanding on the Effective Date and (ii) additional Investments by Holdings and its Subsidiaries that are Loan Parties in other Loan Parties (other than Holdings);

(d) Investments incurred in order to consummate Permitted Acquisitions;

(e) Investments constituting Permitted Swap Obligations or payments or advances under Swap Contracts relating to Permitted Swap Obligations;

(f) Investments constituting non-cash consideration received by Holdings or any Subsidiary in respect of any asset dispositions permitted under Section 7.02; and

(g) Restricted Payments, to the extent permitted under Section 7.10.

7.05 Limitation on Indebtedness. Holdings shall not, and shall not suffer or permit any Subsidiary to, create, incur, assume, suffer to exist, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(a) Indebtedness incurred pursuant to the Loan Documents or, subject to the provisions of the Intercreditor Agreement, the First Lien Loan Documents, including any Permitted Refinancing Indebtedness in respect thereof;

(b) Indebtedness consisting of Contingent Obligations permitted pursuant to Section 7.07;

(c) Indebtedness existing on the Effective Date set forth on Schedule 7.05 and any Permitted Refinancing Indebtedness in respect thereof;

(d) (i) Indebtedness secured by Liens permitted by Sections 7.01(a)(xi) and 7.01(a)(xii) outstanding on the Effective Date and set forth on Schedule 7.05(d), together

with Permitted Refinancing Indebtedness in respect thereof; and (ii) Indebtedness incurred after the Effective Date secured by Liens permitted by Sections 7.01(a)(xi) or 7.01(a)(xii) in an aggregate principal amount not to exceed $5,750,000 at any time outstanding;

(e) Indebtedness of Holdings or other Loan Parties to Holdings or other Loan Parties;

(f) Indebtedness incurred pursuant to sales and leaseback transactions permitted under Section 7.12;

(g) Indebtedness of a Person or Indebtedness secured by assets of a Person that, in either case, becomes a Subsidiary or Indebtedness attaching to assets that are acquired by Holdings or any of its Subsidiaries, in each case after the Effective Date as the result of a Permitted Acquisition, provided that (i) such Indebtedness existed at the time such Person became a Subsidiary or at the time such assets were acquired and, in each case, was not created in anticipation thereof and (ii) such Indebtedness is not guaranteed in any respect by Holdings or any Subsidiary (other than by any such Person that so becomes a Subsidiary and existing Subsidiaries of such Person); and any Permitted Refinancing Indebtedness in respect thereof;

(h) other unsecured Indebtedness in an aggregate principal amount outstanding at any one time not to exceed $11,500,000; and

(i) additional Indebtedness which by its terms is expressly subordinated to the Obligations, provided that (i) the terms of such subordination shall be satisfactory to the Administrative Agent, (ii) the terms of such Indebtedness and the indenture or other agreement evidencing such Indebtedness otherwise shall be satisfactory in all material respects to the Administrative Agent (including terms and conditions relating to the interest rate, fees, amortization, maturity, covenants, events of default and remedies), (iii) no such Indebtedness shall be incurred while there exists a Default or if a Default would occur as a result thereof, and (iv) without limiting the generality of the foregoing, as of the end of the most recent quarter for which Holdings has delivered financial statements under Section 4.01(c), Section 6.01(a) or Section 6.01(b) and immediately after giving effect to such incurrence, Holdings shall be in full pro forma compliance with the financial covenants set forth in Section 7.18 (any such Indebtedness issued in compliance with this Section 7.05(i) hereinafter "Permitted Subordinated Debt").

7.06 Transactions with Affiliates. Holdings shall not, and shall not suffer or permit any Subsidiary to, enter into any transaction with any Affiliate of Holdings, except upon fair and reasonable terms no less favorable to Holdings or such Subsidiary than it would obtain in a comparable arm's length transaction with a Person not an Affiliate of Holdings or such Subsidiary; provided, however, that the foregoing restriction shall not apply to (i) transactions between or among Holdings and any Guarantor (including between Guarantors), (ii) Investments and Restricted Payments permitted hereby (iii) customary fees paid to directors (or members of a similar governing body) of Holdings or its Subsidiaries in the Ordinary Course of Business, (iv) customary indemnities provided to directors of Holdings and its Subsidiaries in the Ordinary Course of Business and (v) compensation arrangements for officers and other employees of Holdings and its Subsidiaries entered into in the Ordinary Course of Business.

7.07 Contingent Obligations. Holdings shall not, and shall not suffer or permit any Subsidiary to, create, incur, assume or suffer to exist any Contingent Obligations, except:

(a) endorsements for collection or deposit in the Ordinary Course of Business;

(b) Contingent Obligations in respect of Swap Contracts permitted under Section 7.04(e);

(c) Contingent Obligations of Holdings in respect of Indebtedness of any other Loan Party, or Contingent Obligations of any Loan Party in respect of Indebtedness of another Loan Party or of Holdings, in each case to the extent such Indebtedness is permitted hereunder;

(d) Contingent Obligations of Holdings and its Subsidiaries existing as of the Effective Date and set forth on Schedule 7.07;

(e) Contingent Obligations with respect to Surety Instruments incurred in the Ordinary Course of Business and not exceeding at any time $69,000,000 in aggregate principal amount in respect of Holdings and its Subsidiaries together;

(f) Contingent Obligations consisting of normal and customary indemnities issued in the Ordinary Course of Business (including under professional services agreements, construction and materials supply agreements, intellectual property agreements or employment and consulting agreements) or consisting of normal and customary indemnities pursuant to the issuance and sale of securities;

(g) Contingent Obligations in respect of Operating Leases, to the extent such Operating Leases are permitted to be entered into hereby;

(h) Contingent Obligations consisting of customary indemnification and purchase price adjustment obligations incurred in connection with asset dispositions permitted under Section 7.02; and

(i) Contingent Obligations consisting of Earn-Out Obligations incurred in connection with Permitted Acquisitions.

7.08 Subsidiaries. Holdings shall not, and shall not suffer or permit any Subsidiary to, incorporate, create or acquire any Subsidiary which is not a U.S. Subsidiary.

7.09 Lease Obligations. Holdings shall not, and shall not suffer or permit any Subsidiary to, create or suffer to exist any obligations for the payment of rent for any property under any Operating Lease which exceed an aggregate amount of $35,000,000 for all Operating Leases in any fiscal year.

7.10 Restricted Payments. Holdings shall not, and shall not suffer or permit any Subsidiary to, declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any shares of any class of its

capital stock or other equity interests (other than dividends or other distributions by a Subsidiary to Holdings or to a Subsidiary that is a Loan Party), or purchase, redeem or otherwise acquire for value any shares of its capital stock or other equity interests or any warrants, rights or options to acquire such shares or other equity interests, now or hereafter outstanding (collectively, "Restricted Payments"); except that Holdings may:

(a) declare and make dividend payments or other distributions payable solely in its common stock;

(b) so long as no Event of Default has occurred and is continuing or would be caused thereby, declare and make dividends required to be declared or paid pursuant to the terms of any securities issued in an offering by Holdings of common stock, preferred stock or other equity interests of Holdings, so long as the dividend provisions of such securities were approved by the Administrative Agent in writing prior to the issuance of such securities;

(c) allow any Non-Wholly-Owned Subsidiary to make distributions to its owners (on a pro rata basis); and

(d) so long as no Event of Default has occurred and is continuing or would be caused thereby, purchase Holdings' Equity Securities from present or former officers or employees of Holdings or any of its Subsidiaries following the death, disability or termination of employment of such officer or employee in accordance with any stock incentive plan approved by Holdings' board of directors, in an aggregate amount not to exceed $1,150,000 in any fiscal year.

7.11 ERISA. Holdings shall not, and shall not suffer or permit any of its ERISA Affiliates to: (a) engage in a prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan which has resulted or could reasonably expected to result in liability of Holdings in an aggregate amount in excess of $5,750,000; or (b) engage in a transaction that could be subject to section 4069 or 4212(c) of ERISA and that would reasonably be expected to have a Material Adverse Effect.

7.12 Sales and Leasebacks. Holdings shall not, and shall not permit any of its Subsidiaries to, become liable, directly or indirectly, with respect to any lease (a "Subject Lease"), whether an Operating Lease or a Capital Lease, of any property (whether real, personal or mixed), whether now owned or hereafter acquired, (i) which Holdings or such Subsidiary has sold or transferred or is to sell or transfer to any other Person or (ii) which Holdings or such Subsidiary intends to use for substantially the same purposes as any other property which has been or is to be sold or transferred by Holdings or such Subsidiary to any other Person in connection with such lease; provided that Holdings and any of its Subsidiaries may enter into any such lease if either (A) (1) no Default shall then exist or would occur as a result thereof and (2) such lease is an Operating Lease with a term of not more than three (3) years entered into in connection with the sale of a facility pending the repurchase and construction of a replacement facility in a new location, or (B) (1) no Default shall then exist or would occur as a result thereof, (2) as of the end of the most recent month for which Holdings has delivered financial statements under Section 4.01(c) or Section 6.01(c) and immediately after giving effect to any such lease, Holdings shall be in full pro forma compliance with the financial covenants set forth in

Section 7.18, and (3) the Disposition Value of the property sold or transferred, or to be sold or transferred, in connection with the lease, when added to the aggregate Disposition Value of all other property sold or transferred, or to be sold or transferred, in connection with all other leases entered into pursuant to this Section 7.12 from and after the Effective Date, does not exceed $11,500,000.

7.13 Certain Payments. Holdings shall not, and shall not permit any of its Subsidiaries to, (i) prepay, redeem, repurchase or otherwise acquire for value any of the Permitted Subordinated Debt; or (ii) make any principal, interest or other payments on any Permitted Subordinated Debt if not permitted by the respective subordination provisions of the Subordinated Debt Documents.

7.14 Modification of First Lien Loan Documents. Holdings shall not, and shall not permit any of its Subsidiaries to, agree to or otherwise suffer or permit any amendment, modification or waiver of any provision of the First Lien Loan Documents to the extent any such amendment, modification or waiver is prohibited under the Intercreditor Agreement.

7.15 Modification of Subordinated Debt Documents. Holdings shall not, and shall not permit any of its Subsidiaries to, agree to or permit any amendment, modification or waiver of any provision of any Subordinated Debt Document (including any amendment, modification or waiver pursuant to an exchange of other securities or instruments for outstanding Permitted Subordinated Debt) if the effect of such amendment, modification or waiver is to (i) increase the interest rate on such Permitted Subordinated Debt or change (to earlier dates) the dates upon which principal and interest are due thereon; (ii) alter the redemption, prepayment or subordination provisions thereof; (iii) alter the covenants and events of default in a manner which would make such provisions more onerous or restrictive to Holdings or such Subsidiary; or (iv) otherwise increase the obligations of Holdings or such Subsidiary in respect of such Permitted Subordinated Debt or confer additional rights upon the holders thereof which individually or in the aggregate would be adverse to Holdings, its Subsidiaries or the Lenders.

7.16 Change in Business. Holdings shall not, and shall not suffer or permit any Subsidiary to, engage in any material line of business substantially different from those lines of business carried on by Holdings and its Subsidiaries on the date hereof and lines of business ancillary thereto.

7.17 Accounting Changes. Holdings shall not, and shall not suffer or permit any Subsidiary to, make any significant change in accounting treatment or reporting practices, except as permitted by GAAP, or change the fiscal year of Holdings or of any Subsidiary, except to change the fiscal year of a Subsidiary to conform its fiscal year to that of Holdings.

7.18 Financial Covenants.

(a) Holdings shall not permit its Liquidity as of the last day of any fiscal month to be less than the following amounts for the respective periods set forth below:

Period	Minimum Liquidity
January 2010	$42,500,000

February 2010	$42,500,000
March 2010	$42,500,000
April 2010	$40,375,000
May 2010	$34,000,000
June 2010	$34,000,000
July 2010	$25,500,000
August 2010	$12,750,000
September 2010	$17,000,000
October 2010	$29,750,000
November 2010	$42,500,000
December 2010	$42,500,000
January 2011	$38,250,000
February 2011	$38,250,000
March 2011	$38,250,000
April 2011	$34,000,000
May 2011	$34,000,000
June 2011	$34,000,000
July 2011	$17,000,000
August 2011	$17,000,000
September 2011	$17,000,000
October 2011	$42,500,000
November 2011	$42,500,000
December 2011	$42,500,000
January 2012	$38,250,000
February 2012	$38,250,000
March 2012	$38,250,000
April 2012	$34,000,000
May 2012	$34,000,000
June 2012	$34,000,000
July 2012	$17,000,000
August 2012	$17,000,000
September 2012	$17,000,000
October 2012	$42,500,000
November 2012	$42,500,000
December 2012	$42,500,000

(b) Holdings shall not permit its EBITDA as at the end of any fiscal quarter to be less than the following amounts for the respective periods set forth below:

Measurement Period	Minimum EBITDA
Six Months Ending June 30, 2010	$(17,250,000)

Nine Months Ending September 30, 2010	$(11,500,000)
Twelve Months Ending December 31, 2010	$(5,750,000)
Twelve Months Ending March 31, 2011	$2,125,000
Twelve Months Ending June 30, 2011	$8,500,000
Twelve Months Ending September 30, 2011	$17,000,000
Twelve Months Ending December31, 2011	$25,500,000
Twelve Months Ending March 31, 2012	$25,500,000
Twelve Months Ending June 30, 2012	$34,000,000
Twelve Months Ending September 30, 2012	$51,000,000
Twelve Months Ending December31, 2012	$63,750,000

(c) During fiscal years 2013 and 2014 (or earlier if, and at such time as, the working capital facility contained in the First Lien Credit Agreement is replaced or refinanced), Holdings shall at all times comply with any financial covenants contained in any extension or refinancing of the First Lien Credit Agreement or other replacement working capital facility of Holdings then existing and permitted under this Agreement or the Intercreditor Agreement, which covenants shall be incorporated into this Agreement automatically without the requirement of consent of the Administrative Agent or any Lender and without the requirement of any conforming amendment to this Agreement or other action, and to the extent that any such working capital facility does not include the financial covenants set forth herein, the financial covenants set forth herein shall no longer be operative and Holdings shall comply with the financial covenants set forth in such working capital facility; provided, however, that any such financial covenants shall maintain an equivalent proportionate difference between dollar amounts or ratios, as the case may be, in the relevant provisions in this Agreement and those in the corresponding provisions in such working capital facility, to the extent that such difference exists between this Agreement and the First Lien Credit Agreement on the date hereof. The Lenders shall promptly execute and deliver to the Administrative Agent such amendment or consent as the Administrative Agent may reasonably request to effectively confirm such amendment.

7.19 No Restrictions on Subsidiary Dividends. Holdings shall not, and shall not suffer or permit any Subsidiary to, enter into or be bound by any Contractual Obligation which restricts, limits or prohibits the payment of dividends by any Subsidiary or the making of any other distribution in respect of such Subsidiary's capital stock or other equity interests, except for the following:

(a) agreements for the sale of a Subsidiary or assets, provided that (i) any such restriction, limitation or prohibition on the payment of dividends or other distributions applies only to the Subsidiary to be sold or to the Subsidiary that owns the assets to be sold, in each case, while such sale is pending and (ii) such sale is permitted under Section 7.02; and

(b) agreements in respect of Indebtedness permitted under Section 7.05 of any Subsidiary acquired after the Effective Date that was incurred by such Subsidiary prior to the date on which such Subsidiary was acquired (other than Indebtedness incurred as consideration for, in contemplation of, or to provide all or any portion of the funds or credit support utilized to consummate the transaction or series of related transactions pursuant to which such Subsidiary becomes a Subsidiary or was otherwise acquired).

7.20 Capital Expenditures. Holdings shall not, and shall not permit any of its Subsidiaries to, make any Capital Expenditures in excess of, on a consolidated basis, in any fiscal year the following amounts for the respective periods set forth below, excluding Capital Expenditures to the extent made using insurance or condemnation proceeds paid on account of an Event of Loss and applied to repair, reconstruct or replace the affected property:

Period	CapEx Limit
Fiscal 2010	$8,625,000
Fiscal 2011	$11,500,000
Fiscal 2012	$11,500,000

7.21 No Opt-In to Article 8 of the UCC. Holdings shall not suffer or permit any Subsidiary which is either a limited partnership or limited liability company to amend its limited partnership agreement or limited liability company operating agreement, as the case may be, to certificate any of its limited partnership interests or membership interests, as the case may be, or opt into Article 8 of the UCC, without the prior written consent of the Administrative Agent.

ARTICLE VIII.

EVENTS OF DEFAULT

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

(a) Non Payment. Holdings fails to make, (i) when and as required to be made herein, payments of any amount of principal of any Loan or (ii) within

three (3) Business Days after the same becomes due, payment of any interest, fee or any other amount payable hereunder or under any other Loan Document;

(b) Representation or Warranty. Any representation or warranty by any Loan Party 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 Loan Party, or any Responsible Officer, furnished at any time under this Agreement, or in or under any other Loan Document, is incorrect in any material respect on or as of the date made or deemed made;

(c) Specific Defaults. Holdings or any other Loan Party fails to perform or observe any term, covenant or agreement contained in any of Sections 6.01(a), 6.01(c), 6.02(f), 6.03(a), 6.04(a)(i), 6.12 or 6.13 or in Article VII;

(d) Other Defaults. Any Loan Party fails to perform or observe any other term or covenant contained in this Agreement or any other Loan Document, and such default shall continue unremedied for a period of 20 days after the earlier of (i) the date upon which a Responsible Officer of Holdings obtained actual knowledge of such failure and (ii) the date upon which written notice thereof is given to Holdings by the Administrative Agent or any Lender;

(e) Cross Default. (i) Holdings or any Subsidiary (A) fails to make any payment in respect of any Indebtedness or Contingent Obligation (other than in respect of Swap Contracts or 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 $5,750,000 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 relevant document on the date of such failure; or (B) 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 the obligations under the First Lien Loan Documents), and such failure continues after the applicable grace or notice period, if any, specified in the relevant document on the date of such failure 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 administrative agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause such Indebtedness to be declared to be due and payable or to be repurchased, prepaid, defeased or redeemed prior to its stated maturity, or such Contingent Obligation to become payable or cash collateral in respect thereof to be demanded; (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (1) any event of default under such Swap Contract as to which Holdings or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (2) any Termination Event (as so defined) as to which Holdings or any Subsidiary is an Affected Party (as so defined), and, in either event, the Swap Termination Value owed by Holdings or such Subsidiary as a result thereof is greater than $5,750,000; or (iii) the obligations under the First Lien Loan Documents are accelerated;

(f) Insolvency; Voluntary Proceedings. Holdings or any Subsidiary (i) ceases or fails to be solvent, or generally fails to pay, or admits in writing its inability to pay,

its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise; (ii) voluntarily ceases to conduct its business in the ordinary course; (iii) commences any Insolvency Proceeding with respect to itself; or (iv) takes any action to effectuate or authorize any of the foregoing;

(g) Involuntary Proceedings. (i) Any involuntary Insolvency Proceeding is commenced or filed against Holdings or any Subsidiary, or any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of Holdings' or any Subsidiary's properties, and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within 60 days after commencement, filing or levy; (ii) Holdings or any Subsidiary admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or (iii) Holdings or any Subsidiary acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or administrative agent therefor), or other similar Person for itself or a substantial portion of its property or business;

(h) ERISA. (i) An ERISA Event shall occur with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of Holdings under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of $5,750,000; (ii) the aggregate amount of Unfunded Pension Liability among all Pension Plans at any time exceeds $5,750,000; or (iii) Holdings or any ERISA Affiliate shall fail 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 $5,750,000;

(i) Monetary Judgments. One or more non-interlocutory judgments, non interlocutory orders, decrees or arbitration awards is entered against Holdings or any Subsidiary involving in the aggregate a liability (to the extent not covered by independent third party insurance as to which the insurer does not dispute coverage) as to any single or related or unrelated series of transactions, incidents or conditions, of $5,750,000 or more, and the same shall remain unsatisfied, unvacated and unstayed pending appeal for a period of 30 days after the entry thereof;

(j) Non Monetary Judgments. Any non monetary judgment, order or decree is entered against Holdings or any Subsidiary which does or would reasonably be expected to have a Material Adverse Effect, and there shall be any period of 30 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;

(k) Change of Control. There occurs any Change of Control;

(l) Guarantor Defaults. Any Guarantor fails in any material respect to perform or observe any term, covenant or agreement in its Guaranty; or any Guaranty is for any reason partially (including with respect to future advances) or wholly revoked or invalidated, or otherwise ceases to be in full force and effect, or such Guarantor or any other Person contests in

any manner the validity or enforceability thereof or denies that it has any further liability or obligation thereunder; or any event described at subsections (f) or (g) of this Section 8.01 occurs with respect to any Guarantor;

(m) Invalidity of Subordination Provisions. The subordination provisions applicable to the Permitted Subordinated Debt or in the Intercreditor Agreement shall be for any reason revoked or invalidated, or otherwise cease to be in full force and effect, or the holders thereof or any other Person shall contest in any manner the validity or enforceability thereof or denies that it has any further liability or obligation thereunder, or the Indebtedness hereunder is for any reason subordinated or does not have the priority contemplated by this Agreement or such subordination provisions; or

(n) Collateral. (i) Any provision of any Collateral Document shall for any reason cease to be valid and binding on or enforceable against Holdings or any Subsidiary party thereto or Holdings or any Subsidiary shall so state in writing or bring an action to limit its obligations or liabilities thereunder; or (ii) any Collateral Document shall for any reason (other than pursuant to the terms thereof) 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 second priority security interest subject only to Permitted Liens.

8.02 Remedies.

(a) At any time after the occurrence and during the continuance of any Event of Default (other than an Event of Default under Section 8.01(f) or Section 8.01(g)), the Administrative Agent may or shall, upon instructions from the Majority Lenders, by written notice to Holdings declare all or a portion of the outstanding Obligations owed to the Lenders and payable by Holdings to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Notes to the contrary notwithstanding.

(b) Upon the occurrence or existence of any Event of Default described in Section 8.01(f) or 8.01(g), immediately and without notice, all outstanding Obligations payable by Holdings hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Notes to the contrary notwithstanding. In addition to the foregoing remedies, upon the occurrence or existence of any Event of Default, the Administrative Agent may exercise any other right, power or remedy available to it under any of the Loan Documents or otherwise by law, either by suit in equity or by action at law, or both.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02(a) (or after the Loans have automatically become immediately due and payable as set forth in Section 8.02(b)), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the

Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and fees payable under Section 2.10(b)) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid fees payable under Section 2.10 and interest on the Loans and other Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to payment of all other Obligations, ratably among the Persons owed such Obligations in proportion to the respective amounts described in this clause Fifth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to Holdings or as otherwise required by applicable law.

ARTICLE IX.

THE ADMINISTRATIVE AGENT

9.01 Appointment and Authority. Each of the Lenders hereby irrevocably appoints Wells Fargo to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX are solely for the benefit of the Administrative Agent and the Lenders, and neither Holdings nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

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

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

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

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

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

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by Holdings or a Lender.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for

relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for Holdings), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

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

9.06 Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders and Holdings. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right, in consultation with Holdings (except during the continuance of an Event of Default, in which case no consultation with Holdings shall be required), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify Holdings and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Majority Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by Holdings to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Holdings and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the

provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

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

9.08 Collateral Matters.

(a) The Administrative Agent is authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action with respect to any Collateral or the Collateral Documents which may be necessary to perfect and maintain perfected the security interest in and Liens upon the Collateral granted pursuant to the Collateral Documents.

(b) The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion, to release any Lien granted to or held by the Administrative Agent upon any Collateral (i) upon payment in full of all Loans and all other Obligations known to the Administrative Agent and payable under this Agreement or any other Loan Document; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any disposition permitted hereunder; (iii) constituting property in which Holdings or any Subsidiary owned no interest at the time the Lien was granted or at any time thereafter; (iv) constituting property leased to Holdings or any Subsidiary in a transaction permitted under this Agreement; (v) consisting of an instrument evidencing Indebtedness or other debt instrument, if the indebtedness evidenced thereby has been paid in full; (vi) if approved, authorized or ratified in writing by the Majority Lenders or all the Lenders, as the case may be, as provided in Section 10.01. Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to release particular types or items of Collateral pursuant to this Section 9.08(b), provided that the absence of any such confirmation for whatever reason shall not affect the Administrative Agent's rights under this Section 9.08.

(c) Each Lender agrees with and in favor of each other (which agreement shall not be for the benefit of Holdings or any Subsidiary) that the Obligations to such Lender under this Agreement and the other Loan Documents shall not be secured by any real property collateral now or hereafter acquired by such Lender other than the Mortgaged Properties described in the Mortgages.

9.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement,

adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on Holdings) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.10 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.10 and 10.04.

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

9.10 Intercreditor Agreement. Each Lender hereby acknowledges that it has received and reviewed the Intercreditor Agreement and agrees to be bound by the terms thereof. Each Lender hereby authorizes and directs the Administrative Agent to enter into the Intercreditor Agreement on behalf of such Lender and agrees that the Administrative Agent may take such actions for itself and on such Lender's behalf as is contemplated by the terms of the Intercreditor Agreement; provided, however, that no amendment to or waiver of any of the provisions of the Intercreditor Agreement, or consent given by the Second Lien Agent (as defined therein) to any departure therefrom by the First Lien Agent (as defined therein), shall be permitted or effective unless the same shall be in writing and signed by the Administrative Agent and the Majority Lenders (or the Administrative Agent with the consent of the Majority Lenders), and any such amendment, waiver or consent shall be permitted and effective only in the specific instance and for the specific purpose for which given. Each Lender hereby (i) acknowledges that Wells Fargo may be acting under the Intercreditor Agreement in multiple capacities as the First Lien Agent (as applicable) and the Second Lien Agent (as applicable) and (ii) waives any conflict of interest, now existing or arising hereafter, in connection therewith and agrees not to assert against Wells Fargo any claims, causes of action, damages or liabilities of whatever kind or nature relating thereto.

ARTICLE X.

MISCELLANEOUS

10.01 Amendments and Waivers.

(a) Except as otherwise provided herein or in any other Loan Document, (i) no amendment to any provision of this Agreement or any of the other Loan Documents shall in any event be effective unless the same shall be in writing and signed by Holdings (or other Loan Party thereto, as applicable), the Administrative Agent and the Majority Lenders (or the Administrative Agent with the written consent of the Majority Lenders); and (ii) no waiver of any provision of this Agreement or any other Loan Document, or consent to any departure by Holdings or other party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Administrative Agent and the Majority Lenders (or the Administrative Agent with the consent of the Majority Lenders). Any such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall do any of the following:

(A) increase the amount, or extend the stated expiration or termination date of any Loan without the consent of such Lender;

(B) reduce or forgive the principal of, or interest or rate of interest on, the Loans of any Lender or any fee or other amount payable to any Lender hereunder without the consent of such Lender; provided, however, that only the consent of the Majority Lenders shall be necessary to change the manner of computation of any financial covenant or related definition used in determining the Applicable Margin that would result in a reduction of any interest rate on any Loan, or to amend the default rate of interest as determined under Section 2.09(c) or to waive any obligation of Holdings to pay interest at the default rate of interest;

(C) postpone any date fixed for any payment in respect of principal of, or interest on, the Loans of any Lender or any fee or other amount payable to the any Lender hereunder without the consent of such Lender;

and provided further, however, that, unless in writing and signed by all of the Lenders (or by the Administrative Agent with the written consent of all the Lenders), no amendment, waiver or consent shall do any of the following:

(D) change the definition of "Majority Lenders" or any definition or provision of this Agreement requiring the approval of Majority Lenders or some other specified amount of Lenders;

(E) consent to the assignment or transfer by Holdings or any other Loan Party of any of its rights and obligations under the Loan Documents;

(F) release any Guarantor or any material portion of the Collateral except as contemplated herein, in the Guaranty or in the Collateral Documents;

(G) amend, modify or waive the provisions of Section 2.13 or Section 8.03; or

(H) amend, modify or waive the provisions of this Section 10.01(a);

provided, further, that no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required hereinabove to take such action, affect the rights, obligations or duties of the Administrative Agent under any Loan Document.

(b) In connection with any such proposed amendment, waiver or consent requiring the consent of all Lenders, if the consent the Majority Lenders (in the case of any proposed amendment, waiver or consent requiring the consent of all Lenders) is obtained, but the consent of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in this Section 10.01 being referred to as a "Non-Consenting Lender"), then, so long as the Lender that is acting as the Administrative Agent is not a Non-Consenting Lender, Holdings may replace such Non-Consenting Lender in accordance with Section 10.11.

No failure or delay by the Administrative Agent or any Lender in exercising any right under this Agreement or any other Loan Document shall operate as a waiver thereof or of any other right hereunder or thereunder nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right hereunder or thereunder. Unless otherwise specified in such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given. The Lenders may condition the giving or making of any amendment, waiver or consent of any term, covenant, agreement or condition of this Agreement or any other Loan Document on payment of a fee by Holdings.

10.02 Notices; Effectiveness; Electronic Communication.

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

(i) if to Holdings, or the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business

day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or Holdings may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, Etc. Each of Holdings and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to Holdings and the Administrative Agent.

(d) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of Holdings even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Holdings shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of Holdings. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Administrative 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. 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.

10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. Holdings shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender) and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent or any Lender in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or similar negotiations in respect of such Loans.

(b) Indemnification by Holdings. Holdings shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by Holdings or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by Holdings or any of its Subsidiaries, or any Environmental Claims related in any way to Holdings or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Holdings or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by Holdings or any other Loan Party against an Indemnitee for breach in bad faith of such

Indemnitee's obligations hereunder or under any other Loan Document, if Holdings or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that Holdings for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's Proportionate Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent). The obligations of the Lenders hereunder to make payments pursuant to this Section 10.04(c) are several and not joint. The failure of any Lender to make any payment under this Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its payment under this Section 10.04(c).

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

(e) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Marshalling; Payments Set Aside. Neither the Administrative Agent nor the Lenders shall be under any obligation to marshal any assets in favor of Holdings or any other Person or against or in payment of any or all of the Obligations. To the extent that any Loan Party makes a payment to the Administrative Agent or the Lenders, or the Administrative Agent or the Lenders exercise their right of set-off, and such payment or the proceeds of such set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (a) to the extent of such recovery the obligation or part thereof originally intended to be satisfied shall be revived and continued in full

force and effect as if such payment had not been made or such set-off had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its Proportionate Share of any amount so recovered from or repaid by the Administrative Agent.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither Holdings nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it); provided that:

(i) except in the case of an assignment of the entire amount of the Loans at the time owing to the assigning Lender, or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $1,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, Holdings otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans; and

(iii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount, if any, required as set forth in Schedule 10.06, and the Eligible

Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.03, 3.04 and 10.04. Upon request, Holdings (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of Holdings, shall maintain at the Administrative Agent's Payment Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the principal amounts of the Loans owing to each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and Holdings, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Holdings at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent, waiver or amendment to the Loan Documents is pending, any Lender may request and receive from the Administrative Agent a copy of the Register.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, Holdings or the Administrative Agent, sell participations to any Person (other than a natural person or Holdings or any of Holdings' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Holdings, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the provisos to Section 10.01(a) that affects such Participant. Subject to subsection (e) of this Section, Holdings

agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.03 and 3.04 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Sections 3.01 or 3.03 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Holdings' prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Sections 3.01 unless Holdings is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Holdings, to comply with Sections 3.01(e) as though it were a Lender.

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

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

10.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any pledgee referred to in Section 10.06(f) or (iii) any actual or prospective counterparty (or its advisors) to any swap or

derivative transaction relating to Holdings and its obligations, (g) with the consent of Holdings or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings.

For purposes of this Section, "Information" means all information received from Holdings or any Subsidiary relating to Holdings or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by Holdings or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Holdings acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of Holdings hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system.

10.08 Set Off. If an Event of Default shall have occurred and be continuing, each Lender and each of its respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of Holdings or any other Loan Party against any and all of the obligations of Holdings or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of Holdings or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and its respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its respective Affiliates may have. Each Lender agrees to notify Holdings and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

NOTWITHSTANDING THE FOREGOING, NO LENDER SHALL EXERCISE, OR ATTEMPT TO EXERCISE, ANY RIGHT OF SET-OFF, BANKER'S LIEN, OR THE LIKE, AGAINST ANY DEPOSIT ACCOUNT OR PROPERTY OF HOLDINGS OR ANY SUBSIDIARY OF HOLDINGS HELD OR MAINTAINED BY THE LENDER WITHOUT THE PRIOR WRITTEN CONSENT OF THE ADMINISTRATIVE AGENT.

10.09 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Holdings that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify

and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act.

10.10 Guaranty.

(a) Guaranty. Each of the Guarantors unconditionally and irrevocably, jointly and severally, guarantees to the Administrative Agent and the Lenders, and their respective successors, endorsers, transferees and assigns (the "Guaranteed Persons"), the full and prompt payment when due (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise) and performance of all indebtedness, liabilities and other obligations of Holdings to any Guaranteed Person, whether arising out of or in connection with this Agreement, any other Loan Document or otherwise, including all unpaid principal of the Loans, all interest accrued thereon, all fees due under this Agreement and all other amounts payable by Holdings to any Guaranteed Person thereunder or in connection therewith. The terms "indebtedness," "liabilities" and "obligations" are used herein in their most comprehensive sense and include any and all advances, debts, obligations and liabilities, now existing or hereafter arising, whether voluntary or involuntary and whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether recovery upon such indebtedness, liabilities and obligations may be or hereafter become unenforceable or shall be an allowed or disallowed claim under the Bankruptcy Code or other applicable law. The foregoing indebtedness, liabilities and other obligations of Holdings shall hereinafter be collectively referred to as the "Guaranteed Obligations." The Guaranteed Obligations include interest which, but for an Insolvency Proceeding, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Holdings for such interest in any such Insolvency Proceeding.

(b) Separate Obligation. Each Guarantor acknowledges and agrees (i) that the Guaranteed Obligations are separate and distinct from any indebtedness, obligations or liabilities arising under or in connection with any other agreement, instrument or guaranty, including under any provision of this Agreement other than this Section 10.10, executed at any time by such Guarantor in favor of any Guaranteed Person, and (ii) such Guarantor shall pay and perform all of the Guaranteed Obligations as required under this Section 10.10, and each Guaranteed Person may enforce any and all of its rights and remedies hereunder, without regard to any other agreement, instrument or guaranty, including any provision of this Agreement other than this Section 10.10, at any time executed by such Guarantor in favor of any Guaranteed Person, regardless of whether or not any such other agreement, instrument or guaranty, or any provision thereof or hereof, shall for any reason become unenforceable or any of the indebtedness, obligations or liabilities thereunder or hereunder shall have been discharged, whether by performance, avoidance or otherwise. Each Guarantor acknowledges that in providing benefits to Holdings and such Guarantor, the Guaranteed Persons are relying upon the enforceability of this Section 10.10 and the Guaranteed Obligations as separate and distinct indebtedness, obligations and liabilities of such Guarantor, and each Guarantor agrees that each Guaranteed Person would be denied the full benefit of their bargain if at any time this Section 10.10 or the Guaranteed Obligations were treated any differently. The fact that the Guaranty of each Guarantor is set forth in this Agreement rather than in a separate guaranty document is for the convenience of Holdings and the Guarantors and shall in no way impair or adversely affect the rights or benefits of any Guaranteed Person under this Section 10.10. Each

Guarantor agrees to execute and deliver a separate agreement, immediately upon request at any time of any Guaranteed Person, evidencing such Guarantor's obligations under this Section 10.10. Upon the occurrence of any Event of Default, a separate action or actions may be brought against each Guarantor, whether or not Holdings or any other Guarantor or Person is joined therein or a separate action or actions are brought against Holdings or any other Guarantor or Person.

(c) Limitation of Guaranty. To the extent that any court of competent jurisdiction shall impose by final judgment under applicable law (including the California Uniform Fraudulent Transfer Act and §§544 and 548 of the Bankruptcy Code) any limitations on the amount of any Guarantor's liability with respect to the Guaranteed Obligations which any Guaranteed Person can enforce under this Section 10.10, each Guaranteed Person by its acceptance hereof accepts such limitation on the amount of such Guarantor's liability hereunder to the extent needed to make this Section 10.10 fully enforceable and nonavoidable.

(d) Liability of Guarantor. The liability of each Guarantor under this Section 10.10 shall be irrevocable, absolute, independent and unconditional, and shall not be affected by any circumstance which might constitute a discharge of a surety or guarantor other than the indefeasible payment and performance in full of all Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(i) such Guarantor's liability hereunder shall be the immediate, direct, and primary obligation of such Guarantor and shall not be contingent upon any Guaranteed Person's exercise or enforcement of any remedy it may have against Holdings or any other Person, or against any collateral or other security for any Guaranteed Obligations;

(ii) this Guaranty is a guaranty of payment when due and not merely of collectibility;

(iii) such Guarantor's payment of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge such Guarantor's liability for any portion of the Guaranteed Obligations remaining unsatisfied; and

(iv) such Guarantor's liability with respect to the Guaranteed Obligations shall remain in full force and effect without regard to, and shall not be impaired or affected by, nor shall such Guarantor be exonerated or discharged by, any of the following events:

(A) any Insolvency Proceeding;

(B) any limitation, discharge, or cessation of the liability of Holdings or any other guarantor or Person for any Guaranteed Obligations due to any statute, regulation or rule of law, or any invalidity or unenforceability in whole or in part of any of the Guaranteed Obligations or the Loan Documents;

(C) any merger, acquisition, consolidation or change in structure of Holdings or any other Guarantor or Person, or any sale, lease, transfer or other disposition of any or all of the assets or shares of Holdings or any other Guarantor or other Person;

(D) any assignment or other transfer, in whole or in part, of any Guaranteed Person's interests in and rights under this Guaranty or the other Loan Documents;

(E) any claim, defense, counterclaim or set-off, other than that of prior performance, that Holdings, such Guarantor, any other guarantor or other Person may have or assert, including any defense of incapacity or lack of corporate or other authority to execute any of the Loan Documents;

(F) any Guaranteed Person's amendment, modification, renewal, extension, cancellation or surrender of any Loan Document or any Guaranteed Obligations;

(G) any Guaranteed Person's exercise or nonexercise of any power, right or remedy with respect to any Guaranteed Obligations or any collateral;

(H) any Guaranteed Person's vote, claim, distribution, election, acceptance, action or inaction in any Insolvency Proceeding; or

(I) any other guaranty, whether by any Guarantor or any other Person, of all or any part of the Guaranteed Obligations or any other indebtedness, obligations or liabilities of any Guaranteed Person.

(e) Consents of Guarantor. Each Guarantor hereby unconditionally consents and agrees that, without notice to or further assent from such Guarantor:

(i) the principal amount of the Guaranteed Obligations may be increased or decreased and additional indebtedness or obligations of Holdings under the Loan Documents may be incurred and the time, manner, place or terms of any payment under any Loan Document be extended or changed, by one or more amendments, modifications, renewals or extensions of any Loan Document or otherwise;

(ii) the time for Holdings' (or any other Person's) performance of or compliance with any term, covenant or agreement on its part to be performed or observed under any Loan Document may be extended, or such performance or compliance waived, or failure in or departure from such performance or compliance consented to, all in such manner and upon such terms as any Guaranteed Person (or the Majority Lenders, as the case may be) may deem proper;

(iii) each Guaranteed Person may request and accept other guarantees and may take and hold other security as collateral for the Guaranteed Obligations, and may, from time to time, in whole or in part, exchange, sell, surrender, release, subordinate, modify, waive, rescind, compromise or extend such other guaranties or security and may permit or consent to any such action or the result of any such action, and may apply such security and direct the order or manner of sale thereof;

(iv) each Guaranteed Person may exercise, or waive or otherwise refrain from exercising, any other right, remedy, power or privilege even if the exercise thereof affects or eliminates any right of subrogation or any other right of such Guarantor against Holdings.

(f) Guarantor's Waivers. Each Guarantor waives and agrees not to assert:

(i) any right to require the Administrative Agent or any Lender to marshal assets in favor of Holdings, the Guarantors, any other guarantor or any other Person, to proceed against Holdings, any other guarantor or any other Person, to proceed against or exhaust any of the Collateral, to give notice of the terms, time and place of any public or private sale of personal property security constituting the Collateral or other collateral for the Guaranteed Obligations or comply with any other provisions of Chapter 6 of Division 9 of the UCC (or any equivalent provision of any other applicable law) or to pursue any other right, remedy, power or privilege of the Administrative Agent or any Lender whatsoever;

(ii) the defense of the statute of limitations in any action hereunder or for the collection or performance of the Guaranteed Obligations;

(iii) any defense arising by reason of any lack of corporate or other authority or any other defense of Holdings, such Guarantor or any other Person;

(iv) any defense based upon any Guaranteed Person's errors or omissions in the administration of the Guaranteed Obligations;

(v) any rights to set-offs and counterclaims;

(vi) without limiting the generality of the foregoing, to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties, or which may conflict with the terms of this Section 10.10;

(vii) any defense based upon an election of remedies (including, if available, an election to proceed by nonjudicial foreclosure) which destroys or impairs the subrogation rights of such Guarantor or the right of such Guarantor to proceed against Holdings or any other obligor of the Guaranteed Obligations for reimbursement;

(viii) without limiting the generality of the foregoing, to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties, or which may conflict with the terms of this Section 10.10, including any and all benefits that otherwise might be available to such Guarantor under California Civil Code §§1432, 2809, 2787 to 2855, inclusive, 2899 and 3433 and California Code of Civil Procedure §§580a, 580b, 580d and 726 or Texas Property Code §§51.003 – 51.005. Accordingly, each Guarantor waives all rights and defenses that such Guarantor may have because Holdings' debt is secured by real property. This means, among other things: (A) the Administrative Agent and the Lenders may collect from such Guarantor without first foreclosing on any real or personal property Collateral pledged by

Holdings or such Guarantor; and (B) if the Administrative Agent forecloses on any real property Collateral pledged by Holdings or such Guarantor: (1) the amount of the debt may be reduced only by the price for which that Collateral is sold at the foreclosure sale, even if the Collateral is worth more than the sale price, and (2) the Administrative Agent and the Lenders may collect from such Guarantor even if the Administrative Agent, by foreclosing on the real property Collateral, has destroyed any right such Guarantor may have to collect from Holdings. This is an unconditional and irrevocable waiver of any rights and defenses such Guarantor may have because Holdings' debt is secured by real property. These rights and defenses include, but are not limited to, any rights of defenses based upon section 580a, 580b, 580d or 726 of the California Code of Civil Procedure or sections 51.003 – 51.005 of the Texas Property Code; and

(ix) any and all notice of the acceptance of this Guaranty, and any and all notice of the creation, renewal, modification, extension or accrual of the Guaranteed Obligations, or the reliance by any Guaranteed Person upon this Guaranty, or the exercise of any right, power or privilege hereunder. The Guaranteed Obligations shall conclusively be deemed to have been created, contracted, incurred and permitted to exist in reliance upon this Guaranty. Each Guarantor waives promptness, diligence, presentment, protest, demand for payment, notice of default, dishonor or nonpayment and all other notices to or upon Holdings, such Guarantor or any other Person with respect to the Guaranteed Obligations.

(g) Financial Condition of Holdings. No Guarantor shall have any right to require any Guaranteed Person to obtain or disclose any information with respect to: the financial condition or character of Holdings or the ability of Holdings to pay and perform the Guaranteed Obligations; the Guaranteed Obligations; any collateral or other security for any or all of the Guaranteed Obligations; the existence or nonexistence of any other guarantees of all or any part of the Guaranteed Obligations; any action or inaction on the part of any Guaranteed Person or any other Person; or any other matter, fact or occurrence whatsoever. Each Guarantor hereby acknowledges that it has undertaken its own independent investigation of the financial condition of Holdings and the other Loan Parties and all other matters pertaining to this Guaranty and further acknowledges that it is not relying in any manner upon any representation or statement of any Guaranteed Person with respect thereto.

(h) Subrogation. Until the Guaranteed Obligations shall be satisfied in full, each Guarantor shall not have, and shall not directly or indirectly exercise (i) any rights that it may acquire by way of subrogation under this Section 10.10, by any payment hereunder or otherwise, (ii) any rights of contribution, indemnification, reimbursement or similar suretyship claims arising out of this Section 10.10 or (iii) any other right which it might otherwise have or acquire (in any way whatsoever) which could entitle it at any time to share or participate in any right, remedy or security of any Guaranteed Person as against Holdings or other guarantors, whether in connection with this Section 10.10, any of the other Loan Documents or otherwise. If any amount shall be paid to any Guarantor on account of the foregoing rights at any time when all the Guaranteed Obligations shall not have been paid in full, such amount shall be held in trust for the benefit of each Guaranteed Person and shall forthwith be paid to the Administrative Agent to be credited and applied to the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of the Loan Documents.

(i) Continuing Guaranty. This Guaranty is a continuing guaranty and agreement of subordination and shall continue in effect and be binding upon each Guarantor until payment and performance in full of all Guaranteed Obligations, including Guaranteed Obligations which may exist continuously or which may arise from time to time under successive transactions, and each Guarantor expressly acknowledges that this Guaranty shall remain in full force and effect notwithstanding that there may be periods in which no Guaranteed Obligations exist.

(j) Reinstatement. This Guaranty shall continue to be effective or shall be reinstated and revived, as the case may be, if, for any reason, any payment of the Guaranteed Obligations by or on behalf of Holdings (or receipt of any proceeds of collateral) shall be rescinded, invalidated, declared to be fraudulent or preferential, set aside, voided or otherwise required to be repaid to Holdings, its estate, trustee, receiver or any other Person (including under the Bankruptcy Code or other state or federal law), or must otherwise be restored by any Guaranteed Person, whether as a result of Insolvency Proceedings or otherwise. All losses, damages, costs and expenses that any Guaranteed Person may suffer or incur as a result of any voided or otherwise set aside payments shall be specifically covered by the indemnity in favor of the Lenders and the Administrative Agent contained in Section 10.10.

(k) Substantial Benefits. The funds that have been borrowed from the Lenders by Holdings have been and are to be contemporaneously used for the direct or indirect benefit of Holdings and each Guarantor. It is the position, intent and expectation of the parties that Holdings and each Guarantor have derived and will derive significant and substantial direct or indirect benefits from the accommodations that have been made by the Lenders under the Loan Documents.

(l) Knowing and Explicit Waivers. EACH GUARANTOR ACKNOWLEDGES THAT IT EITHER HAS OBTAINED THE ADVICE OF LEGAL COUNSEL OR HAS HAD THE OPPORTUNITY TO OBTAIN SUCH ADVICE IN CONNECTION WITH THE TERMS AND PROVISIONS OF THIS SECTION 10.10. EACH GUARANTOR ACKNOWLEDGES AND AGREES THAT EACH OF THE WAIVERS AND CONSENTS SET FORTH HEREIN ARE MADE WITH FULL KNOWLEDGE OF THEIR SIGNIFICANCE AND CONSEQUENCES, AND THAT ALL SUCH WAIVERS AND CONSENTS HEREIN ARE EXPLICIT AND KNOWING AND WHICH EACH GUARANTOR EXPECTS TO BE FULLY ENFORCEABLE.

(m) Release of Subsidiary Guarantors. Holdings may at any time deliver to the Administrative Agent a certificate from a Responsible Officer of Holdings certifying as of the date of the certificate that, after the consummation of the transaction or series of transactions described in such certificate (which certification shall also state that such transactions, individually or in the aggregate, will be in compliance with the terms and conditions of this Agreement, including to the extent applicable Section 7.02 and Section 7.03, and that no Event of Default existed, exists or will exist, as the case may be, immediately before, as a result of or immediately after giving effect to such transaction or transactions and termination), the Guarantor identified in such certification will no longer be a Subsidiary of Holdings. Effective upon the consummation of the transaction or series of transactions described in such certificate effected in compliance with this Agreement, the Subsidiary identified in such

certification shall thereupon automatically cease to be a Guarantor hereunder and shall cease to be a party hereto and shall thereupon automatically be released from its obligations under this Section 10.10 and under the Security Agreement, and all Liens in favor of the Administrative Agent and the Lenders under the Collateral Documents in respect of the property of such Subsidiary shall thereupon terminate. Holdings shall promptly notify the Administrative Agent of the consummation of any such transaction or series of transactions. The Administrative Agent, on behalf of the Lenders, shall, at Holdings' expense, execute and deliver such instruments as Holdings may reasonably request to evidence such release and Lien termination.

10.11 Replacement of Lenders. If any Lender requests compensation under Section 3.03, or if Holdings is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any other circumstance exists hereunder that gives Holdings the right to replace a Lender as a party hereto (including pursuant to Section 10.01(b)), then Holdings may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) Holdings shall have paid to the Administrative Agent the assignment fee specified in Section 10.06;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.04) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Holdings (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 3.03 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with any Requirement of Law.

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

10.12 Notification of Addresses, Lending Offices, Etc. Each Lender shall notify the Administrative Agent in writing of any changes in the address to which notices to such Lender should be directed, of addresses of any Lending Office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as the Administrative Agent shall reasonably request.

10.13 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which

shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Article IV, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or by email in pdf format shall be effective as delivery of a manually executed counterpart of this Agreement.

10.14 Severability. Whenever possible, each provision of the Loan Documents shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of any of the Loan Documents shall be prohibited by or invalid under any such law or regulation in any jurisdiction, it shall, as to such jurisdiction, be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of such Loan Document, or the validity or effectiveness of such provision in any other jurisdiction.

10.15 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and legal benefit of Holdings and the other Loan Parties, the Lenders, the Administrative Agent and the Administrative Agent-Related Persons, the Indemnitees and their respective 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.

10.16 Governing Law; Jurisdiction, Etc.

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

(b) SUBMISSION TO JURISDICTION. HOLDINGS AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF CALIFORNIA SITTING IN SAN FRANCISCO COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH CALIFORNIA STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON

THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST HOLDINGS OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

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

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

10.17 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered in San Francisco, California, by their proper and duly authorized officers as of the day and year first above written.

BORROWER

BUILDING MATERIALS HOLDING CORPORATION

By _____
Name: Paul Street
Title: Chief Executive Officer

GUARANTORS

BMC WEST CORPORATION

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD CONSTRUCTION, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD NORTHERN CALIFORNIA, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

C CONSTRUCTION, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

TWF CONSTRUCTION, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

H.N.R. FRAMING SYSTEMS, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD SOUTHERN CALIFORNIA, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD NEVADA, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD ARIZONA, LLC

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD ILLINOIS, LLC

By _____
Name: Paul Street
Title: Chief Executive Officer

ILLINOIS FRAMING, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Administrative Agent and Lender

By _____

Name:

Title:

EXHIBIT A

FORM OF COMPLIANCE CERTIFICATE

BUILDING MATERIALS HOLDING CORPORATION

Financial Statements Date: _____

Reference is made to that certain Term Loan Credit Agreement, dated as of [_____], 2009 (as extended, renewed, amended or restated from time to time, the "Credit Agreement"), by and among Holdings, as borrower, certain subsidiaries of Holdings, as guarantors, the financial institutions from time to time party thereto (the "Lenders") and Wells Fargo Bank, National Association, as administrative agent (in such capacity, the "Administrative Agent"). Unless otherwise defined herein, capitalized terms used herein have the respective meanings assigned to them in the Credit Agreement.

The undersigned Responsible Officer of Holdings hereby certifies as of the date hereof that he/she is the [_____] of Holdings, and that, as such, he/she is authorized to execute and deliver this Certificate to the Administrative Agent on the behalf of Holdings and its consolidated Subsidiaries, and that:

[Use the following paragraph if this Certificate is delivered in connection with the annual financial statements required by Section 6.01(a) of the Credit Agreement.]

(a) Attached hereto are true and correct copies of the audited consolidated balance sheet of Holdings and its Subsidiaries as at the end of the fiscal year ended _____ and the related consolidated statements of income or operations, shareholders' equity, retained earnings and cash flows for such year, setting forth in each case in comparative form the figures for the previous fiscal year, accompanied by the report and opinion of the Independent Auditor, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to ***[***any "going concern" or like qualification or exception or***] [delete for Certificate delivered in connection with the annual financial statements for fiscal year 2009]*** any qualification or exception as to the scope of such audit and which states that such consolidated financial statements present fairly the financial position and the results of operations and cash flows of Holdings and its Subsidiaries for the periods indicated in conformity with GAAP applied on a basis consistent with prior years.

or

[Use the following paragraph if this Certificate is delivered in connection with the quarterly financial statements required by Section 6.01(b) of the Credit Agreement.]

(a) Attached hereto are true and correct copies of the unaudited consolidated balance sheet of Holdings and its Subsidiaries as of the end of the fiscal quarter ended _____ and the related consolidated statements of income and cash flows for the period commencing on the first day and ending on the last day of such quarter, which are complete and accurate in all material respects and fairly present, in accordance with GAAP (subject to fresh start accounting

adjustments through March 31, 2010, year-end audit adjustments and the absence of footnotes), the financial position, the results of operations and the cash flows of Holdings and the Subsidiaries.

or

[Use the following paragraph if this Certificate is delivered in connection with the monthly financial statements required by Section 6.01(c) of the Credit Agreement.]

(a) Attached hereto are true and correct copies of (i) the unaudited consolidated balance sheet of Holdings and its Subsidiaries as of the end of the fiscal month ended _____ and the related consolidated statements of income and cash flows for the period commencing on the first day and ending on the last day of such month and the year-to-date period ending on the last day of such month, which are complete and accurate in all material respects and fairly present, in accordance with GAAP (subject to fresh start accounting adjustments through March 31, 2010, year-end audit adjustments, quarterly accounting adjustments, and the absence of footnotes) the consolidated financial position, the results of operations and the cash flows of Holdings and the Subsidiaries, (ii) a management commentary in respect of the financial condition and results of operations of Holdings and its Subsidiaries for the financial statements delivered in accordance with the preceding clause (i), which management commentary is accompanied by a comparison of the consolidated statements of income and cash flows for such fiscal month versus the forecasted consolidated income and cash flows for such fiscal month last delivered pursuant to the following clause (iii) or Section 6.01(d) of the Credit Agreement, as the case may be, and (iii) an updated rolling 13-week consolidated cash flow forecast for Holdings and its Subsidiaries, which forecast (A) states the assumptions used in the preparation thereof and (B) represents Holdings' reasonable good faith estimates and assumptions as to future performance, which Holdings believes to be fair and reasonable as of the time made in light of then current and reasonably foreseeable business conditions (it being understood that forecasts and projections by their nature involve approximations and uncertainties).

(b) The undersigned has reviewed and is familiar with the terms of the Credit Agreement and has made, or has caused to be made under his/her supervision, a detailed review of the transactions and condition (financial or otherwise) of Holdings and its Subsidiaries during the accounting period covered by the attached financial statements.

(c) Holdings and its Subsidiaries, during such period, have observed, performed or satisfied all of the covenants and other agreements, and satisfied every condition in the Credit Agreement to be observed, performed or satisfied by Holdings and its Subsidiaries, and the undersigned has no knowledge of any Default or Event of Default.

(d) The representations and warranties of Holdings contained in Article V of the Credit Agreement qualified as to materiality are true and correct, and those not so qualified are true and correct in all material respects, as though made on and as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they shall be true and correct as of such earlier date; and except that this notice shall be deemed instead to refer to the last day of the most recent year and fiscal quarter for which financial statements have then been

delivered in respect of the representation and warranty made in Section 5.10(a) of the Credit Agreement).

(e) The financial covenant analyses and information set forth on Schedule 1 attached hereto are true and accurate on and as of the date of this Certificate.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as the _____ of Holdings as of _____.

BUILDING MATERIALS HOLDING CORPORATION

By: _____
Name: _____
Title: _____

Schedule 1

to Compliance Certificate

Effective Date of Calculation:	_____	
A. Section 7.18(a) - Liquidity		
1. The maximum additional Revolving Loan amount that Holdings may borrow pursuant to Section 2.01(b) of the First Lien Credit Agreement	$_____	
2. Cash Balance	$_____	
3. Anticipated net proceeds from pending sales, or the remaining surrender value, of life insurance policies related to the prepetition supplemental employee retirement plans (without duplication) (not to exceed $16,300,000 in the aggregate for all periods; $0 if 180 days or more since Effective Date)	$_____	
4. Anticipated net proceeds from the liquidation of prepetition deferred compensation accounts (not to exceed $1,300,000 in the aggregate for all periods; $0 if 180 days or more since Effective Date)	$_____	
5. Pre-payments of Prepetition Tax Liabilities (relative to an assumed five-year level payment schedule commencing on the Effective Date) (not to exceed $7,100,000 in the aggregate for all periods)	$_____	
6. Professional fees and costs of counsel and other advisors and consultants paid from and after the Effective Date (in an aggregate amount consented to by the Administrative Agent)	$_____	
Liquidity *(Item A.1 plus Item A.2 plus Item A.3 plus Item A.4 plus Item A.5 plus Item A.6)* shall not be less than the amount set forth in Section 7.18(a) of the Credit Agreement for the applicable period		$_____
B. Section 7.18(b) – EBITDA		
1. Total Sales for the applicable period	$_____	
2. Costs of Goods Sold for the applicable period	$_____	

3. Gross Profit for the applicable period *(Item B.1 minus Item B.2)*		$_____
4. Selling, General and Administrative Expenses for the applicable period		$_____
5. Other Cash Expenses for the applicable period		$_____
6. Gain realized on the disposition of real estate or equipment for the applicable period	$_____	
7. Depreciation expense and amortization expense for the applicable period	$_____	
8. Loss realized on the disposition of real estate or equipment for the applicable period	$_____	
9. Non-cash expenses or charges for the applicable period (excluding any such non-cash expense or charge to the extent that it represents an accrual of or reserve for cash expenditures in any future period)	$_____	
10. Non-recurring costs, expenses and charges for the applicable period incurred in connection with the restructuring of Holdings' consolidated operations (as approved by the Administrative Agent)	$_____	
11. Costs, expenses and charges for the applicable period associated with Permitted Acquisitions (in an aggregate amount consented to by the Administrative Agent)	$_____	
12. Fees and costs of attorneys and other advisors and consultants for the applicable period attributable to (a) the restructuring of Holdings' consolidated operations (as approved by the Administrative Agent) and (b) the negotiation, documentation, implementation and closing of the Reorganization Plan, the Loan Documents in existence as of the Effective Date and the First Lien Loan Documents in existence as of the Effective Date	$_____	
13. Sum of Items B.7, B.8, B.9, B.10, B.11 and B.12 (to the extent included in Item B.2, B.4 or B.5, and without duplication)		$_____
14. Item B.6 (to the extent included in Item B.1)		$_____

EBITDA (*Item B.3 minus Item B.4 minus B.5 minus B.14 plus Item B.13, and excluding all non-cash income other than accruals of revenue in the Ordinary Course of Business*) shall not be less than the amount set forth in Section 7.18(b) of the Credit Agreement for the applicable period		$_____
C. Section 7.07(e) – Contingent Obligations		
Contingent Obligations with respect to Surety Instruments incurred in the Ordinary Course of Business; shall not exceed $69,000,000 in aggregate principal amount		$_____
D. Section 7.20 – Capital Expenditures		
Capital Expenditures (excluding Capital Expenditures to the extent made using insurance or condemnation proceeds paid on account of an Event of Loss and applied to repair, reconstruct or replace the affected property); shall not be greater than $8,625,000 for Fiscal 2010, $11,500,000 for Fiscal 2011 or $11,500,000 for Fiscal 2012		$_____
E. Section 7.09 – Lease Obligations		
Obligations for payment of rent for any property under Operating Leases since beginning of current fiscal year; shall not exceed $35,000,000 in any fiscal year		$_____

EXHIBIT B

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between the each Assignor identified in item 1 below (the "Assignor") and the Assignee identified in item 2 below (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any guarantees included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____

_____

2. Assignee: _____

_____

[for Assignee, indicate [Affiliate][Approved Fund] of [*identify Lender*]

3. Borrower(s): Building Materials Holding Corporation

4. Administrative Agent: Wells Fargo Bank, National Association, as the administrative agent under the Credit Agreement

5. Credit Agreement: The Term Loan Credit Agreement, dated as of [_____], 2009, by and among Borrower, certain subsidiaries of Borrower, as guarantors, the financial institutions from time to time party thereto and Wells Fargo Bank, National Association, as Administrative Agent.

6. Assigned Interest:

Aggregate Amount of Loans for all Lenders[1]	Amount of Loans Assigned	Percentage Assigned of Loans[2]	CUSIP Number
$	$	%	
$	$	%	
$	$	%	

[7. Trade Date: _____][3]

[Page break]

[1] Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

[2] Set forth, to at least 9 decimals, as a percentage of the Loans of all Lenders thereunder.

[3] To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

Effective Date: _____ ___, 20___ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____
Name: _____
Title: _____

ASSIGNEE

[NAME OF ASSIGNEE]

By: _____
Name: _____
Title: _____

[Consented to and][4] Accepted:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent

By: _____
Name: _____
Title: _____

[Consented to:][5]

BUILDING MATERIALS HOLDING CORPORATION

By: _____
Name: _____
Title: _____

[4] To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.
[5] To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.

ANNEX 1

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 10.06(b) of the Credit Agreement (subject to such consents, if any, as may be required under Section 10.06(b) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, and (vii) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of California.

EXHIBIT C

FORM OF NOTE

U.S. $_____

FOR VALUE RECEIVED, the undersigned, BUILDING MATERIALS HOLDING CORPORATION, a Delaware corporation ("Holdings"), hereby promises to pay to the order of_____ (the "Lender") the principal sum of _____ Dollars ($_____) or, if different, the aggregate unpaid principal amount of the Loan made by the Lender to Holdings pursuant to the Credit Agreement referred to below and outstanding on the Maturity Date. Holdings further promises to pay interest on the unpaid principal amount of the Loan evidenced hereby from time to time at the rates, on the dates, and otherwise as provided in the Credit Agreement.

The Lender is authorized to endorse the amount of and the date on which the Loan is made and each payment of principal with respect thereto on the schedule annexed hereto and made a part hereof, or on continuations thereof which shall be attached hereto and made a part hereof; provided that any failure to endorse such information on such schedule or continuation thereof shall not in any manner affect any obligation of Holdings under the Credit Agreement and this Promissory Note (this "Note").

This Note is one of the Notes referred to in, and is entitled to the benefits of, the Term Loan Credit Agreement, dated as of [_____], 2009 (as extended, renewed, amended or restated from time to time, the "Credit Agreement"), by and among Holdings, as borrower, certain subsidiaries of Holdings, as guarantors, the financial institutions from time to time party thereto (the "Lenders") and Wells Fargo Bank, National Association ("Wells Fargo"), as administrative agent (in such capacity, the "Administrative Agent"), which Credit Agreement, among other things, contains provisions for acceleration of the maturity hereof upon the happening of certain stated events and also for payments and prepayments on account of principal hereof prior to the maturity hereof upon the terms and conditions therein specified.

This Note is secured by certain Collateral more specifically described in the Credit Agreement and the Collateral Documents.

Terms defined in the Credit Agreement are used herein with their defined meanings therein unless otherwise defined herein.

Anything herein to the contrary notwithstanding, the liens and security interests securing the obligations evidenced by this Note, the exercise of any right or remedy with respect thereto, and certain of the rights of the holder hereof are subject to the provisions of the Intercreditor Agreement dated as of [_____], 2009 (as amended or restated from time to time, the "Intercreditor Agreement"), by and between Wells Fargo, as First Lien Agent, and Wells Fargo, as Second Lien Agent. In the event of any conflict between the terms of the Intercreditor Agreement and this Note, the terms of the Intercreditor Agreement shall govern and control.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of California.

BUILDING MATERIALS HOLDING CORPORATION

By: _____

Name: _____

Title: _____

SCHEDULE
to Note

Date Loan Disbursed	Amount of Loan	Principal Payment	Date Principal Paid

EXHIBIT D

FORM OF ADDITIONAL GUARANTOR ASSUMPTION AGREEMENT

Date: _____

To each of the Lenders party to the Credit Agreement
referred to below, and to Wells Fargo Bank, National
Association, as Administrative Agent

Ladies and Gentlemen:

This Additional Guarantor Assumption Agreement, dated as of _____, is made and delivered pursuant to Section 6.12 of that certain Term Loan Credit Agreement, dated as of [_____], 2009 (as extended, renewed, amended or restated from time to time, the "Credit Agreement"), by and among Holdings, as borrower, certain subsidiaries of Holdings, as guarantors, the financial institutions from time to time party thereto (the "Lenders") and Wells Fargo Bank, National Association, as administrative agent (in such capacity, the "Administrative Agent"). All capitalized terms used in this Additional Guarantor Assumption Agreement and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

_____ (the "Subsidiary") hereby confirms, represents and warrants to the Administrative Agent and the Lenders that the Subsidiary is a U.S. Subsidiary effective as of _____.

The documents required to be delivered to the Administrative Agent under clauses (ii), (iii) and (iv) of Section 6.12(a) of the Credit Agreement will be furnished to the Administrative Agent in accordance with the requirements of the Credit Agreement.

The parties hereto hereby confirm that with effect from the date hereof, the Subsidiary shall be a party to the Credit Agreement and a party to the Security Agreement (as amended), and shall have the obligations which the Subsidiary would have had if the Subsidiary had been an original party to the Credit Agreement as a Guarantor and the Security Agreement as a Grantor (and pursuant to Section 2(a) of the Security Agreement (and subject to Section 3(i) of the Security Agreement), the Subsidiary hereby grants to the Administrative Agent a security interest in all Collateral (as defined in the Security Agreement) in which Subsidiary has an interest to secure the Secured Obligations (as defined in the Security Agreement)). The Subsidiary confirms its acceptance of, and consents to, all terms and provisions of the Credit Agreement (including, without limitation, Section 10.10 thereof) and the Security Agreement applicable to the Guarantors or the Grantors, as the case may be, and to any other Loan Documents to which the Guarantors or Grantors are parties.

Without limiting the generality of the foregoing, the Subsidiary hereby (a) unconditionally and irrevocably guarantees to the Guaranteed Persons (as defined in Section 10.10 of the Credit Agreement), jointly and severally with each other Guarantor, the full and prompt payment when due (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise) and performance of all Guaranteed Obligations (as defined in Section 10.10 of the Credit Agreement) of Holdings to any such Guaranteed Person, whether arising out of or in connection with the Credit Agreement, any other Loan Document or otherwise, including all unpaid principal of the Loans, all interest accrued thereon, all fees due under the Credit Agreement and all other amounts payable by Holdings to any such Guaranteed Person thereunder or in connection therewith; and (b) subject to Section 3(i) of the Security Agreement, pledges, assigns, transfers, hypothecates, sets over and grants to the Administrative Agent, for the benefit of itself and on behalf of and for the ratable benefit of the Lenders and the other Secured Parties (as defined in the Security Agreement), and their respective successors, endorsers, transferees and assigns, a security interest in all of its right, title and interest in, to and under any Collateral (as defined in the Security Agreement) to secure the payment and performance of the Secured Obligations (as defined in the Security Agreement).

This Additional Guarantor Assumption Agreement shall constitute a Loan Document under the Credit Agreement.

THIS ADDITIONAL GUARANTOR ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA.

IN WITNESS WHEREOF, the Subsidiary has caused this Additional Guarantor Assumption Agreement to be duly executed and delivered in _____ by its proper and duly authorized officer as of the day and year first above written.

[SUBSIDIARY]

By: _____
Name: _____
Title: _____

EXHIBIT E

SECURITY AGREEMENT

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement"), dated as of _____, 2009, is made by and among Building Materials Holding Corporation, a Delaware corporation ("Holdings"), certain affiliates of Holdings signatories hereto or acceding hereto as provided in Section 25 hereof, and Wells Fargo Bank, National Association ("Wells Fargo"), as administrative agent for itself and the other Secured Parties (in such capacity, the "Administrative Agent").

RECITALS

WHEREAS, Holdings, the other Loan Parties named therein, certain lending institutions as lenders and the Administrative Agent are parties to that certain Term Loan Credit Agreement dated as of even date herewith (as amended, restated, modified, renewed or extended from time to time, the "Credit Agreement"); and

WHEREAS, the Credit Agreement requires the Grantors to enter into this Agreement and grant to the Administrative Agent, for itself and for the ratable benefit of the other Secured Parties, the security interests hereinafter provided to secure the Secured Obligations described below.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1 Definitions; Interpretation.

(a) Terms Defined in Credit Agreement. All capitalized terms used in this Agreement (including in the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

(b) Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Accounts" means any and all of any Grantor's accounts, as such term is defined in Article 9 of the UCC.

"Books" means all books, records and other written, electronic or other documentation in whatever form maintained now or hereafter by or for any Grantor in connection with the ownership of its assets or the conduct of its business or evidencing or containing information relating to the Collateral, including: (i) ledgers; (ii) records indicating, summarizing, or evidencing any Grantor's assets (including Inventory and Rights to Payment), business operations or financial condition; (iii) computer programs and software; (iv) computer discs, tapes, files, manuals, spreadsheets; (v) computer printouts and output of whatever kind; (vi) any other computer prepared or electronically stored, collected or reported information and equipment of any kind; and (vii) any and all other rights now or hereafter arising out of any contract or agreement between any Grantor and any service bureau, computer or data processing company or other Person charged with preparing or maintaining any of any Grantor's books or records or with credit reporting, including with regard to any Grantor's Accounts.

"Capital Stock" means and includes (a) any and all shares, interests, participations or other equivalents of or interests in (however designated) corporate stock, including shares of preferred or preference stock, (b) all partnership interests (whether general or limited) in any Person which is a partnership, (c) all membership interests or limited liability company interests in any limited liability company, and (d) all equity or ownership interests in any Person of any other type.

"Chattel Paper" means any and all of any Grantor's chattel paper, as such term is defined in Article 9 of the UCC, including all Electronic Chattel Paper.

"Collateral" has the meaning set forth in Section 2.

"Commercial Tort Claims" means any and all of any Grantor's commercial tort claims, as such term is defined in Article 9 of the UCC, including any described in Schedule 1.

"Control Agreement" means any control agreement or other agreement with any securities intermediary, bank or other Person establishing the Administrative Agent's control with respect to any Deposit Accounts, Letter-of-Credit Rights or Investment Property, for purposes of Article 9 of the UCC.

"Deposit Account" means any deposit account, as such term is defined in Article 9 of the UCC, maintained by or for the benefit of any Grantor, whether or not restricted or designated for a particular purpose.

"Discharge of First Lien Obligations" has the meaning set forth in the Intercreditor Agreement.

"Documents" means any and all of any Grantor's documents, as such term is defined in Article 9 of the UCC.

"Electronic Chattel Paper" means any and all of any Grantor's electronic chattel paper, as such term is defined in Article 9 of the UCC.

"Equipment" means any and all of any Grantors' equipment, including any and all fixtures, as such terms are defined in Article 9 of the UCC.

"Filing Offices" has the meaning set forth in Section 3(a).

"First Lien Agent" has the meaning set forth in the Intercreditor Agreement.

"First Lien Secured Obligations" means the Secured Obligations referred to in the First Lien Security Agreement.

"First Lien Security Agreement" means the Security Agreement referred to in the First Lien Credit Agreement.

"General Intangibles" means any and all of any Grantor's general intangibles, as such term is defined in Article 9 of the UCC, including, without limitation, any and all tax

refunds, tax credits, tax attributes, tax benefits and tax-related payments of any kind paid or owing to any Grantor by any Governmental Authority and all claims in respect of any of the foregoing.

"Grantors" means Holdings and the other Loan Parties.

"Instruments" means any and all of any Grantor's instruments, as such term is defined in Article 9 of the UCC.

"Intellectual Property Collateral" means the following properties and assets owned or held by any Grantor or in which any Grantor otherwise has any interest, now existing or hereafter acquired or arising:

(i) all patents and patent applications, domestic or foreign, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including such patents, patent applications and patent licenses as described in Schedule 2), all rights to sue for past, present or future infringement thereof, all rights arising therefrom and pertaining thereto and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof;

(ii) all copyrights and applications for copyright, domestic or foreign, together with the underlying works of authorship (including titles), whether or not the underlying works of authorship have been published and whether said copyrights are statutory or arise under the common law, and all other rights and works of authorship (including the copyrights and copyright applications described in Schedule 2), all computer programs, computer databases, computer program flow diagrams, source codes, object codes and all tangible property embodying or incorporating any copyrights, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses, and all other rights, claims and demands in any way relating to any such copyrights or works, including royalties and rights to sue for past, present or future infringement, and all rights of renewal and extension of copyright;

(iii) all state (including common law), federal and foreign trademarks, service marks and trade names, and applications for registration of such trademarks, service marks and trade names, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including such marks, names, applications and licenses as described in Schedule 2), whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented use thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof;

(iv) all trade secrets, trade dress, trade styles, logos, other source of business identifiers, mask-works, mask-work registrations, mask-work applications, software, confidential information, customer lists, license rights, advertising materials, operating manuals, methods, processes, know-how, algorithms, formulae, databases, quality control procedures, product, service and technical specifications, operating, production and quality control manuals, sales literature, drawings, specifications, blue prints, descriptions, inventions, name plates and catalogs;

(v) the entire goodwill of or associated with the businesses now or hereafter conducted by such Grantor connected with and symbolized by any of the aforementioned properties and assets; and

(vi) all accounts, all intangible intellectual or other similar property and other general intangibles associated with or arising out of any of the aforementioned properties and assets and not otherwise described above.

"Intellectual Property Security Agreement" means each Patent and Trademark Security Agreement, each Copyright Security Agreement or any amendment thereto, in form and substance satisfactory to the Administrative Agent, supplementary to this Agreement and prepared for purposes of recordation with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable.

"Inventory" means any and all of any Grantor's inventory, as such term is defined in Article 9 of the UCC.

"Investment Property" means any and all of any Grantor's investment property, as such term is defined in Article 9 of the UCC.

"Lenders" has the meaning specified in the Credit Agreement.

"Letter-of-Credit Rights" means any and all of any Grantor's letter-of-credit rights, as such term is defined in Article 9 of the UCC.

"Partnership and LLC Collateral" means any and all limited, limited liability and general partnership interests and limited liability company interests of any type or nature, whether now existing or hereafter acquired or arising, including any more specifically described in Schedule 3.

"Pledged Collateral" means any and all (i) Pledged Shares; (ii) additional Capital Stock of the direct or indirect Subsidiaries of Holdings (other than Subsidiaries which are owned by Non-Wholly-Owned Subsidiaries), whether certificated or uncertificated; (iii) other Investment Property of any Grantor; (iv) warrants, options or other rights entitling any Grantor to acquire any interest in Capital Stock or other securities of such Subsidiaries or any other Person; (v) Partnership and LLC Collateral; (vi) Instruments; (vii) Pledged Debt; (viii) securities, property, interest, dividends and other payments and distributions issued as an addition to, in redemption of, in renewal or exchange for, in substitution or upon conversion of, or otherwise on account of, any of the foregoing; (ix) certificates and instruments now or hereafter representing or evidencing any of the foregoing; (x) rights, interests and claims with respect to the foregoing, including under any and all related agreements, instruments and other documents, and (xi) cash and non-cash proceeds of any of the foregoing; in each case whether presently existing or owned or hereafter arising or acquired and wherever located, and as from time to time received or receivable by, or otherwise paid or distributed to or acquired by, any Grantor.

"Pledged Debt" means the indebtedness described in Schedule 3.

"Pledged Shares" means all of the issued and outstanding shares of Capital Stock, whether certificated or uncertificated, of Holdings' direct or indirect Subsidiaries (other than Subsidiaries which are owned by Non-Wholly-Owned Subsidiaries) now owned by any Grantor, as more specifically described in Schedule 3.

"Primary Account" means each Deposit Account for which a Control Agreement in form and substance reasonably satisfactory to the Administrative Agent has been executed and delivered to the Administrative Agent by the applicable Grantor and the bank or other depository institution at which such Deposit Account is maintained.

"Proceeds" means all proceeds, as such term is defined in Article 9 of the UCC.

"Rights to Payment" means any and all of any Grantor's Accounts and any and all of any Grantor's rights and claims to the payment or receipt of money or other forms of consideration of any kind in, to and under or with respect to its Chattel Paper, Documents, General Intangibles, Instruments, Investment Property, Letter-of-Credit Rights, Proceeds and Supporting Obligations.

"Secured Obligations" means all indebtedness, liabilities and other obligations of the Grantors to the Secured Parties created under, or arising out of or in connection with, the Credit Agreement, the Notes or any of the other Loan Documents, and any and all other indebtedness, liabilities and other obligations of the Grantors to the Administrative Agent, the Lenders or any Affiliate thereof, whether created under, arising out of or in connection with the Credit Agreement, the Notes or any of the other Loan Documents or otherwise, including all unpaid principal of the Loans, all interest accrued thereon, all fees due under the Credit Agreement and all other amounts payable by the Grantors to any Secured Party thereunder or in connection therewith, whether now existing or hereafter arising, and whether due or to become due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and including interest that accrues after the commencement by or against any Grantor of any Insolvency Proceedings naming such Person as the debtor in such proceeding.

"Secured Parties" means the Lenders and the Administrative Agent, and each of their respective successors, transferees and assigns.

"Supporting Obligations" means all supporting obligations, as such term is defined in Article 9 of the UCC.

"UCC" means the Uniform Commercial Code as the same may from time to time be in effect in the State of California.

"Zero Balance Account" means each Deposit Account designated as a "zero balance" account on Schedule 1 hereto and any other Deposit Account designated as a "zero balance" account in a written notice to the Administrative Agent pursuant to Section 5(m) hereof.

(c) Terms Defined in UCC. Where applicable and except as otherwise defined herein, terms used in this Agreement shall have the meanings assigned to them in the UCC.

(d) Interpretation. The rules of interpretation set forth in Section 1.02 of the Credit Agreement shall be applicable to this Agreement and are incorporated herein by this reference.

SECTION 2 Security Interest.

(a) Grant of Security Interest. As security for the payment and performance of the Secured Obligations, each Grantor hereby grants to the Administrative Agent, for itself and on behalf of and for the ratable benefit of the other Secured Parties, a security interest in all of such Grantor's right, title and interest in, to and under all of its personal property, wherever located and whether now existing or owned or hereafter acquired or arising, including the following property (collectively, the "Collateral"): (i) all Accounts; (ii) all Chattel Paper; (iii) all Commercial Tort Claims; (iv) all Deposit Accounts; (v) all Documents; (vi) all Equipment; (vii) all General Intangibles; (viii) all Instruments; (ix) all Inventory; (x) all Investment Property; (xi) all Letter-of-Credit Rights; and (xii) all money; and all products and Proceeds of any and all of the foregoing, and all Supporting Obligations of any and all of the foregoing. Notwithstanding the foregoing, except for fixtures (to the extent covered by Article 9 of the UCC), such grant of a security interest shall not extend to, and the term "Collateral" shall not include, (i) any agreements, contracts, permits or licenses only if and to the extent that the granting of a Lien as contemplated hereby would (A) constitute a violation of a restriction in favor of a third party on such grant, (B) give any other party to such contract, instrument, license, license agreement or other document the right to terminate its obligations thereunder, or (C) violate any law (other than (but only in respect of agreements or contracts not constituting a document evidencing a Capital Lease or purchase money obligation) to the extent that any such term described in the preceding clauses (A), (B) or (C) would be rendered ineffective pursuant to Section 9-406, 9-407 or 9-408 of the UCC (or any successor provision or provisions)) ("Excluded Contracts and Leases"); provided, however, that any agreement, contract, permit or license that does not constitute "Collateral" pursuant to this sentence shall immediately become "Collateral," and the Grantors, as applicable, shall be deemed to have granted a Lien therein, from and after such time as the other party to such agreement, contract, permit or license consents to the grant of a Lien in such agreement, contract, permit or license in favor of the Administrative Agent or the prohibition against granting a Lien therein otherwise ceases to be effective; and provided, further, that with respect to Excluded Contracts and Leases, Collateral shall in any case include the proceeds from the disposition of Excluded Contracts and Leases whether now or hereafter arising, whether tangible or intangible, and wherever located; (ii) any equipment subject to certain long-term secured debt consisting of the term notes, equipment notes and capital leases set forth on Schedule 5 and any other equipment in which any Grantor has rights if and for so long as the grant of a security interest therein shall constitute or result in a breach or termination pursuant to the terms of, or a default under, any capital lease or purchase money agreement entered into in connection with the acquisition or financing of such equipment; provided, however, that such security interest shall attach immediately at such time as the term restricting the attachment of a security interest in such equipment is no longer operative or the attachment of a security interest in such equipment would not constitute or result in a breach or termination pursuant to the terms of, or a default under, the capital lease or purchase money agreement governing such equipment; (iii) any trademark applications filed in the United States Patent and Trademark Office on the basis of a Grantor's "intent-to-use" such trademark to the extent that granting a security interest in such trademark application prior to such filing would

adversely affect the enforceability or validity or result in the voiding of such trademark application, unless and until acceptable evidence of use of the trademark has been filed with and accepted by the United States Patent and Trademark Office pursuant to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C. 1051, et seq.), whereupon such trademark application will be deemed automatically included in the Collateral; or (iv) the insurance-related cash collateral accounts set forth on Schedule 6, the aggregate balances of which shall not exceed $4,000,000 at any point in time without the prior written consent of the Administrative Agent.

(b) Grantors Remain Liable. Anything herein to the contrary notwithstanding, (i) each Grantor shall remain liable under any contracts, agreements and other documents included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Administrative Agent of any of the rights hereunder shall not release any Grantor from any of its duties or obligations under such contracts, agreements and other documents included in the Collateral, and (iii) neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any contracts, agreements and other documents included in the Collateral by reason of this Agreement, nor shall the Administrative Agent or any other Secured Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any such contract, agreement or other document included in the Collateral hereunder.

(c) Continuing Security Interest. Each Grantor agrees that this Agreement shall create a continuing security interest in the Collateral which shall remain in effect until terminated in accordance with Section 24.

SECTION 3 Perfection Procedures. Each Grantor shall (if necessary) execute and deliver to the Administrative Agent concurrently with the execution of this Agreement, and each Grantor hereby authorizes the Administrative Agent to file (with or without such Grantor's signature) at any time and from time to time thereafter, all financing statements, continuation statements, termination statements, security agreements relating to the Intellectual Property Collateral, assignments, fixture filings, affidavits, reports, notices, and other documents and instruments, in form satisfactory to the Administrative Agent, and take all other action, as the Administrative Agent or the Majority Lenders may request, to perfect and continue perfected, maintain the priority of or provide notice of the Administrative Agent's security interest in the Collateral and to accomplish the purposes of this Agreement. Without limiting the generality of the foregoing, each Grantor (1) ratifies and authorizes the filing by the Administrative Agent of any financing statements filed prior to the date hereof, (2) authorizes the Administrative Agent to use the collateral description "all assets" or "all personal property now owned or hereafter acquired" or words of similar import in any financing statements and (3) shall take the following actions:

(a) Filing of Financing Statements. On or prior to the Effective Date each Grantor authorizes the Administrative Agent to file completed UCC-1 financing statements in the offices described in Schedule 4 (the "Filing Offices"), and after the Effective Date the applicable Grantor authorizes the Administrative Agent to file completed UCC-1 financing statements in the appropriate filing office or offices in any state identified by a Grantor in a notice delivered to the Administrative Agent pursuant to subsection 5(e).

(b) Delivery of Pledged Collateral. Upon the Discharge of First Lien Obligations, each Grantor hereby agrees to deliver to or for the account of the Administrative Agent, at the address and to the Person to be designated by the Administrative Agent, the certificates, instruments and other writings representing any Pledged Collateral, which shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, in form satisfactory to the Administrative Agent. From and after the Discharge of First Lien Obligations, if any Grantor shall become entitled to receive or shall receive any Pledged Collateral, such Grantor shall accept the foregoing as the agent for the Administrative Agent, shall hold it in trust for the Administrative Agent, shall segregate it from other property or funds of such Grantor, and shall immediately deliver the same and all certificates, instruments and other writings representing such Pledged Collateral forthwith to or for the account of the Administrative Agent, at the address and to the Person to be designated by the Administrative Agent, which shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank in form satisfactory to the Administrative Agent. Anything to the contrary notwithstanding, so long as no Event of Default shall have occurred and be continuing, (i) each Grantor may retain for collection in the ordinary course any Instruments received by such Grantor in the ordinary course of business, and the Administrative Agent shall, promptly upon request of such Grantor, make appropriate arrangements for making any other Instruments and/or Pledged Debt pledged by such Grantor available to the payor of any such Instrument or Pledged Debt for purposes of presentation, collection or renewal (any such arrangement to be effected, to the extent required under applicable law to continue perfected the Administrative Agent's security interest hereunder in such Instruments or Pledged Debt, against trust receipt or like document), and (ii) each Grantor may retain any additional Pledged Collateral consisting of Instruments with a face value of less than $100,000 individually and $500,000 in the aggregate for all such Instruments or, in the case of any such additional Pledged Collateral with no face value, then such additional Pledged Collateral with a fair market value of less than $100,000 individually and $500,000 in the aggregate for all such Instruments, as determined by such Grantor in good faith.

(c) Transfer of Security Interest Other Than by Delivery. If for any reason Pledged Collateral cannot be delivered to or for the account of the Administrative Agent as provided in subsection 3(b), each Grantor shall promptly take such other steps as may be necessary or as shall be reasonably requested from time to time by the Administrative Agent to effect a transfer of a perfected second priority security interest (or, from and after the Discharge of First Lien Obligations, a perfected first priority security interest) in and pledge of the Pledged Collateral to the Administrative Agent for itself and on behalf of and for the ratable benefit of the other Secured Parties pursuant to the UCC. To the extent practicable from and after the Discharge of First Lien Obligations, such Grantor shall thereafter deliver the Pledged Collateral to or for the account of the Administrative Agent as provided in subsection 3(b).

(d) Deposit Accounts. Each Grantor shall execute such notices, and shall take such other action, including delivery of Control Agreements from and after the Discharge of First Lien Obligations, as the Administrative Agent may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the Administrative Agent's security interest in Collateral consisting of Deposit Accounts (other than any Zero Balance Accounts, unless the Administrative Agent determines in its reasonable discretion that obtaining

a Control Agreement in respect of one or more Zero Balance Accounts is necessary or desirable) and to accomplish the purposes of this Agreement; provided, however, that in respect of the delivery of any Control Agreement requested by the Administrative Agent each Grantor shall only be required to use commercially reasonable efforts to cause any applicable depository to execute and deliver such Control Agreement; and provided, further, however, that in the event that notwithstanding such commercially reasonable efforts any depository refuses or otherwise fails to execute and deliver any Control Agreement requested by the Administrative Agent, then the Administrative Agent may require that the applicable Grantor promptly close the Deposit Account(s) that is the subject of such Control Agreement and transfer all funds therein to a Deposit Account maintained with the Administrative Agent or to another deposit account over which the Administrative Agent has "control" within the meaning of Section 9-104 of the UCC.

(e) Intellectual Property Collateral. (i) Each Grantor shall execute and deliver to the Administrative Agent, concurrently with the execution of this Agreement, such Intellectual Property Security Agreements as the Administrative Agent may reasonably request, and authorizes the Administrative Agent to record such Intellectual Property Security Agreements with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, and take such other action as may be necessary, or as the Administrative Agent may reasonably request, to perfect the Administrative Agent's security interest in such Intellectual Property Collateral. (ii) Following the creation or other acquisition of any Intellectual Property Collateral by any Grantor after the date hereof which is registered or becomes registered or the subject of an application for registration with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, such Grantor (A) shall reflect such Intellectual Property Collateral in the next Update Certificate delivered to the Administrative Agent under the Credit Agreement, (B) shall execute such Intellectual Property Security Agreement(s) as may be requested by the Administrative Agent in respect thereof and (C) authorizes the Administrative Agent to record any Intellectual Property Security Agreement related thereto with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, and take such other action as may be necessary, or as the Administrative Agent may reasonably request, to perfect the Administrative Agent's security interest in such Intellectual Property Collateral.

(f) Documents, Etc. From and after the Discharge of First Lien Obligations, each Grantor shall deliver to the Administrative Agent, or an agent designated by it, appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, all Documents and Chattel Paper, and all other Rights to Payment at any time evidenced by promissory notes, trade acceptances or other instruments, not already delivered hereunder pursuant to this Section 3; provided, however, that unless an Event of Default shall have occurred and be continuing, such Grantor shall not be required to deliver any Document, Chattel Paper, promissory note, trade acceptance or other instrument having a face amount not in excess of $100,000 individually and $500,000 in the aggregate for all such items. Upon the request of the Administrative Agent, Grantors shall mark all Documents and Chattel Paper with such legends as the Administrative Agent shall reasonably specify.

(g) Bailees. At any time and from time to time, the Administrative Agent may give notice to any Person holding all or any portion of the Collateral that such Person is holding the Collateral as the agent and bailee of, and as pledge holder for, the Administrative Agent, and obtain such Person's written acknowledgment thereof. Without limiting the

generality of the foregoing, each Grantor, upon the Administrative Agent's reasonable request, will join with the Administrative Agent in notifying any Person who has possession of any Collateral of the Administrative Agent's security interest therein and obtaining an acknowledgment from such Person that it is holding the Collateral for the benefit of the Administrative Agent.

(h) Control. Without limiting the foregoing provisions of this Section 3, from and after the Discharge of First Lien Obligations each Grantor will cooperate with the Administrative Agent in obtaining control (as defined in the UCC) of Collateral consisting of any Deposit Accounts (other than any Zero Balance Account, unless the Administrative Agent determines in its reasonable discretion that obtaining control in respect of one or more Zero Balance Accounts is necessary or desirable), Electronic Chattel Paper, Investment Property or Letter-of-Credit Rights.

(i) Controlled Foreign Corporations. Notwithstanding anything herein to the contrary, in no event shall the Collateral include, and no Grantor shall be deemed to have granted a security interest in, any of such Grantor's right, title or interest in any of the outstanding capital stock or other ownership interests of a Controlled Foreign Corporation (as defined below) in excess of 65% of the voting power of all classes of capital stock or other ownership interests of such Controlled Foreign Corporation entitled to vote; provided that immediately upon the amendment of the Code to allow the pledge of a greater percentage of the voting power of capital stock or other ownership interests in a Controlled Foreign Corporation without adverse tax consequences, the Collateral shall include, and such Grantor shall be deemed to have granted a security interest in, such greater percentage of capital stock or other ownership interests of each Controlled Foreign Corporation. As used herein, "Controlled Foreign Corporation" shall mean a "controlled foreign corporation" as defined in the Code.

SECTION 4 Representations and Warranties. In addition to the representations and warranties of the Grantors set forth in the Credit Agreement, which are incorporated herein by this reference, each Grantor represents and warrants to each Lender and the Administrative Agent that:

(a) Location of Chief Executive Office. Each Grantor's chief executive office is set forth in Schedule 1.

(b) Locations of Books. All locations where Books pertaining to the Rights to Payment are kept, including all equipment necessary for accessing such Books and the names and addresses of all service bureaus, computer or data processing companies and other Persons keeping any Books or collecting Rights to Payment for any Grantor, are set forth in Schedule 1.

(c) Jurisdiction of Organization and Names. Each Grantor's jurisdiction of organization, as of the Effective Date, is set forth in Schedule 1; and each Grantor's exact legal name, as of the Effective Date, is as set forth on the signature pages of this Agreement. Except as set forth in Schedule 1, each Grantor has not, at any time in the past five years: (i) changed its name; (ii) been the surviving or resulting corporation in a merger or consolidation; or (iii) acquired through asset purchase or otherwise any business of any Person.

(d) Collateral. Each Grantor has rights in or the power to transfer the Collateral, and each Grantor is, and, except as permitted by Section 5(i), will continue to be, the sole and complete owner of the Collateral (or, in the case of after-acquired Collateral, at the time any Grantor acquires rights in such Collateral, will be the sole and complete owner thereof), free from any Lien other than Permitted Liens.

(e) Enforceability; Priority of Security Interest. (i) This Agreement creates a security interest which is enforceable against the Collateral in which each Grantor now has rights and will create a security interest which is enforceable against the Collateral in which such Grantor hereafter acquires rights at the time such Grantor acquires any such rights; and (ii) the Administrative Agent has a perfected second priority security interest, subject and subordinate only to the Liens securing the First Lien Secured Obligations and other Permitted Liens, (or, from and after the Discharge of First Lien Obligations, will have a perfected first priority security interest) in the Collateral in which such Grantor now has rights, and will have such a perfected and priority security interest in the Collateral in which such Grantor hereafter acquires rights at the time such Grantor acquires any such rights, in each case for the Administrative Agent's own benefit and for the ratable benefit of the other Secured Parties and subject to Permitted Liens, securing the payment and performance of the Secured Obligations.

(f) Other Financing Statements. Other than (i) financing statements disclosed to the Administrative Agent and (ii) financing statements in favor of the Administrative Agent in its capacity as Administrative Agent for itself and the other Secured Parties under the Credit Agreement and any other Loan Documents, no effective financing statement naming the Grantor as debtor, assignor, grantor, mortgagor, pledgor or the like and covering all or any part of the Collateral is on file in any filing or recording office in any jurisdiction, except in respect of Permitted Liens.

(g) Rights to Payment.

(i) The Rights to Payment represent valid, binding and enforceable obligations of the account debtors or other Persons obligated thereon, representing undisputed, bona fide transactions completed in accordance with the terms and provisions contained in any documents related thereto, and are and will be genuine, free from Liens (other than Permitted Liens), and not subject to any adverse claims, counterclaims, setoffs, defaults, disputes, defenses, discounts, retainages, holdbacks or conditions precedent of any kind of character, except to the extent reflected by the Grantors' reserves for uncollectible Rights to Payment or to the extent, if any, that such account debtors or other Persons may be entitled to normal and ordinary course trade discounts, returns, adjustments and allowances in accordance with Section 5(l), or as otherwise disclosed to the Administrative Agent in writing or occurring in the ordinary course of business;

(ii) to the best of each Grantor's knowledge, all account debtors and other obligors on the Rights to Payment are solvent and generally paying their debts as they come due, except to the extent that such Grantor has established adequate reserves therefor in accordance with GAAP;

(iii) all Rights to Payment comply in all material respects with all applicable laws concerning form, content and manner of preparation and execution, including where applicable any federal or state consumer credit laws;

(iv) no Grantor has assigned any of its rights under the Rights to Payment except as provided in this Agreement or as set forth in the other Loan Documents or the First Lien Loan Documents;

(v) all statements made, all unpaid balances and all other information in the Books and other documentation relating to the Rights to Payment in all material respects are true and correct and what they purport to be; and

(vi) no Grantor has any knowledge of any fact or circumstance which would materially impair the validity or collectibility of any of the Rights to Payment, except to the extent that such Grantor has established adequate reserves therefor in accordance with GAAP;

(h) Inventory. No Inventory is stored with any bailee, warehouseman or similar Person, nor has any Inventory been consigned to any Grantor or consigned by any Grantor to any Person or is held by any Grantor for any Person under any "bill and hold" or other arrangement, except at locations listed, and as specified, in Schedule 1.

(i) Intellectual Property.

(i) Except as set forth in Schedule 2 or in an Update Certificate delivered under the Credit Agreement, no Grantor (directly or through any Subsidiary) owns, possesses or uses under any licensing arrangement any patents, copyrights, trademarks, service marks or trade names, nor is there currently pending before any Governmental Authority any application for registration of any patent, copyright, trademark, service mark or trade name material to its business and operations;

(ii) all of each Grantor's patents, copyrights, trademarks, service marks and trade names are subsisting and have not been adjudged invalid or unenforceable in whole or in part;

(iii) all maintenance fees required to be paid by any Grantor on account of any of its patents have been timely paid for maintaining such patents in force, and, to the best of such Grantor's knowledge, each of such patents is valid and enforceable;

(iv) to the best of each Grantor's knowledge, no infringement or unauthorized use presently is being made of any Intellectual Property Collateral by any Person that could reasonably be expected to have a Material Adverse Effect; and

(v) each Grantor owns, has material rights under, is a party to, or an assignee of a party to, all material licenses, patents, patent applications, copyrights, service marks, trademarks, trademark applications, trade names and all other Intellectual Property Collateral necessary to continue to conduct its business as heretofore conducted.

(j) Equipment. As of the Effective Date, none of the Equipment that is material to any Grantor is leased from any Person, except as set forth in UCC record searches delivered to the Administrative Agent or as otherwise disclosed in writing to the Administrative Agent.

(k) Deposit Accounts. The names and addresses of all financial institutions at which any Grantor maintains, as of the Effective Date, its Deposit Accounts, and the account numbers and account names of such Deposit Accounts, are set forth in Schedule 1.

(l) Pledged Debt and Instrument Collateral. (i) No Grantor has previously assigned any interest in the Pledged Debt or any Collateral consisting of Instruments (other than to the Administrative Agent, the First Lien Agent, and such interests as will be released on or before the date hereof), (ii) no Person other than such Grantor owns an interest in the Pledged Debt or Instrument Collateral (whether as joint holders, participants or otherwise), and (iii) the entire Pledged Debt and Instrument Collateral is owing only to such Grantor.

(m) Pledged Shares, Partnership and LLC Collateral and other Pledged Collateral. (i) All the Pledged Shares and Partnership and LLC Collateral have been, and upon issuance any additional Pledged Collateral consisting of Pledged Shares, Partnership and LLC Collateral or any other Capital Stock, will be, duly and validly issued, and are and will be fully paid and non-assessable, subject in the case of Partnership and LLC Collateral to future assessments required under applicable law and any applicable partnership agreement or limited liability company agreement, (ii) the applicable Grantor is or, in the case of any such additional Pledged Collateral will be, the legal record and beneficial owner thereof, (iii) there are no restrictions on the transferability of the Pledged Collateral or such additional Pledged Collateral to the Administrative Agent or with respect to the foreclosure, transfer or disposition thereof by the Administrative Agent, except as provided under applicable securities or "Blue Sky" laws or in connection with any limitation imposed by joint venture agreements, (iv) as of the Effective Date, except as set forth in Schedule 3, the Pledged Shares and Partnership and LLC Collateral constitute 100% of the issued and outstanding shares of capital stock, membership interests and partnership interests of Holdings' direct and indirect Subsidiaries (other than Subsidiaries which are owned by Non-Wholly-Owned Subsidiaries), and no securities convertible into or exchangeable for any shares of capital stock, membership interests and partnership interests of any such Subsidiary, or any options, warrants or other commitments entitling any Person to purchase or otherwise acquire any shares of capital stock, membership interests and partnership interests of any such Subsidiary, are issued and outstanding, and (v) any and all shareholders agreements, voting trusts, proxy agreements or other agreements or understandings which affect or relate to the voting or giving of written consents with respect to any of the Pledged Shares, and any and all partnership agreements, operating agreements and other agreements relating to the Partnership and LLC Collateral, have been disclosed in writing to the Administrative Agent.

(n) Other Investment Property; Instruments; and Chattel Paper. All securities accounts of the Grantors and other Investment Property of the Grantors, as of the Effective Date, are set forth in Schedule 1, and all Instruments and Chattel Paper held, as of the Effective Date, by Grantors are also set forth in Schedule 1.

(o) Control Agreements. No Control Agreements exist with respect to any Collateral other than any Control Agreements in favor of the First Lien Agent. From and after the Discharge of First Lien Obligations, no Control Agreements will exist with respect to any Collateral other than any Control Agreements in favor of the Administrative Agent.

(p) Letter-of-Credit Rights. None of the Grantors have any Letter-of-Credit Rights, as of the Effective Date, except as set forth in Schedule 1.

(q) Commercial Tort Claims. None of the Grantors have any Commercial Tort Claims, as of the Effective Date, except as set forth in Schedule 1.

SECTION 5 Covenants. In addition to the covenants of the Grantors set forth in the Credit Agreement, which are incorporated herein by this reference, so long as any of the Secured Obligations remain unsatisfied, each Grantor agrees that:

(a) Defense of Collateral. Each Grantor shall appear in and defend any action, suit or proceeding which may affect to a material extent its title to, or right or interest in, or the Administrative Agent's right or interest in, the Collateral.

(b) Preservation of Collateral. Each Grantor shall do and perform all reasonable acts that may be necessary and appropriate to maintain, preserve and protect the Collateral.

(c) Compliance with Laws, Etc. Each Grantor shall comply in all material respects with all laws, regulations and ordinances, and all policies of insurance, relating in a material way to the possession, operation, maintenance and control of the Collateral.

(d) Location of Books and Chief Executive Office. Each Grantor shall: (i) keep all Books (other than copies) pertaining to the Rights to Payment at the locations set forth in Schedule 1 or at such other locations as may be specified in a written notice to the Administrative Agent as provided in this Section 5(d); and (ii) give prompt written notice to the Administrative Agent, but in any event within 30 days, of (a) any changes in any such location where Books pertaining to the Rights to Payment are kept, including any change of name or address of any service bureau, computer or data processing company or other Person preparing or maintaining any Books or collecting Rights to Payment for such Grantor or (b) any changes in the location of such Grantor's chief executive office or principal place of business.

(e) Change in Name, Identity or Structure. Each Grantor shall give prompt written notice to the Administrative Agent, but in any event within 10 days, of (i) any change in name, (ii) any change in its jurisdiction of organization, (iii) any change in its registration as an organization (or any new such registration); and (iv) any changes in its identity or structure in any manner which might make any financing statement filed hereunder incorrect or misleading; provided that no Grantor shall change its jurisdiction of organization to a jurisdiction outside of the United States.

(f) Maintenance of Records. Each Grantor shall keep accurate and complete Books with respect to the Collateral, disclosing the Administrative Agent's security interest hereunder.

(g) Invoicing of Sales. The Grantor will invoice all of its sales upon forms customary in the industry and maintain proof of delivery and customer acceptance of goods.

(h) Disposition of Collateral. Each Grantor shall not surrender or lose possession of (other than to the Administrative Agent), sell, lease, rent, or otherwise dispose of or transfer any of the Collateral or any right or interest therein, except to the extent permitted by the Loan Documents (including disposition permitted under Section 7.02 of the Credit Agreement).

(i) Liens. Each Grantor shall keep the Collateral free of all Liens except Permitted Liens.

(j) Expenses. The Grantor (or purchaser of Inventory) will pay all expenses of protecting, storing, warehousing, insuring, handling and shipping the Collateral.

(k) Leased Premises. At the Administrative Agent's request, each Grantor shall use commercially reasonable efforts to obtain from each Person from whom such Grantor leases any premises at which any Collateral is at any time present such collateral access, subordination, waiver, consent and estoppel agreements as the Administrative Agent may reasonably require, in form and substance satisfactory to the Administrative Agent.

(l) Rights to Payment. Each Grantor shall:

(i) with such frequency as the Administrative Agent may require, furnish to the Administrative Agent such information relating to the Accounts as the Administrative Agent shall from time to time reasonably request;

(ii) give only normal discounts, allowances and credits as to Accounts and other Rights to Payment, in the ordinary course of business, according to normal trade practices, and enforce all Accounts and other Rights to Payment strictly in accordance with their terms, and during the existence of an Event of Default, take all such action to such end as may from time to time be reasonably requested by the Administrative Agent, except that such Grantor may at any time grant any extension of the time for payment or enter into any agreement to make a rebate or otherwise to reduce the amount owing on or with respect to, or compromise or settle for less than the full amount thereof, any Account or other Right to Payment, in the ordinary course of business, according to normal trade practices;

(iii) if any discount, allowance, credit, extension of time for payment, agreement to make a rebate or otherwise to reduce the amount owing on, or compromise or settle, an Account or other Right to Payment exists or occurs, or if, to the knowledge of any Grantor, any dispute, setoff, claim, counterclaim or defense exists or has been asserted or threatened with respect to an Account or other Right to Payment, disclose such fact to the Administrative Agent in the Books relating to such Account or other Right to Payment when such Books are requested for inspection by the Administrative Agent, and in connection with any invoice or report furnished by any Grantor to the Administrative Agent relating to such Account or other Right to Payment;

(iv) if any Accounts arise from contracts with the United States or any department, agency or instrumentality thereof, promptly notify the Administrative Agent thereof and execute any documents and instruments and take any other steps reasonably requested by the Administrative Agent in order that all monies due and to become due thereunder shall be assigned to the Administrative Agent and notice thereof given to the Federal authorities under the Federal Assignment of Claims Act;

(v) in accordance with its sound business judgment perform and comply in all material respects with its obligations in respect of the Accounts and other Rights to Payment;

(vi) upon the request of the Administrative Agent (a) at any time, notify all or any designated portion of the account debtors and other obligors on the Rights to Payment of the security interest hereunder, and (b) during the continuance of an Event of Default and subject to the terms and conditions of the Intercreditor Agreement, notify the account debtors and other obligors on the Rights to Payment or any designated portion thereof that payment shall be made directly to the Administrative Agent or to such other Person or location as the Administrative Agent shall specify; and

(vii) upon the occurrence of any Event of Default and subject to the terms and conditions of the Intercreditor Agreement, establish such lockbox or similar arrangements for the payment of the Accounts and other Rights to Payment as the Administrative Agent shall require.

(m) Deposit Accounts and Securities Accounts. Each Grantor shall give the Administrative Agent prompt written notice of the establishment of (i) any new Deposit Account and whether such Deposit Account is designated a Zero Balance Account, and (ii) any new securities account with respect to any Investment Property.

(n) Inventory. Each Grantor shall:

(i) at such times as the Administrative Agent shall request, prepare and deliver to the Administrative Agent a report of all Inventory, in form and substance reasonably satisfactory to the Administrative Agent;

(ii) upon the request of the Administrative Agent, take a physical listing of the Inventory and promptly deliver a copy of such physical listing to the Administrative Agent; and

(iii) not store any Inventory with a bailee, warehouseman or similar Person or on premises leased to any Grantor, nor dispose of any Inventory on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment or similar basis, nor acquire any Inventory from any Person on any such basis, except in the ordinary course of business and in accordance with its normal practices.

(o) Equipment. Each Grantor shall, upon the Administrative Agent's request, deliver to the Administrative Agent a report of each item of Equipment, in form and substance reasonably satisfactory to the Administrative Agent.

(p) Intellectual Property Collateral. Each Grantor shall:

(i) not allow or suffer any Intellectual Property Collateral to become abandoned, nor any registration thereof to be terminated, forfeited, expired or dedicated to the public, except for Intellectual Property Collateral having negligible commercial value;

(ii) not enter into any agreements or transactions (including any license, sublicense or royalty agreement) pertaining to any Intellectual Property Collateral outside of the ordinary course of business, or enter into any exclusive license or sublicense of any Intellectual Property Collateral, except in a transaction permitted under the Loan Documents;

(iii) give the Administrative Agent notice in the next Update Certificate delivered under the Credit Agreement of any rights any Grantor may obtain to any new patentable inventions, copyrightable works or other new Intellectual Property Collateral which such Grantor has registered or intends to register; and

(iv) diligently prosecute all applications for patents, copyrights and trademarks, and file and prosecute any and all continuations, continuations-in-part, applications for reissue, applications for certificate of correction and like matters as shall be reasonable and appropriate in accordance with prudent business practice, and promptly and timely pay any and all maintenance, license, registration and other fees, taxes and expenses incurred in connection with any Intellectual Property Collateral, subject to clause (i) above.

(q) Notices, Reports and Information. Each Grantor shall (i) notify the Administrative Agent of any material claim made or asserted against the Collateral by any Person and of any change in the composition of the Collateral or other event which could materially adversely affect the value of the Collateral or the Administrative Agent's Lien thereon; (ii) furnish to the Administrative Agent such statements and schedules further identifying and describing the Collateral and such other reports and other information in connection with the Collateral as the Administrative Agent may reasonably request, all in reasonable detail; and (iii) upon reasonable request of the Administrative Agent make such demands and requests for information and reports as any Grantor is entitled to make in respect of the Collateral.

(r) Commercial Tort Claims. Each Grantor will give the Administrative Agent prompt written notice if such Grantor shall at any time hold or acquire any Commercial Tort Claim.

(s) Letter-of-Credit Rights. Each Grantor will give the Administrative Agent immediate notice if such Grantor shall at any time hold or acquire any Letter-of-Credit Rights.

(t) Shareholder Agreements and Other Agreements. (i) Each Grantor shall comply with all of its obligations under any shareholders agreement, operating agreement, partnership agreement, voting trust, proxy agreement or other agreement or understanding (collectively, the "Pledged Collateral Agreements") to which it is a party and shall enforce all of its rights thereunder.

(ii) No Grantor shall vote to enable or take any other action to amend or terminate, or waive compliance with any of the terms of, any Pledged Collateral Agreement, certificate or articles of incorporation, bylaws or other organizational documents in any way that materially changes the rights of such Grantor with respect to any Pledged Collateral in a manner adverse to the Administrative Agent or the Lenders or that adversely affects the validity, perfection or priority of the Administrative Agent's security interest therein.

(u) Insurance. (i) Each Grantor shall carry and maintain in full force and effect, at the expense of the Grantors and with financially sound and reputable insurance companies, insurance with respect to the Collateral in such amounts, with such deductibles and covering such risks as shall be specified in the Credit Agreement. Upon the request of the Administrative Agent, and in any event not less often than annually, each Grantor shall furnish the Administrative Agent with full information as to the insurance carried by it and, if so requested, copies of all such insurance policies. All insurance policies required under this subsection 5(u) shall provide that they shall not be terminated or cancelled nor shall any such policy be materially changed without at least 30 days' prior written notice to the Grantor and the Administrative Agent (or 10 days' prior written notice if the Administrative Agent consents to such shorter notice). Receipt of notice of termination or cancellation of any such insurance policies or reduction of coverages or amounts thereunder shall entitle the Administrative Agent to renew any such policies, cause the coverages and amounts thereof to be maintained at levels required pursuant to the first sentence of this subsection 5(u) or otherwise to obtain similar insurance in place of such policies, in each case at the expense of the Grantors.

(ii) If Collateral with a value exceeding $100,000 of any Grantor shall be materially damaged or destroyed, in whole or in part, by fire or other casualty, such Grantor shall give prompt notice thereof to the Administrative Agent. No settlement on account of any loss on any such Collateral covered by insurance shall be made for less than insured value without the consent of the Administrative Agent. After the occurrence and during the continuance of an Event of Default, or as otherwise required under the Loan Documents, and subject to the terms and conditions of the Intercreditor Agreement, all sums payable to any Grantor by any insurer with respect to a casualty relating to all or any part of the Collateral shall be paid to the Administrative Agent. If any Grantor shall receive any insurance proceeds which are to be paid to the Administrative Agent pursuant to the previous sentence, such Grantor shall hold such proceeds in trust for the Administrative Agent, shall segregate such proceeds from other funds of such Grantor, and shall immediately forward such proceeds in the form received to the Administrative Agent (appropriately indorsed by such Grantor to the order of the Administrative Agent or in such other manner as shall be satisfactory to the Administrative Agent). All such insurance proceeds may be retained by the Administrative Agent as part of Collateral hereunder and held in the Cash Collateral Account, applied by the Administrative Agent toward payment of all or part of the Secured Obligations in such order as is provided herein, or released to such Grantor upon its request with the consent of the Administrative Agent.

(v) Zero Balance Accounts. Each Grantor shall take all steps necessary to ensure that (i) each Zero Balance Account is swept into a Primary Account no less frequently than every other day, and (ii) no Zero Balance Account shall maintain a balance in excess of $5,000 for a period in excess of two consecutive Business Days.

SECTION 6 Administration of the Rights to Payment and Pledged Collateral.

(a) Collection of Rights to Payment. Until the Administrative Agent exercises its rights hereunder to collect Rights to Payment, each Grantor shall endeavor in the first instance diligently to collect all amounts due or to become due on or with respect to the Rights to Payment. At the request of the Administrative Agent, during the continuance of any Event of Default and subject to the terms and conditions of the Intercreditor Agreement, all remittances received by any Grantor shall be held in trust for the Administrative Agent and, in accordance with the Administrative Agent's instructions, remitted to the Administrative Agent or deposited to an account with the Administrative Agent in the form received (with any necessary endorsements or instruments of assignment or transfer).

(b) Investment Property and Instruments. Unless and until an Event of Default shall have occurred and be continuing, each Grantor shall be entitled to receive and retain for its own account any cash dividend on or other cash distribution, if any, in respect of the Pledged Collateral, to the extent consistent with the Credit Agreement; provided, however, that, except in connection with transactions permitted under Section 7.02 or Section 7.03 of the Credit Agreement, such Grantor shall not be entitled to receive (i) cash paid, payable or otherwise distributed in redemption of, or in exchange for or in substitution of, any Pledged Collateral, or (ii) dividends and other distributions paid or payable in cash in respect of any Pledged Collateral in connection with a partial or total liquidation or dissolution of such Grantor or in connection with a reduction of capital, capital surplus or paid-in-surplus or any other type of recapitalization. At the request of the Administrative Agent, during the continuance of any Event of Default and subject to the terms and conditions of the Intercreditor Agreement, the Administrative Agent shall be entitled to receive all distributions and payments of any nature with respect to any Investment Property or Instruments, and all such distributions or payments received by any Grantor shall be held in trust for the Administrative Agent and, in accordance with the Administrative Agent's instructions, remitted to the Administrative Agent or deposited to an account with the Administrative Agent in the form received (with any necessary endorsements or instruments of assignment or transfer). During the continuance of an Event of Default any such distributions and payments with respect to any Investment Property held in any securities account shall be held and retained in such securities account, in each case as part of the Collateral hereunder. Additionally, the Administrative Agent shall have the right, during the continuance of an Event of Default, subject to the terms and conditions of the Intercreditor Agreement and following prior written notice to any Grantor, to vote and to give consents, ratifications and waivers with respect to any Investment Property, Pledged Debt and Instruments, and to exercise all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining thereto, as if the Administrative Agent were the absolute owner thereof; provided that the Administrative Agent shall have no duty to exercise any of the foregoing rights afforded to it and shall not be responsible to any Grantor or any other Person for any failure to do so or delay in doing so.

(c) Voting Prior to an Event of Default. Unless and until an Event of Default shall have occurred and be continuing, each Grantor shall have the right to vote the Pledged Collateral and to give consents, ratifications and waivers in respect thereof, and shall retain the power to control the direction, management and policies of any Person comprising the Pledged Collateral to the same extent as such Grantor would if the Pledged Collateral were not pledged to

the Administrative Agent pursuant to this Agreement; provided, however, that no vote shall be cast or consent, waiver or ratification given or action taken which would have the effect of materially impairing the position or interest of the Administrative Agent and the Secured Parties in respect of the Pledged Collateral or which would alter the voting rights with respect to the stock or other ownership interest in or of any such Person or be inconsistent with or violate any provision of this Agreement, the Credit Agreement, or any other Loan Documents. If applicable, such Grantor shall be deemed the beneficial owner of all Pledged Collateral for purposes of Sections 13 and 16 of the Exchange Act and agrees to file all reports required to be filed by beneficial owners of securities thereunder. The Administrative Agent shall execute and deliver (or cause to be executed and delivered) to each Grantor all such proxies and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and other rights which it is entitled to exercise pursuant to this subsection (c) and to receive the distributions which it is authorized to receive and retain pursuant to this subsection (c).

(d) General Authority upon an Event of Default. During the continuance of any Event of Default and subject to the terms and conditions of the Intercreditor Agreement:

(i) the Administrative Agent shall be entitled to receive all distributions and payments of any nature with respect to the Pledged Collateral, to be held by the Administrative Agent as part of the Collateral; and

(ii) the Administrative Agent shall have the right following prior written notice to the Grantor to vote or consent to take any action with respect to the Pledged Collateral and exercise all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to the Pledged Collateral, as if the Administrative Agent were the absolute owner thereof.

(e) Distributions to Be Held for Administrative Agent. Subject to the terms and conditions of the Intercreditor Agreement, distributions and other payments which are received by the Grantor but which it is not entitled to retain as a result of the operation of this Section 6 shall be held in trust for the benefit of the Administrative Agent, be segregated from the other property or funds of such Grantor, and be forthwith paid over or delivered to the Administrative Agent in the same form as so received.

(f) Certain Other Administrative Matters. Subject to the terms and conditions of the Intercreditor Agreement, the Administrative Agent may cause any of the Pledged Collateral to be transferred into its name or into the name of its nominee or nominees (subject to the revocable rights specified in this Section 6) if, in the Administrative Agent's reasonable discretion, such action is necessary or desirable to protect or exercise the Administrative Agent's rights and interests hereunder. Subject to the terms and conditions of the Intercreditor Agreement, the Administrative Agent shall at all times have the right to exchange uncertificated Pledged Collateral for certificated Pledged Collateral, and to exchange certificated Pledged Collateral for certificates of larger or smaller denominations, for any purpose consistent with this Agreement.

SECTION 7 Authorization; Administrative Agent Appointed Attorney-in-Fact. The Administrative Agent shall have the right to, in the name of any Grantor, or in the name of the Administrative Agent or otherwise, without notice to or assent by such Grantor, and each Grantor hereby constitutes and appoints the Administrative Agent (and any of the Administrative Agent's officers or employees or agents designated by the Administrative Agent) as such Grantor's true and lawful attorney-in-fact, with full power and authority to:

(a) sign and file any of the financing statements which must be executed or filed to perfect or continue perfected, maintain the priority of or provide notice of the Administrative Agent's security interest in the Collateral and file any such financing statements by electronic means with or without a signature as authorized or required by applicable law or filing procedures;

(b) take possession of and endorse any notes, acceptances, checks, drafts, money orders or other forms of payment or security and collect any Proceeds of any Collateral;

(c) sign and endorse any invoice or bill of lading relating to any of the Collateral, warehouse or storage receipts, drafts against customers or other obligors, assignments, notices of assignment, verifications and notices to customers or other obligors;

(d) notify the U.S. Postal Service and other postal authorities to change the address for delivery of mail addressed to any Grantor to such address as the Administrative Agent may designate (provided that the Administrative Agent agrees it will promptly deliver over to such Grantors any mail that does not relate to the Collateral); and, without limiting the generality of the foregoing, establish with any Person lockbox or similar arrangements for the payment of the Rights to Payment;

(e) receive, open and dispose of all mail addressed to any Grantor (provided that the Administrative Agent agrees it will promptly deliver over to such Grantors any mail that does not relate to the Collateral);

(f) send requests for verification of Rights to Payment to the customers or other obligors of any Grantor;

(g) contact, or direct any Grantor to contact, all account debtors and other obligors on the Rights to Payment and instruct such account debtors and other obligors to make all payments directly to the Administrative Agent;

(h) assert, adjust, sue for, compromise or release any claims under any policies of insurance;

(i) exercise dominion and control over, and refuse to permit further withdrawals from, Deposit Accounts maintained with Wells Fargo or any other bank, financial institution or other Person;

(j) notify each Person maintaining lockbox or similar arrangements for the payment of the Rights to Payment to remit all amounts representing collections on the Rights to Payment directly to the Administrative Agent;

(k) ask, demand, collect, receive and give acquittances and receipts for any and all Rights to Payment, enforce payment or any other rights in respect of the Rights to Payment and other Collateral, grant consents, agree to any amendments, modifications or waivers of the agreements and documents governing the Rights to Payment and other Collateral, and otherwise file any claims, take any action or institute, defend, settle or adjust any actions, suits or proceedings with respect to the Collateral, as the Administrative Agent may deem necessary or desirable to maintain, preserve and protect the Collateral, to collect the Collateral or to enforce the rights of the Administrative Agent with respect to the Collateral;

(l) execute any and all applications, documents, papers and instruments necessary for the Administrative Agent to use the Intellectual Property Collateral and grant or issue any exclusive or non-exclusive license or sublicense with respect to any Intellectual Property Collateral;

(m) execute any and all endorsements, assignments or other documents and instruments necessary to sell, lease, assign, convey or otherwise transfer title in or dispose of the Collateral;

(n) execute and deliver to any securities intermediary or other Person any entitlement order or other notice, document or instrument which the Administrative Agent may deem necessary or advisable (A) to realize upon the Collateral, and (B) to maintain, protect and preserve the Deposit Accounts and Investment Property and the Administrative Agent's security interest therein; and

(o) execute any and all such other documents and instruments, and do any and all acts and things for and on behalf of any Grantor, which the Administrative Agent may deem necessary or advisable (A) to realize upon the Collateral, and (B) to maintain, protect and preserve the Collateral and the Administrative Agent's security interest therein and to accomplish the purposes of this Agreement.

The Administrative Agent agrees that, except during the continuance of an Event of Default and subject to the terms and conditions of the Intercreditor Agreement, it shall not exercise the power of attorney, or any rights granted to the Administrative Agent, pursuant to clauses (b) through (m), (n)(A) and (o)(A) above. The foregoing power of attorney is coupled with an interest and irrevocable so long as the Secured Obligations have not been paid and performed in full. Each Grantor hereby ratifies, to the extent permitted by law, all that the Administrative Agent shall lawfully and in good faith do or cause to be done by virtue of and in compliance with this Section 7.

SECTION 8 Administrative Agent Performance of Company Obligations. The Administrative Agent may perform or pay any obligation which any Grantor has agreed to perform or pay under or in connection with this Agreement, and which such Grantor has failed to perform or pay as and when due, and such Grantor shall reimburse the Administrative Agent on demand for any amounts paid by the Administrative Agent pursuant to this Section 8.

SECTION 9 Administrative Agent's Duties. Notwithstanding any provision contained in this Agreement, the Administrative Agent shall have no duty to exercise any of the

rights, privileges or powers afforded to it and shall not be responsible to any Grantor or any other Person for any failure to do so or delay in doing so. Beyond the exercise of reasonable care to assure the safe custody of Collateral in the Administrative Agent's possession and the accounting for moneys actually received by the Administrative Agent hereunder, the Administrative Agent shall have no duty or liability to exercise or preserve any rights, privileges or powers pertaining to the Collateral.

SECTION 10 Remedies.

(a) Remedies. During the continuance of any Event of Default and subject to the terms and conditions of the Intercreditor Agreement, the Administrative Agent shall have, in addition to all other rights and remedies granted to it in this Agreement, the Credit Agreement or any other Loan Document, all rights and remedies of a secured party under the UCC and other applicable laws. Without limiting the generality of the foregoing, each Grantor agrees that, subject to the terms and conditions of the Intercreditor Agreement:

(i) The Administrative Agent may peaceably and without notice enter any premises of any Grantor, take possession of any Collateral, remove or dispose of all or part of the Collateral on any premises of any Grantor or elsewhere, or, in the case of Equipment, render it nonfunctional, and otherwise collect, receive, appropriate and realize upon all or any part of the Collateral, and demand, give receipt for, settle, renew, extend, exchange, compromise, adjust, or sue for all or any part of the Collateral, as the Administrative Agent may determine.

(ii) The Administrative Agent may require any Grantor to assemble all or any part of the Collateral and make it available to the Administrative Agent, at any place and time designated by the Administrative Agent.

(iii) The Administrative Agent may use or transfer any of any Grantor's rights and interests in any Intellectual Property Collateral, by license, by sublicense (to the extent permitted by an applicable license) or otherwise, on such conditions and in such manner as the Administrative Agent may determine.

(iv) The Administrative Agent may secure the appointment of a receiver of the Collateral or any part thereof (to the extent and in the manner provided by applicable law).

(v) The Administrative Agent may withdraw (or cause to be withdrawn) any and all funds from any Deposit Accounts or securities accounts.

(vi) The Administrative Agent may sell, resell, lease, use, assign, transfer or otherwise dispose of any or all of the Collateral in its then condition or following any commercially reasonable preparation or processing (utilizing in connection therewith any of any Grantor's assets, without charge or liability to the Administrative Agent therefor) at public or private sale, by one or more contracts, in one or more parcels, at the same or different times, for cash or credit or for future delivery without assumption of any credit risk, all as the Administrative Agent deems advisable; provided, however, that such Grantor shall be credited with the net proceeds of sale only when such proceeds are finally collected by the Administrative Agent. The Administrative Agent and each of the Lenders shall have the right upon any such

public sale, and, to the extent permitted by law, upon any such private sale, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption, which right or equity of redemption each Grantor hereby releases, to the extent permitted by law. The Administrative Agent shall give each Grantor such notice of any public or private sale as may be required by the UCC or other applicable law. Each Grantor recognizes that the Administrative Agent may be unable to make a public sale of any or all of the Pledged Collateral, by reason of prohibitions contained in applicable securities laws or otherwise, and expressly agrees that a private sale to a restricted group of purchasers for investment and not with a view to any distribution thereof shall be considered a commercially reasonable sale.

(b) Sale of Collateral; Administrative Agent's Obligations. Neither the Administrative Agent nor any Lender shall have any obligation to clean up or otherwise prepare the Collateral for sale. The Administrative Agent has no obligation to attempt to satisfy the Secured Obligations by collecting them from any other Person liable for them and the Administrative Agent and the Lenders may release, modify or waive any Collateral provided by any other Person to secure any of the Secured Obligations, all without affecting the Administrative Agent's or any Lender's rights against the Grantors. Each Grantor waives any right it may have to require the Administrative Agent or any Lender to pursue any third Person for any of the Secured Obligations. The Administrative Agent and the Lenders may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. The Administrative Agent may sell the Collateral without giving any warranties as to the Collateral. The Administrative Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. If the Administrative Agent sells any of the Collateral upon credit, the Grantors will be credited only with payments actually made by the purchaser, received by the Administrative Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Administrative Agent may resell the Collateral and the Grantors shall be credited only with the proceeds of such resale.

(c) License. For the purpose of enabling the Administrative Agent to exercise its rights and remedies under this Section 10 or otherwise in connection with this Agreement, each Grantor hereby grants to the Administrative Agent an irrevocable, non-exclusive and assignable license (exercisable without payment or royalty or other compensation to any Grantor) to use, license or sublicense any Intellectual Property Collateral.

(d) Proceeds Account. To the extent that any of the Secured Obligations may be contingent, unmatured or unliquidated at such time as there may exist an Event of Default, the Administrative Agent may, at its election (or at the direction of the Majority Lenders) and subject to the terms and conditions of the Intercreditor Agreement, (i) retain the proceeds of any sale, collection, disposition or other realization upon the Collateral (or any portion thereof) in a special purpose non-interest-bearing restricted deposit account (the "Proceeds Account") created and maintained by the Administrative Agent for such purpose (which shall constitute a Deposit Account included within the Collateral hereunder) until such time as the Administrative Agent may elect to apply such proceeds to the Secured Obligations, and each Grantor agrees that such retention of such proceeds by the Administrative Agent shall not be deemed strict foreclosure with respect thereto; (ii) in any manner elected by the Administrative Agent, estimate the

liquidated amount of any such contingent, unmatured or unliquidated claims and apply the proceeds of the Collateral against such amount; or (iii) otherwise proceed in any manner permitted by applicable law. Each Grantor agrees that the Proceeds Account shall be a blocked account and that upon the irrevocable deposit of funds into the Proceeds Account, such Grantor shall not have any right of withdrawal with respect to such funds without the consent of the Administrative Agent. Accordingly, each Grantor irrevocably waives until the termination of the security interests granted under this Agreement in accordance with Section 24 the right, without the consent of the Administrative Agent, to make any withdrawal from the Proceeds Account and the right, without the consent of the Administrative Agent, to instruct the Administrative Agent to honor drafts against the Proceeds Account.

(e) Application of Proceeds. Subject to subsection 10(d) and the terms and conditions of the Intercreditor Agreement, cash proceeds actually received from the sale or other disposition or collection of Collateral, and any other amounts received in respect of the Collateral the application of which is not otherwise provided for herein, shall be applied in the order specified in Section 8.03 of the Credit Agreement. Any surplus thereof which exists after payment and performance in full of the Secured Obligations shall be promptly paid over to the Grantors entitled thereto or otherwise disposed of in accordance with the UCC or other applicable law. Each Grantor shall remain liable to the Administrative Agent and other Secured Parties for any deficiency which exists after any sale or other disposition or collection of Collateral.

SECTION 11 Certain Waivers. Each Grantor waives, to the fullest extent permitted by law, (i) any right of redemption with respect to the Collateral, whether before or after sale hereunder, and all rights, if any, of marshalling of the Collateral or other collateral or security for the Secured Obligations; (ii) any right to require the Administrative Agent or the Lenders (a) to proceed against any Person, (b) to exhaust any other collateral or security for any of the Secured Obligations, (c) to pursue any remedy in the Administrative Agent's or any of the Lenders' power, or (d) to make or give any presentments, demands for performance, notices of nonperformance, protests, notices of protests or notices of dishonor in connection with any of the Collateral; and (iii) all claims, damages, and demands against the Administrative Agent or the Lenders arising out of the repossession, retention, sale or application of the proceeds of any sale of the Collateral.

SECTION 12 Notices. All notices or other communications hereunder shall be given in the manner and to the addresses specified in, and shall be effective as provided in, the Credit Agreement.

SECTION 13 No Waiver; Cumulative Remedies. No failure on the part of the Administrative Agent or any Lender to exercise, and no delay in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to the Administrative Agent or any Lender.

SECTION 14 Costs and Expenses; Indemnification; Other Charges.

(a) Costs and Expenses. The Grantors jointly and severally agree to pay on demand:

(i) the reasonable out-of-pocket costs and expenses of the Administrative Agent and any of its Affiliates, and the Administrative Agent's reasonable Attorney Costs, in connection with the negotiation, preparation, execution, delivery and administration of this Agreement, and any amendments, modifications or waivers of the terms thereof, any releases of Collateral, and the custody of the Collateral;

(ii) all reasonable title, appraisal (including the allocated costs of internal appraisal services), survey, audit, consulting, search, recording, filing and similar fees, costs and expenses incurred or sustained by the Administrative Agent or any of its Affiliates in connection with this Agreement or the Collateral; and

(iii) all costs and expenses of the Administrative Agent and its Affiliates, including all Attorney Costs, in connection with the enforcement or attempted enforcement of, and preservation of any rights or interests under, this Agreement, any out-of-court workout or other refinancing or restructuring or in any bankruptcy case, and the protection, sale or collection of, or other realization upon, any of the Collateral, including all expenses of taking, collecting, holding, sorting, handling, preparing for sale, selling, or the like, and other such expenses of sales and collections of Collateral, and any and all losses, costs and expenses sustained by the Administrative Agent and any Lender as a result of any failure by any Grantor to perform or observe its obligations contained herein.

(b) Indemnification. The Grantors jointly and severally hereby agree to indemnify, defend and hold the Administrative Agent Related Persons and each Secured Party and their respective Affiliates, directors, officers, employees, counsel, agents and attorneys-in-fact (collectively the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including Attorney Costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of this Agreement or other Loan Document to which any Grantor is a party or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, or (ii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "Indemnified Liabilities"), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by Holdings or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if Holdings or such Loan

Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement, except to the extent such damages are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, nor shall any Indemnitee have any liability for any indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Effective Date).

(c) Other Charges. The Grantors jointly and severally agree to indemnify the Administrative Agent and each of the other Secured Parties against and hold each of them harmless from any and all present and future stamp, transfer, documentary and other such taxes, levies, fees, assessments and other charges made by any jurisdiction by reason of the execution, delivery, performance and enforcement of this Agreement.

(d) Interest. Any amounts payable to the Administrative Agent or any Secured Party under this Section 14 or otherwise under this Agreement if not paid upon demand shall bear interest from the date of such demand until paid in full, at a fluctuating interest rate per annum at all times equal to the default rate of interest applicable to Loans specified in Section 2.09(c) of the Credit Agreement to the fullest extent permitted by applicable Law. Any such interest shall be due and payable upon demand and shall be calculated on the basis of a year of 365 or 366 days, as the case may be, and the actual number of days elapsed.

(e) Payment. Any amounts due under this Section 14 shall be payable within ten Business Days after demand therefor.

(f) Survival. The agreements in this Section 14 shall survive the repayment of all Secured Obligations.

SECTION 15 Binding Effect. This Agreement shall be binding upon, inure to the benefit of and be enforceable by any Grantor, the Administrative Agent, each Secured Party, each Indemnified Person referred to in Section 14 and their respective successors and assigns and shall bind any Person who becomes bound as a debtor to this Agreement.

SECTION 16 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA, EXCEPT AS REQUIRED BY MANDATORY PROVISIONS OF LAW AND TO THE EXTENT THE VALIDITY OR PERFECTION OF THE SECURITY INTERESTS HEREUNDER, OR THE REMEDIES HEREUNDER, IN RESPECT OF ANY COLLATERAL ARE GOVERNED BY THE LAW OF A JURISDICTION OTHER THAN CALIFORNIA; PROVIDED THAT THE ADMINISTRATIVE AGENT SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW (INCLUDING THE BANKRUPTCY CODE).

SECTION 17 Forum Selection and Consent to Jurisdiction.

(a) SUBMISSION TO JURISDICTION. IN THE EVENT THE BANKRUPTCY COURT DOES NOT HAVE OR REFUSES TO EXERCISE JURISDICTION

WITH RESPECT THERETO, THE GRANTORS AND ADMINISTRATIVE AGENT EACH IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF CALIFORNIA SITTING IN SAN FRANCISCO COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY DOCUMENT RELATING HERETO, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH CALIFORNIA STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY DOCUMENT RELATED HERETO AGAINST HOLDINGS OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

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

(c) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02 OF THE CREDIT AGREEMENT. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

SECTION 18 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS

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

SECTION 19 Entire Agreement; Amendment. This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the Grantors, the Lenders and the Administrative Agent, and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof and shall not be amended except by the written agreement of the parties as provided in the Credit Agreement.

SECTION 20 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 21 Counterparts. This Agreement may be executed in one or more counterparts, and by different parties on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 22 Incorporation of Provisions of the Credit Agreement. To the extent the Credit Agreement contains provisions of general applicability to the Loan Documents, including any such provisions contained in Article X thereof, such provisions are incorporated herein by this reference.

SECTION 23 No Inconsistent Requirements. Each Grantor acknowledges that this Agreement and the other Loan Documents may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and agrees that all such covenants, terms and provisions are cumulative and all shall be performed and satisfied in accordance with their respective terms.

SECTION 24 Termination; Releases. (i) Upon payment and performance in full of all Secured Obligations, the security interests granted under this Agreement shall terminate and the Administrative Agent shall promptly execute and deliver to each Grantor such documents and instruments reasonably requested by such Grantor as shall be necessary to evidence termination of all security interests given by any Grantor to the Administrative Agent hereunder; (ii) concurrently with any permitted disposition of Collateral under the Loan Documents, the security interest hereunder shall automatically be released from the Collateral so

disposed of; provided, however, that the security interest shall continue in the Proceeds thereof. Upon satisfaction of all conditions precedent to any permitted disposition set forth herein or in the other Loan Documents, at the expense of the Grantors, the Administrative Agent shall execute and deliver any releases or other documents reasonably requested by the relevant Grantor to accomplish or confirm the release of Collateral provided by this Section. Any such release shall specifically describe the portion of the Collateral to be released and shall be without recourse or warranty (other than a warranty that the Administrative Agent has not assigned its rights and interests to any other Person).

SECTION 25 Accession. Upon execution and delivery to the Administrative Agent of an Additional Guarantor Assumption Agreement by a Subsidiary of Holdings as provided in Section 6.12 of the Credit Agreement, effective as of the Additional Guarantor Accession Date applicable thereto, such Guarantor shall be deemed a Grantor party hereto, and this Agreement shall be deemed amended to include any amendments to the Schedules provided by such Subsidiary in connection therewith.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered in San Francisco, California, by their proper and duly authorized officers as of the day and year first above written.

GRANTORS:

BUILDING MATERIALS HOLDING CORPORATION

By _____
Name: Paul Street
Title: Chief Executive Officer

BMC WEST CORPORATION

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD CONSTRUCTION, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD NORTHERN CALIFORNIA, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

C CONSTRUCTION, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

TWF CONSTRUCTION, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

H.N.R. FRAMING SYSTEMS INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD SOUTHERN CALIFORNIA, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD NEVADA, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD ARIZONA, LLC

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD ILLINOIS, LLC

By _____
Name: Paul Street
Title: Chief Executive Officer

ILLINOIS FRAMING, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

ADMINISTRATIVE AGENT:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By _____
Name:
Title:

SCHEDULE 1
to the Security Agreement

1. **Locations of Chief Executive Office and other Locations, including of Collateral**

   a. Chief Executive Office and Principal Place of Business:

   b. Other locations where any Grantor conducts business or Collateral is kept:

2. **Locations of Books Pertaining to Rights to Payment**

3. **Jurisdiction of Organization**

4. **Trade Names and Trade Styles; Other Corporate, Trade or Fictitious Names; Etc.**

5. **Deposit Accounts**

6. **Investment Property**

7. **Instruments and Chattel Paper**

8. **Leased Equipment**

9. **Commercial Tort Claims**

10. **Letter-of-Credit Rights**

SCHEDULE 2
to the Security Agreement

1. Patents, Trademarks, Copyrights, Etc.

SCHEDULE 3
to the Security Agreement

1. Pledged LLC Interests. Interests in each limited liability company that is a Subsidiary as follows:

Subsidiary and Percentage Ownership Interest	Number of Units	Date of Issuance of Units

2. Pledged Partnership Interests. Interests in each general partnership, limited partnership, limited liability partnership or other partnership that is a Subsidiary as follows:

Subsidiary and Percentage Ownership Interest	Type of Partnership Interest (*e.g.*, general, limited)	Date of Issuance or Formation	Number of Units or Other Ownership Interests

3. Pledged Shares. Capital stock of each Subsidiary being represented by stock certificates as follows:

Subsidiary and Percentage Ownership Interest	Certificate No.	Certificate Date	No. and Class of Shares

4. Pledged Debt.

SCHEDULE 4
to the Security Agreement

Filing Offices

SCHEDULE 5
to the Security Agreement

SCHEDULE 6
to the Security Agreement

EXHIBIT F

FORM OF UPDATE CERTIFICATE

for the Reporting Period ended _____, 20__

TO: Wells Fargo Bank, National Association, as Administrative Agent

Reference is made to the Term Loan Credit Agreement, dated as of [_____], 2009 (as extended, renewed, amended or restated from time to time, the "Credit Agreement"), by and among Holdings, as borrower, certain subsidiaries of Holdings, as guarantors, the financial institutions from time to time party thereto (the "Lenders") and Wells Fargo Bank, National Association, as administrative agent (in such capacity, the "Administrative Agent"). Capitalized terms used and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

This Update Certificate is provided pursuant to Section 6.02(g) of the Credit Agreement without limiting the ongoing reporting obligations of the Loan Parties under the Credit Agreement and the Security Agreement (as amended) with respect to the matters covered by this Update Certificate.

The undersigned hereby certifies to the Administrative Agent and the Lenders on behalf of each Loan Party that, during the fiscal quarter ended _____, 20_ (the "Reporting Period"), there has not been (i) any change in its corporate name or in its jurisdiction of organization, (ii) any change in the location of its chief executive office or (iii) the creation or acquisition of any Subsidiary by a Loan Party, except as follows:

1. Names.

(a) During the Reporting Period, each Loan Party identified below changed its corporate name as follows:

(b) During the Reporting Period, each Loan Party identified below changed its jurisdiction of organization as follows:

2. Locations. During the Reporting Period, each Loan Party identified below changed the location of its chief executive office as follows:

3. Subsidiaries. During the Reporting Period, each Loan Party identified below created or acquired the following direct or indirect Subsidiaries:

The undersigned hereby certifies to the Administrative Agent and the Lenders on behalf of each Loan Party that, during the Reporting Period, no new (i) Deposit Account or (ii) securities account with respect to any Investment Property (as such terms are defined in the Security Agreement) has been established, except as follows:

1. Deposit Accounts. During the Reporting Period, each Loan Party identified below established one or more Deposit Accounts as follows:

2. Securities Accounts. During the Reporting Period, each Loan Party identified below established one or more securities accounts as follows:

The undersigned hereby certifies to the Administrative Agent and the Lenders on behalf of each Loan Party that, during the Reporting Period, no new (i) Instruments, (ii) Chattel Paper, (iii) Letter-of-Credit Rights or (iv) Commercial Tort Claims (as such terms are defined in the Security Agreement) were acquired or otherwise arose, except as follows:

1. Instruments. During the Reporting Period, each Loan Party identified below acquired Instruments as follows:

2. Chattel Paper. During the Reporting Period, each Loan Party identified below acquired Chattel Paper as follows:

3. Letter-of-Credit Rights. During the Reporting Period, each Loan Party identified below acquired Letter-of-Credit Rights as follows:

4. Commercial Tort Claims. During the Reporting Period, each Loan Party identified below acquired rights in Commercial Tort Claims as follows:

Consistent with the provisions of revised Article 9 of the Uniform Commercial Code of the relevant jurisdiction(s), the Loan Parties hereby authorize the Administrative Agent to file (with or without a Loan Party's signature), at any time and from time to time thereafter, all financing statements, assignments, continuation financing statements, financing statement amendments, termination statements and other documents and instruments, in form reasonably satisfactory to the Administrative Agent, and take all other action, as the Administrative Agent may deem reasonable, to perfect and continue perfected, maintain the priority of or provide notice of any security interest of the Administrative Agent in the Collateral and to accomplish the purposes of the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Update Certificate on behalf of itself and each other Loan Party this _____ day of _____.

BUILDING MATERIALS HOLDING CORPORATION

By: _____
Name: _____
Title: _____

EXHIBIT G

FORM OF ROLLING 13-WEEK CONSOLIDATED CASH FLOW FORECAST

EXHIBIT H

FORM OF ANNUAL FINANCIAL FORECAST AND RECONCILIATION

EXHIBIT E
[Intercreditor Agreement]

INTERCREDITOR AGREEMENT

This INTERCREDITOR AGREEMENT is dated as of [_____], 2009, and entered into by and between WELLS FARGO BANK, NATIONAL ASSOCIATION, in its capacity as administrative agent under the First Lien Loan Documents (as defined below), including its successors and assigns in such capacity from time to time ("**First Lien Agent**"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, in its capacity as administrative agent under the Second Lien Loan Documents (as defined below), including its successors and assigns in such capacity from time to time ("**Second Lien Agent**").

RECITALS

Building Materials Holding Corporation, a Delaware corporation ("**Borrower**"), certain subsidiaries of Borrower (collectively, the "**Guarantors**"), the lenders from time to time party thereto (collectively, the "**First Lien Lenders**") and First Lien Agent have entered into that certain Senior Secured Credit Agreement dated as of the date hereof providing for a revolving credit facility and term loan (the "**First Lien Credit Agreement**");

Borrower, Guarantors, the lenders from time to time party thereto (collectively, the "**Second Lien Lenders**") and Second Lien Agent have entered into that certain Term Loan Credit Agreement dated as of the date hereof providing for a term loan (the "**Second Lien Credit Agreement**");

The obligations of (i) Borrower and Guarantors under the First Lien Credit Agreement are to be secured on a first priority basis by liens on substantially all the assets of Borrower and Guarantors;

The obligations of Borrower and Guarantors under the Second Lien Credit Agreement are to be secured on a second priority basis by liens on substantially all the assets of Borrower and Guarantors; and

First Lien Agent and Second Lien Agent wish to set forth their agreement as to certain of their respective rights and obligations with respect to the Collateral (as defined below) and certain other matters.

AGREEMENT

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

SECTION 1. Definitions.

1.1 Defined Terms. As used in the Agreement, the following terms shall have the following meanings:

"**Agreement**" means this Intercreditor Agreement.

"**Bank Product**" means any financial accommodation extended to Holdings or its Subsidiaries by a Bank Product Provider (other than pursuant to the Credit Agreement) including: (a) credit cards, (b) credit card processing services, (c) debit cards, (d) purchase cards, (e) ACH transactions, or (f) cash management, including controlled disbursement, accounts or services.

"**Bank Product Agreements**" means those agreements entered into from time to time by Holdings or its Subsidiaries with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

"**Bank Product Obligations**" means all obligations, liabilities, reimbursement obligations, fees, or expenses owing by Holdings or its Subsidiaries to any Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising.

"**Bank Product Provider**" means Wells Fargo or any of its Affiliates.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Bankruptcy Law**" means the Bankruptcy Code and any other federal, state, or foreign law for the relief of debtors.

"**Borrower**" has the meaning set forth in the recitals to this Agreement.

"**Business Day**" means any day other than a Saturday, Sunday, or day on which banks in San Francisco, California are authorized or required by law to close.

"**Cash Collateral**" has the meaning set forth in Section 6.2.

"**Claimholders**" means First Lien Claimholders and Second Lien Claimholders.

"**Collateral**" means all of the assets and property of any Grantor, whether real, personal or mixed, constituting First Lien Collateral or Second Lien Collateral.

"**Conforming Amendment**" means any amendment to any Second Lien Loan Document that is substantively identical to a corresponding amendment to a comparable provision of a First Lien Loan Document.

"**Deemed Second Lien Amendment**" means any amendment, waiver, or consent in respect of any representation or warranty, covenant or event of default of Borrower or any other Grantor under the First Lien Loan Documents.

"**Default Disposition**" has the meaning set forth in Section 5.1(d).

"**DIP Financing**" has the meaning set forth in Section 6.2.

"**Discharge of First Lien Obligations**" means, except to the extent otherwise expressly provided in Section 5.5:

(a) payment in full in cash of the First Lien Obligations (other than outstanding Letters of Credit and Bank Product Obligations and inchoate indemnity obligations);

(b) termination or expiration of all commitments, if any, to extend credit that would constitute First Lien Obligations; and

(c) termination or cash collateralization (in an amount and in the manner required by the First Lien Credit Agreement) of all outstanding Letters of Credit and all Bank Product Obligations.

"**Disposition**" or "**Dispose**" means the sale, assignment, transfer, license, lease (as lessor), or other disposition (including any sale and leaseback transaction) of any property by any person (or the granting of any option or other right to do any of the foregoing).

"**Exercise any Secured Creditor Remedies**" or "**Exercise of Secured Creditor Remedies**" means (a) the taking of any action to enforce any Lien with respect to the Collateral, including the institution of any foreclosure proceedings, the noticing of any public or private sale or other disposition pursuant to Article 9 of the UCC or any diligently pursued in good faith attempt to vacate or obtain relief from a stay or other injunction restricting any other action described in this definition, (b) the exercise of any right or remedy provided to a secured creditor under the First Lien Loan Documents or the Second Lien Loan Documents (including, in either case, any delivery of any notice to otherwise seek to obtain payment directly from any account debtor of any Grantor or the taking of any action or the exercise of any right or remedy in respect of the setoff or recoupment against the Collateral or proceeds of Collateral), under applicable law, at equity, in an Insolvency Proceeding or otherwise, including the acceptance of Collateral in full or partial satisfaction of a Lien, (c) the sale, assignment, transfer, lease, license, or other Disposition of all or any portion of the Collateral, by private or public sale or any other means, (d) the solicitation of bids from third parties to conduct the liquidation of all or a material portion of Collateral to the extent undertaken and being diligently pursued in good faith to consummate the Disposition of such Collateral within a commercially reasonable time, (e) the engagement or retention of sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers, or other third parties for the purposes of valuing, marketing, or Disposing of, all or a material portion of the Collateral to the extent undertaken and being diligently pursued in good faith to consummate the Disposition of such Collateral within a commercially reasonable time, (f) the exercise of any other enforcement right relating to the Collateral (including the exercise of any voting rights relating to any capital stock composing a portion of the Collateral) whether under the First Lien Loan Documents, the Second Lien Loan Documents, under applicable law of any jurisdiction, in equity, in an Insolvency Proceeding, or otherwise, (h) the pursuit of Default Dispositions relative to all or a material portion of the Collateral to the extent undertaken and being diligently pursued in good faith to consummate the Disposition of such Collateral within a commercially reasonable time, or (i) the commencement of, or the joinder with any creditor in commencing, any Insolvency Proceeding against any Grantor or any assets of any Grantor.

"**Excess Real Estate**" means the real property assets set forth on Schedule 1.01B to the First Lien Credit Agreement.

"**First Lien Agent**" has the meaning set forth in the preamble to this Agreement.

"**First Lien Cap**" means the sum of (i) $103,500,000, which is the aggregate original principal amount of the revolving commitments and term loans under the First Lien Credit Agreement, plus (ii) $21,500,000.

"**First Lien Claimholders**" means, at any relevant time, the holders of First Lien Obligations at that time, including First Lien Lenders and First Lien Agent.

"**First Lien Collateral**" means all of the assets and property of any Grantor, whether real, personal or mixed, with respect to which a consensual Lien is granted as security for any First Lien Obligation.

"**First Lien Collateral Documents**" means the Security Agreement (as defined in the First Lien Credit Agreement), the First Lien Mortgages and any other agreement, document, or instrument pursuant to which a Lien is granted securing any First Lien Obligation or under which rights or remedies with respect to such Liens are governed.

"**First Lien Credit Agreement**" has the meaning set forth in the recitals to this Agreement.

"**First Lien Default**" means any Event of Default, as such term is defined in any First Lien Loan Document.

"**First Lien Lenders**" has the meaning set forth in the preamble to this Agreement.

"**First Lien Loan Documents**" means the First Lien Collateral Documents, the First Lien Credit Agreement, and each of the other Loan Documents (as defined in the First Lien Credit Agreement).

"**First Lien Mortgages**" means each mortgage, deed of trust, and other document or instrument under which any Lien on real property owned or leased by any Grantor is granted to secure any First Lien Obligations or under which rights or remedies with respect to any such Liens are governed.

"**First Lien Obligations**" means all obligations and all amounts owing, due, or secured under the terms of the First Lien Credit Agreement or any other First Lien Loan Document, whether now existing or arising hereafter, including all principal, premium, interest, fees, attorneys fees, costs, charges, expenses, reimbursement obligations, obligations to post cash collateral in respect of Letters of Credit or Bank Product Obligations or indemnities in respect thereof, any other indemnities or guaranties, and all other amounts payable under or secured by any First Lien Loan Document (including, in each case, all amounts accruing on or after the commencement of any Insolvency Proceeding relating to any Grantor, or that would have accrued or become due under the terms of the First Lien Loan Documents but for the effect of

the Insolvency Proceeding and irrespective of whether a claim for all or any portion of such amounts is allowable or allowed in such Insolvency Proceeding).

"**Governmental Authority**" means the government of the United States of America or any other nation, any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of or pertaining to government.

"**Grantors**" means Borrower and Guarantors, and each other person that may from time to time execute and deliver a First Lien Collateral Document or a Second Lien Collateral Document as a "debtor," "grantor," or "pledgor" (or the equivalent thereof).

"**Guarantors**" has the meaning set forth in the recitals to this Agreement.

"**Insolvency Proceeding**" means:

(a) any voluntary or involuntary case or proceeding under any Bankruptcy Law with respect to any Grantor;

(b) any other voluntary or involuntary insolvency or bankruptcy case or proceeding, or any receivership, liquidation or other similar case or proceeding with respect to any Grantor or with respect to a material portion of its assets;

(c) any liquidation, dissolution, or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or

(d) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of any Grantor.

"**Letters of Credit**" has the meaning set forth in the First Lien Credit Agreement.

"**Lien**" means any lien, mortgage, pledge, assignment, security interest, charge, or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust, or other preferential arrangement having the practical effect of any of the foregoing.

"**person**" shall mean any natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority, or other entity.

"**Pledged Collateral**" has the meaning set forth in Section 5.4(a).

"**Purchase Notice**" has the meaning set forth in Section 5.6(a).

"**Recovery**" has the meaning set forth in Section 6.8.

"**Refinance**" means, in respect of any indebtedness, to refinance, extend, renew, defease, supplement, restructure, replace, refund or repay, or to issue other indebtedness in exchange or replacement for such indebtedness, in whole or in part, whether with the same or different lenders, arrangers or agents. "**Refinanced**" and "**Refinancing**" shall have correlative meanings.

"**Second Lien Agent**" has the meaning set forth in the preamble to this Agreement.

"**Second Lien Claimholders**" means, at any relevant time, the holders of Second Lien Obligations at that time, including Second Lien Lenders and Second Lien Agent.

"**Second Lien Collateral**" means all of the assets and property of any Grantor, whether real, personal, or mixed, with respect to which a consensual Lien is granted as security for any Second Lien Obligations.

"**Second Lien Collateral Documents**" means the Security Agreement (as defined in the Second Lien Credit Agreement), the Second Lien Mortgage and any other agreement, document, or instrument pursuant to which a Lien is granted securing any Second Lien Obligations or under which rights or remedies with respect to such Liens are governed.

"**Second Lien Credit Agreement**" has the meaning set forth in the recitals to this Agreement.

"**Second Lien Default**" means any Event of Default (as defined in any Second Lien Loan Document).

"**Second Lien Lenders**" has the meaning set forth in the preamble to this Agreement.

"**Second Lien Loan Documents**" means the Second Lien Collateral Documents, the Second Lien Credit Agreement and each of the other Loan Documents (as defined in the Second Lien Credit Agreement).

"**Second Lien Mortgages**" means each mortgage, deed of trust, and any other document or instrument under which any Lien on real property owned or leased by any Grantor is granted to secure any Second Lien Obligations or under which rights or remedies with respect to any such Liens are governed.

"**Second Lien Obligations**" means all obligations and all amounts owing, due, or secured under the terms of the Second Lien Credit Agreement or any other Second Lien Loan Document, whether now existing or arising hereafter, including all principal, premium, interest, fees, attorneys fees, costs, charges, expenses, reimbursement obligations, indemnities, guaranties, and all other amounts payable under or secured by any Second Lien Loan Document (including, in each case, all amounts accruing on or after the commencement of any Insolvency Proceeding relating to any Grantor, or that would have accrued or become due under the terms of the Second Lien Loan Documents but for the effect of the Insolvency Proceeding and

irrespective of whether a claim for all or any portion of such amounts is allowable or allowed in such Insolvency Proceeding).

"**Standstill Notice**" means a written notice from Second Lien Agent to First Lien Agent stating that a Second Lien Default has occurred and is continuing and that, as a consequence thereof, Second Lien Agent has accelerated the Second Lien Obligations.

"**Standstill Period**" means the period of 180 days commencing on the date on which First Lien Agent receives the applicable Standstill Notice.

"**Triggering Event**" means (i) the acceleration of any First Lien Obligations, (ii) First Lien Agent's Exercise of Secured Creditor Remedies with respect to all or a material portion of the Collateral, (iii) the occurrence of a Second Lien Default as a result of a failure to make payment of any Second Lien Obligation when due under the terms of the Second Lien Loan Documents, or (iv) the commencement of an Insolvency Proceeding with respect to any Grantor.

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

1.2 Construction. The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." The term "or" shall be construed to have, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." Any term used in this Agreement and not defined in this Agreement shall have the meaning set forth in the First Lien Credit Agreement. Unless the context requires otherwise:

(a) except as otherwise provided herein, any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, restated, supplemented, modified, renewed, extended, Refinanced, refunded, or replaced;

(b) any reference to any agreement, instrument, or other document herein "as in effect on the date hereof" shall be construed as referring to such agreement, instrument, or other document without giving effect to any amendment, restatement, supplement, modification, or Refinance after the date hereof;

(c) any definition of or reference to First Lien Obligations or the Second Lien Obligations herein shall be construed as referring to the First Lien Obligations or the Second Lien Obligations (as applicable) as from time to time amended, restated, supplemented, modified, renewed, extended, Refinanced, refunded, or replaced;

(d) any reference herein to any person shall be construed to include such person's successors and assigns;

(e) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

(f) all references herein to Sections shall be construed to refer to Sections of this Agreement; and

(g) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

SECTION 2. Lien Priorities.

2.1 Relative Priorities. Notwithstanding the date, time, method, manner, or order of grant, attachment, or perfection of any Liens securing the Second Lien Obligations granted with respect to the Collateral or of any Liens securing the First Lien Obligations granted with respect to the Collateral and notwithstanding any contrary provision of the UCC or any other applicable law or the Second Lien Loan Documents or any defect or deficiencies in the Liens securing the First Lien Obligations, or any other circumstance whatsoever, Second Lien Agent hereby agrees that:

(a) any Lien with respect to the Collateral securing any First Lien Obligations now or hereafter held by or on behalf of, or created for the benefit of, First Lien Agent or any First Lien Claimholders or any agent or trustee therefor shall be and remain senior in all respects and prior to any Lien with respect to the Collateral securing any Second Lien Obligations; and

(b) any Lien with respect to the Collateral securing any Second Lien Obligations now or hereafter held by or on behalf of, or created for the benefit of, Second Lien Agent or any Second Lien Claimholders or any agent or trustee therefor shall be and remain junior and subordinate in all respects to any Lien with respect to the Collateral securing any First Lien Obligations.

2.2 Prohibition on Contesting Liens. Each of Second Lien Agent, for itself and on behalf of each Second Lien Claimholder, and First Lien Agent, for itself and on behalf of each First Lien Claimholder, agrees that it will not (and hereby waives any right to), directly or indirectly, contest, or support any other person in contesting, in any proceeding (including any Insolvency Proceeding), the priority, validity, or enforceability of a Lien held by or on behalf of any First Lien Claimholders with respect to the First Lien Collateral or by or on behalf of any Second Lien Claimholders with respect to the Second Lien Collateral, as the case may be, or the provisions of this Agreement; provided, however that nothing in this Agreement shall be construed to prevent or impair the rights of First Lien Agent or Second Lien Agent to enforce the terms of this Agreement.

2.3 New Liens. So long as the Discharge of First Lien Obligations has not occurred, and so long as no Insolvency Proceeding has been commenced by or against such Grantor, the parties hereto agree that no Grantor shall:

(a) grant any additional Liens with respect to any asset to secure any Second Lien Obligation unless such Grantor gives First Lien Agent at least five (5) Business Days' prior written notice thereof and unless such notice also offers to grant a Lien with respect to such asset to secure the First Lien Obligations concurrently with the grant of a Lien with respect thereto in favor of Second Lien Agent; or

(b) grant any additional Liens with respect to any asset to secure any First Lien Obligations unless such Grantor gives Second Lien Agent at least five (5) Business Days' prior written notice thereof and unless such notice also offers to grant a Lien with respect to such asset to secure the Second Lien Obligations concurrently with the grant of a Lien with respect thereto in favor of First Lien Agent.

To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to First Lien Agent, Second Lien Agent, for itself and on behalf of Second Lien Claimholders, agrees that any amounts received by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.2.

2.4 Similar Liens and Agreements. The parties hereto agree that it is their intention that the First Lien Collateral and the Second Lien Collateral be identical. In furtherance of the foregoing and of Section 9.8, the parties hereto agree, subject to the other provisions of this Agreement:

(a) upon request by First Lien Agent or Second Lien Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the First Lien Collateral and the Second Lien Collateral and the steps taken or to be taken to perfect their respective Liens with respect thereto and the identity of the respective parties obligated under the First Lien Loan Documents and the Second Lien Loan Documents; and

(b) that the First Lien Collateral Documents and Second Lien Collateral Documents shall be in all material respects the same forms of documents other than with respect to the first lien and the second lien nature thereof.

The foregoing to the contrary notwithstanding, it is understood by each of the parties that to the extent that First Lien Agent or Second Lien Agent obtains a Lien with respect to an asset (of a type that is not included in the types of assets included in the Collateral as of the date hereof or which would not constitute Collateral without a grant of a security interest or lien separate from the First Lien Loan Documents or Second Lien Loan Documents, as applicable, as in effect immediately prior to obtaining such Lien with respect to such asset) which the other party to this Agreement elects not to obtain after receiving prior written notice thereof in accordance with the provisions of Section 2.3, the Collateral securing the First Lien Loan Obligations and the Second Lien Loan Obligations will not be identical, and the provisions of the documents, agreements and instruments evidencing such Liens also will not be substantively similar, and any such difference in the scope or extent of perfection with respect to the Collateral resulting therefrom is hereby expressly permitted by this Agreement.

SECTION 3. Exercise of Remedies; Payment Blockage.

3.1 Standstill. Until the Discharge of First Lien Obligations has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, Second Lien Agent and Second Lien Claimholders:

(a) will not exercise or seek to exercise any rights or remedies with respect to any Collateral (including any Exercise of Secured Creditor Remedies with respect to any Collateral); provided, however, that if a Second Lien Default has occurred and is continuing, Second Lien Agent may Exercise any Secured Creditor Remedies after the passage of the applicable Standstill Period (it being understood that if at any time after the delivery of a Standstill Notice that commences a Standstill Period, no Second Lien Default is continuing, Second Lien Agent may not Exercise any Secured Creditor Remedies until the passage of a new Standstill Period commenced by a new Standstill Notice relative to the occurrence of a new Second Lien Default that had not occurred as of the date of the delivery of the earlier Standstill Notice); provided further, however, that in no event shall Second Lien Agent or any Second Lien Claimholder exercise any rights or remedies with respect to the Collateral if, notwithstanding the expiration of the Standstill Period, First Lien Agent shall have commenced prior to the expiration of the Standstill Period (or thereafter but prior to the commencement of any Exercise of Secured Creditor Remedies by Second Lien Agent with respect to all or any material portion of the Collateral) and be diligently pursuing in good faith the Exercise of Secured Creditor Remedies with respect to all or any material portion of the Collateral;

(b) will not contest, protest, or object to any Exercise of Secured Creditor Remedies by First Lien Agent and has no right to direct First Lien Agent to Exercise any Secured Creditor Remedies or take any other action under the First Lien Loan Documents; and

(c) will not object to (and waive any and all claims with respect to) the forbearance by First Lien Agent from Exercising any Secured Creditor Remedies.

3.2 Exclusive Enforcement Rights. Until the Discharge of First Lien Obligations has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, but subject to the first proviso to Section 3.1(a), First Lien Agent shall have the exclusive right to Exercise any Secured Creditor Remedies with respect to the Collateral without any consultation with or the consent of Second Lien Agent or any Second Lien Claimholder. In connection with any Exercise of Secured Creditor Remedies, First Lien Agent may enforce the provisions of the First Lien Loan Documents and exercise remedies thereunder, all in such order and in such manner as it may determine in the exercise of its sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to Dispose of Collateral, to incur expenses in connection with such Disposition, and to exercise all the rights and remedies of a secured creditor under applicable law.

3.3 Second Lien Permitted Actions. Anything to the contrary in this Section 3 notwithstanding, Second Lien Agent and, if applicable, any Second Lien Claimholder may:

(a) if an Insolvency Proceeding has been commenced by or against any Grantor, file a claim or statement of interest with respect to the Second Lien Obligations;

(b) take any action (not adverse to the priority status of the Liens with respect to the Collateral securing the First Lien Obligations, or the rights of First Lien Agent or any First Lien Claimholders to Exercise any Secured Creditor Remedies) in order to create or perfect its Lien with respect to the Collateral;

(c) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding, or other pleading made by any person objecting to or otherwise seeking the disallowance of the claims of Second Lien Claimholders, including any claims secured by the Collateral, if any;

(d) vote on any plan of reorganization and make any filings and motions that are, in each case, in accordance with the terms of this Agreement, with respect to the Second Lien Obligations and the Collateral;

(e) join (but not exercise any control with respect to) any judicial foreclosure proceeding or other judicial lien enforcement proceeding with respect to the Collateral initiated by First Lien Agent to the extent that any such action could not reasonably be expected, in any material respect, to restrain, hinder, limit, delay for any material period or otherwise interfere with the Exercise of Secured Creditor Remedies by First Lien Agent (it being understood that neither Second Lien Agent nor any Second Lien Claimholder shall be entitled to receive any proceeds thereof unless otherwise expressly permitted herein); and

(f) Exercise any Secured Creditor Remedies after the termination of the Standstill Period if and to the extent specifically permitted by Section 3.1(a).

3.4 Retention of Proceeds. First Lien Agent and Second Lien Agent each agrees that prior to the Discharge of the First Lien Obligations, neither Second Lien Agent nor any Second Lien Claimholder shall be permitted to retain any proceeds of Collateral in connection with any Exercise of Secured Creditor Remedies in any circumstance unless and until the Discharge of First Lien Obligations has occurred, and any such proceeds received or retained will be subject to Section 4.2.

3.5 Non-Interference. Subject to Sections 3.1(a), 3.3, and 6.5(b), Second Lien Agent, for itself and on behalf of Second Lien Claimholders, hereby:

(i) agrees that Second Lien Agent and Second Lien Claimholders will not take any action that would restrain, hinder, limit, delay, or otherwise interfere with any Exercise of Secured Creditor Remedies by First Lien Agent, including any Disposition of the Collateral, whether by foreclosure or otherwise;

(ii) subject to Section 3.7, waives any and all rights it or Second Lien Claimholders may have as a junior lien creditor or otherwise to object to the manner in which First Lien Agent seeks to enforce or collect the First Lien Obligations or the Liens securing the First Lien Obligations granted with respect to any of the First Lien Collateral, regardless of whether any action or failure to act by or on behalf of First Lien Agent or First Lien Claimholders is adverse to the interest of Second Lien Claimholders; and

(iii) acknowledges and agrees that no covenant, agreement or restriction contained in the Second Lien Collateral Documents or any other Second Lien Loan Document (other than this Agreement) shall be deemed to restrict in any way the rights and remedies of First Lien Agent or First Lien Claimholders with respect to the Collateral as set forth in this Agreement and the First Lien Credit Documents.

3.6 Unsecured Creditor Remedies. Except as set forth in Sections 3.1(a), 3.5, and 6, Second Lien Agent and Second Lien Claimholders may exercise rights and remedies as unsecured creditors against any Grantor in accordance with the terms of the Second Lien Loan Documents and applicable law; provided, however, that in the event that any Second Lien Claimholder becomes a judgment Lien creditor in respect of Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to the Second Lien Obligations, such judgment Lien shall be subject to the terms of this Agreement for all purposes as the other Liens securing the Second Lien Obligations; and provided further, however, that except as otherwise permitted under this Agreement, the Second Lien Claimholders shall not commence, or join with any other creditor of the Borrower or any Guarantor in commencing, any bankruptcy, reorganization or Insolvency Proceeding against the Borrower or any Guarantor.

3.7 Commercially Reasonable Dispositions; Notice of Exercise. First Lien Agent, for itself and on behalf of First Lien Claimholders, agrees that any Exercise of Secured Creditor Remedies by First Lien Agent with respect to Collateral subject to Article 9 of the UCC shall be conducted in a commercially reasonable manner. Second Lien Agent, for itself and on behalf of Second Lien Claimholders, agrees that any Exercise of Secured Creditor Remedies by Second Lien Agent with respect to Collateral subject to Article 9 of the UCC shall be conducted in a commercially reasonable manner. First Lien Agent shall provide reasonable prior notice to Second Lien Agent of its initial material Exercise of Secured Creditor Remedies. Second Lien Agent shall provide reasonable prior notice to First Lien Agent of its initial material Exercise of Secured Creditor Remedies.

3.8 Payment Blockage.

(a) (i) Upon the occurrence and continuance of any First Lien Default with respect to payment of any First Lien Obligations (a "Payment Default"), no payment shall be made on the Second Lien Obligations until the earlier to occur of (x) the date on which all Payment Defaults have been cured or waived in writing or (y) the Discharge of First Lien Obligations.

(b) If any First Lien Default other than a Payment Default (a "Covenant Default") shall have occurred, no payment on the Second Lien Obligations shall be made for a period (a "Blockage Period") of time commencing upon delivery by the First Lien Agent to the Borrower and the Second Lien Agent of written notice specifying the First Lien Default (the "Blockage Notice") and continuing until the earlier to occur of (i) 180 days from the date of delivery of the Blockage Notice, or (ii) the date on which all such First Lien Defaults described in such Blockage Notice have been cured or waived, provided that if such First Lien Default is waived by the requisite First Lien Claimholders or is cured and any other First Lien Default occurs or shall have occurred then no payments shall be permitted under the foregoing provisions of this subparagraph (b) until the expiration of 180 days after receipt by the Second Lien Agent

of written notice from the First Lien Agent of such other First Lien Default (or until the cure thereof or waiver thereof by the requisite First Lien Claimholders if such cure or waiver occurs during such 180-day period), which notice shall constitute the commencement of a second Blockage Period. Upon the expiration of the Blockage Period, the Second Lien Claimholders shall be entitled to the immediate payment in full of all suspended payments of the Second Lien Obligations to the extent, if any, such payment is otherwise permitted under this Agreement.

(c) In the event that Borrower or any Guarantor shall make or the Second Lien Claimholders shall collect any payment on account of the principal of, premium or interest on or any other amounts due in respect of the Second Lien Obligations in contravention of this Section 3.8, such payments shall be paid over and delivered to the First Lien Agent, for the benefit of First Lien Claimholders, promptly upon receipt thereof.

(d) No Covenant Default existing on the date any notice is given pursuant to Section 3.8(b) shall, unless the same shall have ceased to exist for a period of at least sixty (60) consecutive days, be used as a basis for any subsequent such notice.

(e) The failure of the Borrower to make any payment with respect to the Second Lien Obligations by reason of the operation of this Section 3.8 shall not be construed as preventing the occurrence of a default under the Second Lien Loan Documents.

SECTION 4. Proceeds.

4.1 Application of Proceeds. Whether or not any Insolvency Proceeding has been commenced by or against any Grantor, any Collateral or proceeds thereof received in connection with any Exercise of Secured Creditor Remedies shall (at such time as such Collateral or proceeds has been monetized) be applied: (a) first, to the payment in full in cash of costs and expenses of First Lien Agent in connection with such Exercise of Secured Creditor Remedies, (b) second, to the payment in full in cash or cash collateralization of the First Lien Obligations in accordance with the First Lien Loan Documents, and in the case of payment of any amounts under the revolving credit facility, together with the concurrent permanent reduction of any availability thereunder in an amount equal to the amount of such payment, (c) third, to the payment in full in cash of costs and expenses of Second Lien Agent in connection with such Exercise of Secured Creditor Remedies (to the extent Second Lien Agent's Exercise of Secured Creditor Remedies was permitted hereunder), and (d) fourth, to the payment in full in cash of the Second Lien Obligations in accordance with the Second Lien Loan Documents. If any Exercise of Secured Creditor Remedies with respect to the Collateral produces non-cash proceeds, then such non-cash proceeds shall be held by the Agent that conducted the Exercise of Secured Creditor Remedies as additional Collateral and, at such time as such non-cash proceeds are monetized, shall be applied as set forth above.

4.2 Turnover. Unless and until the Discharge of First Lien Obligations has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, any Collateral or proceeds thereof (including assets or proceeds subject to Liens referred to in the final sentence of Section 2.3 or the proviso in Section 3.6) received by Second Lien Agent or any Second Lien Claimholder (a) in connection with the Exercise of Secured Creditor Remedies with respect to the Collateral by Second Lien Agent or any Second Lien Claimholder, or (b) as a

result of Second Lien Agent's or any Second Lien Claimholder's collusion with any Grantor in violating the rights of First Lien Agent or any First Lien Claimholder (within the meaning of Section 9-332 of the UCC), shall be segregated and held in trust and forthwith paid over to First Lien Agent for the benefit of First Lien Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. First Lien Agent is hereby authorized to make any such endorsements as agent for Second Lien Agent or any such Second Lien Claimholders. This authorization is coupled with an interest and is irrevocable until the Discharge of First Lien Obligations.

4.3 No Subordination of the Relative Priority of Claims. Anything to the contrary contained herein notwithstanding, the subordination of the Liens of Second Lien Claimholders to the Liens of First Lien Claimholders as set forth herein is with respect to the priority of the respective Liens held by or on behalf of them only and shall not constitute a subordination of the Second Lien Obligations to the First Lien Obligations.

4.4 Sales of Excess Real Estate. Anything to the contrary contained herein notwithstanding, unless a First Lien Default has occurred and is continuing, proceeds from any Disposition of Excess Real Estate permitted under the First Lien Credit Agreement may be applied to the payment of the Second Lien Obligations in accordance with the terms of the Second Lien Credit Agreement. In the event that Borrower or any Guarantor shall pay or the Second Lien Claimholders shall collect any proceeds from any Disposition of Excess Real Estate in contravention of this Section 4.4, such payments shall be paid over and delivered to the First Lien Agent, for the benefit of First Lien Claimholders, promptly upon receipt thereof.

SECTION 5. Releases; Dispositions; Other Agreements.

5.1 Releases.

(a) First Lien Agent shall have the exclusive right to make determinations regarding the release or Disposition of any Collateral in accordance with the provisions of the First Lien Loan Documents or in accordance with the provisions of this Agreement, in each case without any consultation with, consent of, or notice to Second Lien Agent or any Second Lien Claimholder.

(b) If, in connection with the Exercise of Secured Creditor Remedies by First Lien Agent as provided for in Section 3 (with the proceeds thereof being applied to the First Lien Obligations), First Lien Agent releases any of its Liens with respect to any part of the Collateral or releases any Grantor from its obligations in respect of the First Lien Obligations, then the Liens of Second Lien Agent with respect to such Collateral, and the obligations of such Grantor in respect of the Second Lien Obligations, shall be automatically, unconditionally, and simultaneously released. Second Lien Agent, for itself or on behalf of any Second Lien Claimholders, promptly shall execute and deliver to First Lien Agent such termination or amendment statements, releases, and other documents as First Lien Agent may request to effectively confirm such release.

(c) If, in connection with any Disposition of any Collateral permitted under the terms of the First Lien Loan Documents and the Second Lien Loan Documents as in effect as

of the date hereof, First Lien Agent, for itself or on behalf of any First Lien Claimholders, releases any of its Liens with respect to the portion of the Collateral that is the subject of such Disposition, or releases any Grantor from its obligations in respect of the First Lien Obligations (if such Grantor is the subject of such Disposition), in each case other than (i) in connection with the Discharge of First Lien Obligations, or (ii) after the occurrence and during the continuance of any Second Lien Default, then the Liens of Second Lien Agent with respect to such Collateral, and the obligations of such Grantor in respect of the Second Lien Obligations, shall be automatically, unconditionally, and simultaneously released. Second Lien Agent, for itself or on behalf of any Second Lien Claimholders, promptly shall execute and deliver to First Lien Agent such termination or amendment statements, releases, and other documents as First Lien Agent may request to effectively confirm such release.

(d) In the event of any private or public Disposition of all or any material portion of the Collateral by one or more Grantors with the consent of First Lien Agent after the occurrence and during the continuance of a First Lien Default (and prior to the Discharge of First Lien Obligations), which Disposition is conducted by such Grantors with the consent of First Lien Agent in connection with good faith efforts by First Lien Agent to collect the First Lien Obligations through the Disposition of Collateral (any such Disposition, a "**Default Disposition**"), then the Liens of Second Lien Agent with respect to such Collateral shall be automatically, unconditionally, and simultaneously released (and, if the Default Disposition includes equity interests in any Grantor, Second Lien Agent further agrees to release those persons whose equity interests are Disposed of from all of their obligations under the Second Lien Loan Documents); provided that (i) First Lien Agent also releases its Liens with respect to such Collateral (and, if the Default Disposition includes equity interests in any Grantor, First Lien Agent is also releasing those persons whose equity interests are Disposed of from all of their obligations under the First Lien Loan Documents), (ii) the net cash proceeds of any such Default Disposition are applied in accordance with Section 4.1 (as if they were proceeds received in connection with an Exercise of Secured Creditor Remedies), and (iii) with respect to Collateral that is subject to Article 9 of the UCC, the Grantors consummating such Default Disposition have (a) provided Second Lien Agent with the prior written notice that would have been required if the Default Disposition were a disposition of collateral by a secured creditor under Article 9 of the UCC, and (b) conducted such Default Disposition in a commercially reasonable manner as if such Default Disposition were a disposition of collateral by a secured creditor in accordance with Article 9 of the UCC.

(e) Until the Discharge of First Lien Obligations occurs, Second Lien Agent, for itself and on behalf of Second Lien Claimholders, hereby irrevocably constitutes and appoints First Lien Agent and any officer or agent of First Lien Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Second Lien Agent or such holder or in First Lien Agent's own name, from time to time in First Lien Agent's discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary to accomplish the purposes of this Section 5.1, including any endorsements or other instruments of transfer or release.

(f) Until the Discharge of First Lien Obligations occurs, to the extent that First Lien Agent or First Lien Claimholders (i) have released any Lien with respect to Collateral

or any Grantor with respect to the First Lien Obligations, and any such Liens or obligations are later reinstated, or (ii) obtain any new Liens from any Grantor or obtain a guaranty from any Grantor of the First Lien Obligations, then Second Lien Agent, for itself and for Second Lien Claimholders, shall be entitled to obtain a Lien with respect to any such Collateral, subject to the terms (including the lien subordination provisions) of this Agreement, and a guaranty from such Grantor, as the case may be.

5.2 Insurance. Unless and until the Discharge of First Lien Obligations has occurred:

(a) (i) First Lien Agent shall have the sole and exclusive right, subject to the rights of Grantors under the First Lien Loan Documents, to adjust and settle any claim under any insurance policy covering the Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the Collateral; and (ii) all proceeds of any such insurance policy and any such award (or any payments with respect to a deed in lieu of condemnation) shall be paid, subject to the rights of Grantors under the First Lien Loan Documents and the Second Lien Loan Documents, first to First Lien Claimholders and Second Lien Claimholders in accordance with the priorities set forth in Section 4.1, until paid in full in cash, and second, to the owner of the subject property, such other person as may be entitled thereto, or as a court of competent jurisdiction may otherwise direct; and

(b) if Second Lien Agent or any Second Lien Claimholders shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Section 5.2, it shall pay such proceeds over to First Lien Agent in accordance with the terms of Section 4.2 (whether or not such proceeds were received in connection with the Exercise of Secured Creditor Remedies).

5.3 Amendments; Refinancings; Legend.

(a) The First Lien Loan Documents may be amended, supplemented, or otherwise modified in accordance with their terms and the First Lien Obligations may be Refinanced, in each case without notice to, or the consent of, Second Lien Agent or Second Lien Claimholders, all without affecting the lien subordination or other provisions of this Agreement; provided, however, that, in the case of a Refinancing, the holders of such Refinancing debt bind themselves (in a writing addressed to Second Lien Agent for the benefit of itself and the Second Lien Claimholders) to the terms of this Agreement; provided further, however, that any such amendment, supplement, modification, or Refinancing shall not, without the prior written consent of Second Lien Agent:

(i) contravene the provisions of this Agreement;

(ii) increase, to an amount that would exceed the First Lien Cap, the sum of the revolving credit commitment, plus the outstanding principal amount of the loans, plus the outstanding amounts of issued and undrawn Letters of Credit, other than as a result of the capitalization of accrued interest, fees and expenses or prepayment fees or premiums;

(iii) increase the "Applicable Margin" or similar component of the interest rate by more than three (3) percentage points per annum (excluding increases resulting from the accrual of interest at the default rate);

(iv) change to earlier dates any dates upon which payments of principal are due; or

(v) modify Section 8.02(g) of the First Lien Credit Agreement or otherwise modify or add any covenant or event of default under the First Lien Loan Documents that would restrict Borrower or the Second Lien Claimholders from applying proceeds from the Disposition of Excess Real Estate to the Second Lien Obligations that would otherwise be permitted under the First Lien Loan Documents as in effect on the date hereof.

(b) The Second Lien Loan Documents may be amended, supplemented, or otherwise modified in accordance with their terms and the Second Lien Obligations may be Refinanced, in each case without notice to, or the consent of, First Lien Agent or First Lien Claimholders, all without affecting the lien subordination or other provisions of this Agreement; provided, however, that, in the case of a Refinancing, the holders of such Refinancing debt bind themselves (in a writing addressed to First Lien Agent for the benefit of itself and the First Lien Claimholders) to the terms of this Agreement; provided further, however, that any such amendment, supplement, modification, or Refinancing shall not (except with respect to any Conforming Amendment (provided that any Conforming Amendment to the Second Lien Loan Documents shall maintain an equivalent proportionate difference between dollar amounts or ratios, as the case may be, in the relevant provision in the Second Lien Loan Documents and those in the corresponding provision in the First Lien Loan Documents, to the extent that such difference exists between the Second Lien Loan Documents and the First Lien Loan Documents on the date hereof)), without the prior written consent of First Lien Agent:

(i) contravene the provisions of this Agreement;

(ii) increase the "Applicable Margin" or similar component of the cash pay portion of any interest rate (excluding increases resulting from the accrual of interest at the default rate);

(iii) change to earlier dates any dates upon which payments of principal are due;

(iv) change any financial covenant in a manner adverse to Grantors thereunder (it being understood that any waiver of any default or Second Lien Default arising from the failure to comply with any financial covenant, in and of itself, shall not be deemed to be adverse to Grantors);

(v) change any default or Second Lien Default thereunder in a manner adverse to Grantors thereunder (it being understood that any waiver of any such default or Second Lien Default, in and of itself, shall not be deemed to be adverse to Grantors);

(vi) modify (or have the effect of a modification of) the mandatory prepayment provisions of the Second Lien Credit Agreement or any Second Lien Loan Document; or

(vii) increase the non-monetary obligations of Grantors thereunder or confer any additional rights on Second Lien Claimholders that would be materially adverse to First Lien Claimholders.

(c) Borrower agrees that any promissory note evidencing the Second Lien Obligations shall at all times include the following language (or language to similar effect approved by First Lien Agent):

> "Anything herein to the contrary notwithstanding, the liens and security interests securing the obligations evidenced by this promissory note, the exercise of any right or remedy with respect thereto, and certain of the rights of the holder hereof are subject to the provisions of the Intercreditor Agreement dated as of _____, (as amended, restated, supplemented, or otherwise modified from time to time, the "**Intercreditor Agreement**"), by and between _____, as First Lien Agent, and Wells Fargo Bank, National Association, as Second Lien Agent. In the event of any conflict between the terms of the Intercreditor Agreement and this promissory note, the terms of the Intercreditor Agreement shall govern and control."

(d) In the event First Lien Agent or First Lien Claimholders and the relevant Grantor enter into any amendment, waiver, or consent which constitutes a Deemed Second Lien Amendment, then such Deemed Second Lien Amendment shall apply automatically to any comparable provision of the Second Lien Loan Documents without the requirement of consent of Second Lien Agent or Second Lien Claimholders and without any action by Second Lien Agent, or any Grantor (provided that any Deemed Second Lien Amendment to the Second Lien Loan Documents shall maintain an equivalent proportionate difference between dollar amounts or ratios, as the case may be, in the relevant provision in the Second Lien Loan Documents and those in the corresponding provision in the First Lien Loan Documents, to the extent that such difference exists between the Second Lien Loan Documents and the First Lien Loan Documents on the date hereof). Second Lien Agent, for itself or on behalf of Second Lien Claimholders, promptly shall execute and deliver to First Lien Agent such amendment, waiver, or consent as First Lien Agent may request to effectively confirm such amendment.

5.4 Bailee for Perfection.

(a) First Lien Agent and Second Lien Agent each agree to hold or control that part of the Collateral that is in its possession or control (or in the possession or control of its agents or bailees) to the extent that possession or control thereof is taken to perfect a Lien with respect thereto under the UCC or other applicable law (such Collateral being referred to as the "**Pledged Collateral**"), as bailee and as a non-fiduciary agent for Second Lien Agent or First Lien Agent, as applicable (such bailment and agency being intended, among other things, to satisfy the requirements of Sections 8-301(a)(2), 9-313(c), 9-104, 9-105, 9-106, and 9-107 of the UCC), solely for the purpose of perfecting the security interest granted under the Second Lien

Loan Documents or the First Lien Loan Documents, as applicable, subject to the terms and conditions of this Section 5.4. Unless and until the Discharge of the First Lien Obligations, Second Lien Agent agrees to promptly notify First Lien Agent of any Pledged Collateral held by it or by any Second Lien Claimholders, and, immediately upon the request of First Lien Agent at any time prior to the Discharge of the First Lien Obligations, Second Lien Agent agrees to deliver to First Lien Agent any such Pledged Collateral held by it or by any Second Lien Claimholders, together with any necessary endorsements (or otherwise allow First Lien Agent to obtain control of such Pledged Collateral). First Lien Agent hereby agrees that upon the Discharge of the First Lien Obligations, upon the written request of Second Lien Agent, to the extent that the applicable control agreement is in full force and effect and has not been terminated, First Lien Agent shall continue to act as such a bailee and non-fiduciary agent for Second Lien Agent (solely for the purpose of perfecting the security interest granted under the Second Lien Loan Documents and at the expense of Second Lien Agent) with respect to the deposit account or securities account that is the subject of such control agreement, until the date when a control agreement is executed in favor of Second Lien Agent with respect to such deposit account or securities account.

(b) First Lien Agent shall have no obligation whatsoever to Second Lien Agent or any Second Lien Claimholder to ensure that the Pledged Collateral is genuine or owned by any of Grantors or to preserve rights or benefits of any person except as expressly set forth in this Section 5.4. Second Lien Agent shall have no obligation whatsoever to First Lien Agent or any First Lien Claimholder to ensure that the Pledged Collateral is genuine or owned by any of Grantors or to preserve rights or benefits of any person except as expressly set forth in this Section 5.4. The duties or responsibilities of First Lien Agent under this Section 5.4 shall be limited solely to holding or controlling the Pledged Collateral as bailee and agent in accordance with this Section 5.4 and delivering the Pledged Collateral upon a Discharge of First Lien Obligations as provided in paragraph (d) of this Section 5.4. The duties or responsibilities of Second Lien Agent under this Section 5.4 shall be limited solely to holding or controlling the Pledged Collateral as bailee and agent in accordance with this Section 5.4.

(c) First Lien Agent acting pursuant to this Section 5.4 shall not have by reason of the First Lien Collateral Documents, the Second Lien Collateral Documents, or this Agreement a fiduciary relationship in respect of Second Lien Agent or any Second Lien Claimholder. Second Lien Agent acting pursuant to this Section 5.4 shall not have by reason of the First Lien Collateral Documents, the Second Lien Collateral Documents, or this Agreement a fiduciary relationship in respect of First Lien Agent or First Lien Claimholder.

(d) Upon the Discharge of First Lien Obligations, First Lien Agent shall deliver the remaining Pledged Collateral (if any) together with any necessary endorsements, first, to Second Lien Agent to the extent Second Lien Obligations remain outstanding as confirmed in writing by Second Lien Agent, and, to the extent that Second Lien Agent confirms no Second Lien Obligations remain outstanding, second, to Borrower or to such other person as may be required by applicable law (in each case, so as to allow such person to obtain possession or control of such Pledged Collateral). At such time, First Lien Agent further agrees to take all other action reasonably requested by Second Lien Agent at the expense of Borrower (including amending any outstanding control agreements) to enable Second Lien Agent to obtain a first priority security interest in the Collateral.

(e) First Lien Agent and Second Lien Agent agree that any Collateral in the possession or control of Wells Fargo Bank (or in the possession or control of the agents or bailees of Wells Fargo Bank) shall be deemed to be held by Wells Fargo Bank in its capacity as First Lien Agent for so long as Wells Fargo Bank is acting in the capacity of First Lien Agent.

5.5 When Discharge of First Lien Obligations Deemed to Not Have Occurred. If Borrower enters into any Refinancing of the First Lien Obligations, then a Discharge of First Lien Obligations shall be deemed not to have occurred for all purposes of this Agreement, and the obligations under such Refinancing of such First Lien Obligations shall be treated as First Lien Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and First Lien Agent under the First Lien Loan Documents effecting such Refinancing shall be First Lien Agent for all purposes of this Agreement. First Lien Agent under such First Lien Loan Documents shall agree (in a writing addressed to Second Lien Agent for the benefit of itself and the Second Lien Claimholders) to be bound by the terms of this Agreement.

5.6 Purchase Option.

(a) Upon the occurrence and during the continuation of a Triggering Event, then, in any such case, any one or more of Second Lien Claimholders (acting in their individual capacity or through one or more affiliates) shall have the right, but not the obligation (each Second Lien Claimholder having a ratable right to make the purchase, with each Second Lien Claimholder's right to purchase being automatically proportionately increased by the amount not purchased by another Second Lien Claimholder), upon five (5) Business Days' advance written notice from Second Lien Agent, on behalf of such Second Lien Claimholders (a "**Purchase Notice**"), to First Lien Agent, for the benefit of First Lien Claimholders, to acquire from First Lien Claimholders all (but not less than all) of the right, title, and interest of First Lien Claimholders in and to the First Lien Obligations and the First Lien Loan Documents. The Purchase Notice, if given, shall be irrevocable.

(b) On the date specified by Second Lien Agent in the Purchase Notice (which shall not be more than five (5) Business Days after the receipt by First Lien Agent of the Purchase Notice, unless otherwise consented to by First Lien Agent), First Lien Claimholders shall sell to the purchasing Second Lien Claimholders, and purchasing Second Lien Claimholders shall purchase from First Lien Claimholders, the First Lien Obligations.

(c) On the date of such purchase and sale, purchasing Second Lien Claimholders shall (i) pay to First Lien Agent, for the benefit of First Lien Claimholders, as the purchase price therefore, the full amount at par of all the First Lien Obligations (other than First Lien Obligations cash collateralized in accordance with clause (c)(ii) below) then outstanding and unpaid, (ii) furnish cash collateral to First Lien Agent in such amounts as First Lien Agent determines is reasonably necessary to secure First Lien Agent and First Lien Claimholders in connection with (A) any issued and outstanding Letters of Credit (but not in any event in an amount greater than 105% of the aggregate undrawn amount of such Letters of Credit) and (B) Bank Product Obligations, and (iii) agree to reimburse First Lien Agent and First Lien Claimholders for all expenses to the extent earned or due and payable in accordance with the First Lien Loan Documents (including the reimbursement of extraordinary expenses, financial

examination expenses, and appraisal fees to the applicable purchase date). Anything contained in this paragraph to the contrary notwithstanding, in the event that (X) purchasing Second Lien Claimholders receive all or a portion of any prepayment premium, make-whole obligation or early termination fee payable pursuant to the First Lien Loan Documents in cash, (Y) all First Lien Obligations purchased by such purchasing Second Lien Claimholders and all of the Second Lien Obligations, including principal, interest and fees thereon and costs and expenses of collection thereof (including reasonable attorneys fees and legal expenses), are repaid in full in cash, and (Z) the First Lien Credit Agreement is terminated, in each case, within 180 days following the date on which the purchasing Second Lien Claimholders pay the purchase price described in clauses (i)-(iii) of this paragraph, then, within three (3) Business Days after receipt by such Second Lien Claimholders of such amounts, purchasing Second Lien Claimholders shall pay a supplemental purchase price to First Lien Agent, for the benefit of First Lien Claimholders, in respect of their purchase under this Section 5.6 in an amount equal to the portion of the prepayment premium, make-whole obligation or early termination fee received by purchasing Second Lien Claimholders to which First Lien Claimholders would have been entitled to receive had the purchase under this paragraph not occurred. Such purchase price and cash collateral shall be remitted by wire transfer in federal funds to such bank account of First Lien Agent as First Lien Agent may designate in writing to Second Lien Agent for such purpose. Interest shall be calculated to but excluding the Business Day on which such purchase and sale shall occur if the amounts so paid by purchasing Second Lien Claimholders to the bank account designated by First Lien Agent are received in such bank account prior to 2:00 p.m., New York City time, and interest shall be calculated to and including such Business Day if the amounts so paid by purchasing Second Lien Claimholders to the bank account designated by First Lien Agent are received in such bank account later than 2:00 p.m., New York City time.

(d) Such purchase shall be effected pursuant to Assignment and Assumptions (as defined in the First Lien Credit Agreement) in form and substance satisfactory to First Lien Agent. Such purchase shall be expressly made without representation or warranty of any kind by First Lien Agent and First Lien Claimholders as to the First Lien Obligations so purchased or otherwise and without recourse to First Lien Agent or any First Lien Claimholder, except that each First Lien Claimholder shall represent and warrant: (i) that the amount quoted by such First Lien Claimholder as its portion of the purchase price represents the amount shown as owing with respect to the claims transferred as reflected on its books and records, (ii) it owns, or has the right to transfer to purchasing Second Lien Claimholders, the rights being transferred, and (iii) such transfer will be free and clear of Liens.

(e) In the event that any one or more of Second Lien Claimholders exercises and consummates the purchase option set forth in this Section 5.6, (i) First Lien Agent shall have the right, but not the obligation, to immediately resign under the First Lien Credit Agreement, and (ii) purchasing Second Lien Claimholders shall have the right, but not the obligation, to require First Lien Agent to immediately resign under the First Lien Credit Agreement.

5.7 Injunctive Relief. Should any Second Lien Claimholder in any way take, attempt to, or threaten to take any action contrary to terms of this Agreement with respect to the Collateral, or fail to take any action required by this Agreement, First Lien Agent or any First Lien Claimholder (in its or their own name or in the name of any Grantor) or any Grantor may obtain relief against such Second Lien Claimholder by injunction, specific performance, or other

appropriate equitable relief, it being understood and agreed by Second Lien Agent that (a) First Lien Claimholders' damages from such actions may at that time be difficult to ascertain and may be irreparable, and (b) each Second Lien Claimholder waives any defense that such Grantor or First Lien Claimholders cannot demonstrate damage or be made whole by the awarding of damages. Should any First Lien Claimholder in any way take, attempt to, or threaten to take any action contrary to terms of this Agreement with respect to the Collateral, or fail to take any action required by this Agreement, Second Lien Agent or any Second Lien Claimholder (in its or their own name or in the name of any Grantor) or any Grantor may obtain relief against such First Lien Claimholder by injunction, specific performance, or other appropriate equitable relief, it being understood and agreed by First Lien Agent that (i) Second Lien Claimholders' damages from such actions may at that time be difficult to ascertain and may be irreparable, and (ii) each First Lien Claimholder waives any defense that such Grantor or Second Lien Claimholders cannot demonstrate damage or be made whole by the awarding of damages. First Lien Agent and Second Lien Agent hereby irrevocably waive any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by First Lien Agent or First Lien Claimholders or Second Lien Agent or Second Lien Claimholders, as the case may be.

SECTION 6. Insolvency Proceedings.

6.1 Enforceability and Continuing Priority. This Agreement shall be applicable both before and after the commencement of any Insolvency Proceeding and all converted or succeeding cases in respect thereof. The relative rights of Claimholders in or to any distributions from or in respect of any Collateral or proceeds of Collateral, shall continue after the commencement of any Insolvency Proceeding. Accordingly, the provisions of this Agreement are intended to be and shall be enforceable as a subordination agreement within the meaning of Section 510 of the Bankruptcy Code.

6.2 Financing. If any Grantor shall be subject to any Insolvency Proceeding and First Lien Agent consents to the use of cash collateral (as such term is defined in Section 363(a) of the Bankruptcy Code; herein, "**Cash Collateral**") on which First Lien Agent has a Lien or to permit any Grantor to obtain financing provided by any one or more First Lien Claimholders under Section 364 of the Bankruptcy Code or any similar Bankruptcy Law (such financing, a "**DIP Financing**"), then Second Lien Agent agrees that it will consent to such Cash Collateral use or raise no objection to such DIP Financing and, to the extent the Liens securing the First Lien Obligations are discharged, subordinated to, or pari passu with such DIP Financing, Second Lien Agent will subordinate its Liens with respect to the Collateral to the Liens securing such DIP Financing. If First Lien Claimholders offer to provide DIP Financing, Second Lien Agent agrees that it shall not, directly or indirectly, provide, offer to provide, or support any DIP Financing secured by a Lien senior to or pari passu with the Liens securing the First Lien Obligations. The foregoing provisions of this Section 6.2 shall not prevent the Second Lien Agent or the Second Lien Claimants from objecting to any provision in any Cash Collateral order or DIP Financing documentation relating to any provision or content of a plan of reorganization. If, in connection with any Cash Collateral use or DIP Financing, any Liens with respect to the Collateral held by First Lien Claimholders are subject to a surcharge or are subordinated to an administrative priority claim, a professional fee "carve out," or fees owed to the United State Trustee, then the Liens with respect to the Collateral of Second Lien Claimholders shall also be subordinated to

such interest or claim and shall remain subordinated to the Liens with respect to the Collateral of First Lien Claimholders consistent with this Agreement.

6.3 Sales. Second Lien Agent agrees that it will consent, and will not object or oppose a motion to Dispose of any Collateral free and clear of the Liens or other claims in favor of Second Lien Agent under Section 363 of the Bankruptcy Code if the requisite First Lien Claimholders under the First Lien Credit Agreement have consented to such Disposition of such assets, and such motion does not impair, subject to the priorities set forth in this Agreement, the rights of Second Lien Claimholders under Section 363(k) of the Bankruptcy Code (so long as the right of the Second Lien Claimholders to offset its claim against the purchase price is only after the First Lien Obligations have been paid in full in cash). The foregoing to the contrary notwithstanding, Second Lien Claimholders may raise any objections to such Disposition of the Collateral that could be raised by a creditor of Grantors whose claims are not secured by Liens with respect to such Collateral, provided such objections are not inconsistent with any other term or provision of this Agreement and are not based on their status as secured creditors (without limiting the foregoing, Second Lien Creditors may not raise any objections based on rights afforded by Sections 363(e) and (f) of the Bankruptcy Code to secured creditors (or any comparable provision of any other Bankruptcy Law) with respect to the Liens granted to Second Lien Agent with respect to such assets).

6.4 Relief from the Automatic Stay. Until the Discharge of First Lien Obligations has occurred, Second Lien Agent agrees not to (a) seek (or support any other person seeking) relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of the Collateral, without the prior written consent of First Lien Agent, or (b) oppose any request by the First Lien Agent or any First Lien Claimholder to seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of the Collateral.

6.5 Adequate Protection.

(a) In any Insolvency Proceeding involving a Grantor, Second Lien Agent agrees that no Second Lien Claimholder shall contest (or support any other person contesting):

(i) any request by First Lien Agent or other First Lien Claimholders for adequate protection; or

(ii) any objection by First Lien Agent or First Lien Claimholders to any motion, relief, action, or proceeding based on First Lien Agent or First Lien Claimholders claiming a lack of adequate protection.

(b) In any Insolvency Proceeding involving a Grantor:

(i) if any one or more First Lien Claimholders are granted adequate protection in the form of a replacement Lien (with respect to existing or future assets of Grantors) in connection with any DIP Financing or use of Cash Collateral, then First Lien Agent agrees that Second Lien Agent shall also be entitled to seek, without objection from First Lien Claimholders, adequate protection in the form of a replacement Lien (with respect to such existing or future assets of Grantors), which replacement Lien, if obtained, shall be subordinate to the Liens securing the First Lien Obligations (including

those under a DIP Financing) on the same basis as the other Liens securing the Second Lien Obligations are subordinate to the First Lien Obligations under this Agreement;

(ii) if any one or more Second Lien Claimholders are granted adequate protection in the form of a replacement Lien (with respect to existing or future assets of Grantors), then Second Lien Agent agrees that First Lien Agent shall also be entitled to seek, without objection from Second Lien Claimholders, a senior adequate protection Lien with respect to existing or future assets of Grantors as security for the First Lien Obligations and that any adequate protection Lien with respect to such existing or future assets securing the Second Lien Obligations shall be subordinated to the Lien with respect to such assets securing the First Lien Obligations on the same basis as the other Liens securing the Second Lien Obligations are subordinated to the First Lien Obligations under this Agreement;

(iii) if any one or more First Lien Claimholders are granted adequate protection in the form of an expense of administration claim in connection with any DIP Financing or use of Cash Collateral, then First Lien Agent agrees that Second Lien Agent shall also be entitled to seek, without objection from First Lien Claimholders, adequate protection in the form of an expense of administration claim, which administration claim, if obtained, shall be subordinate to the administration claim of the First Lien Claimholders;

(iv) if any one or more Second Lien Claimholders are granted adequate protection in the form of an expense of administration claim in connection with any DIP Financing or use of Cash Collateral, then Second Lien Agent agrees that First Lien Agent shall also be entitled to seek, without objection from Second Lien Claimholders, adequate protection in the form of an expense of administration claim, which administration claim, if obtained, shall be senior to the administration claim of the Second Lien Claimholders; and; and

(v) Second Lien Agent (a) may seek, without objection from First Lien Claimholders, adequate protection with respect to the Second Lien Claimholders' rights in the Collateral in the form of periodic cash payments in an amount not exceeding interest at the non-default contract rate, together with payment of reasonable out-of-pocket expenses, and (b) without the consent of First Lien Agent, shall not seek any other adequate protection in the form of cash payments with respect to their rights in the Collateral.

(c) Neither Second Lien Agent nor any other Second Lien Claimholder shall object to, oppose, or challenge any claim by First Lien Agent or any First Lien Claimholder for allowance in any Insolvency Proceeding of First Lien Obligations consisting of post-petition interest, fees, or expenses.

(d) Neither First Lien Agent nor any other First Lien Claimholder shall object to, oppose, or challenge any claim by Second Lien Agent or any Second Lien Claimholder for allowance in any Insolvency Proceeding of Second Lien Obligations consisting of post-petition interest, fees, or expenses.

6.6 Section 1111(b) of the Bankruptcy Code. Second Lien Agent, for itself and on behalf of Second Lien Claimholders, shall not object to, oppose, support any objection, or take any other action to impede, the right of any First Lien Claimholder to make an election under Section 1111(b)(2) of the Bankruptcy Code. Second Lien Agent, for itself and on behalf of Second Lien Claimholders, waives any claim it may hereafter have against any First Lien Claimholder arising out of the election by any First Lien Claimholder of the application of Section 1111(b)(2) of the Bankruptcy Code.

6.7 No Waiver. Subject to Sections 3.1(a) and 6.5(b), nothing contained herein shall prohibit or in any way limit First Lien Agent or any First Lien Claimholder from objecting in any Insolvency Proceeding involving a Grantor to any action taken by Second Lien Agent or any Second Lien Claimholders, including the seeking by Second Lien Agent or any Second Lien Claimholders of adequate protection or the assertion by Second Lien Agent or any Second Lien Claimholders of any of its rights and remedies under the Second Lien Loan Documents.

6.8 Avoidance Issues. If any First Lien Claimholder is required in any Insolvency Proceeding or otherwise to turn over, disgorge or otherwise pay to the estate of any Grantor any amount paid in respect of First Lien Obligations (a "**Recovery**"), then such First Lien Claimholders shall be entitled to a reinstatement of First Lien Obligations with respect to all such recovered amounts, and all rights, interests, priorities and privileges recognized in this Agreement shall apply with respect to any such Recovery. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair, or otherwise affect the obligations of the parties hereto from such date of reinstatement.

6.9 Plan of Reorganization.

(a) If, in any Insolvency Proceeding involving a Grantor, debt obligations of the reorganized debtor secured by Liens with respect to any property of the reorganized debtor are distributed pursuant to a plan of reorganization or similar dispositive restructuring plan, both on account of First Lien Obligations and on account of Second Lien Obligations, then, to the extent the debt obligations distributed on account of the First Lien Obligations and on account of the Second Lien Obligations are secured by Liens with respect to the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

(b) Second Lien Claimholders shall not propose or support any plan of reorganization that is inconsistent with the priorities or other provisions of this Agreement.

SECTION 7. Reliance; Waivers; Etc.

7.1 Reliance. Other than any reliance on the terms of this Agreement, First Lien Agent acknowledges that it and First Lien Claimholders have, independently and without reliance on Second Lien Agent or any Second Lien Claimholders, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the First Lien Loan Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the

First Lien Loan Documents or this Agreement. Second Lien Agent acknowledges that it and Second Lien Claimholders have, independently and without reliance on First Lien Agent or any First Lien Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the Second Lien Loan Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Second Lien Loan Documents or this Agreement.

7.2 No Warranties or Liability. First Lien Agent acknowledges and agrees that each of Second Lien Agent and Second Lien Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility, or enforceability of any of the Second Lien Loan Documents, the ownership of any Collateral, or the perfection or priority of any Liens with respect thereto. Except as otherwise expressly provided herein, Second Lien Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Second Lien Loan Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. Second Lien Agent acknowledges and agrees that First Lien Agent and First Lien Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility, or enforceability of any of the First Lien Loan Documents, the ownership of any Collateral, or the perfection or priority of any Liens with respect thereto. Except as otherwise expressly provided herein, First Lien Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under their respective First Lien Loan Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. Second Lien Agent and Second Lien Claimholders shall have no duty to First Lien Agent or any First Lien Claimholders, and First Lien Agent and First Lien Claimholders shall have no duty to Second Lien Agent or any Second Lien Claimholders, to act or refrain from acting in a manner that allows, or results in, the occurrence or continuance of an event of default or default under any agreements with any Grantor (including the First Lien Loan Documents and the Second Lien Loan Documents), regardless of any knowledge thereof which they may have or be charged with.

7.3 No Waiver of Lien Priorities.

(a) No right of First Lien Agent or any First Lien Claimholder to enforce any provision of this Agreement or any First Lien Loan Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Grantor or by any act or failure to act by any First Lien Claimholder or First Lien Agent, or by any noncompliance by any person with the terms, provisions, and covenants of this Agreement, any of the First Lien Loan Documents or any of the Second Lien Loan Documents, regardless of any knowledge thereof which First Lien Agent or any First Lien Claimholders may have or be otherwise charged with.

(b) Without in any way limiting the generality of the foregoing paragraph (but subject to any rights of Grantors under the First Lien Loan Documents and subject to the provisions of Section 5.1 and Section 5.3(a)), First Lien Agent and any First Lien Claimholders may, at any time and from time to time in accordance with the First Lien Loan Documents or applicable law, without the consent of, or notice to, Second Lien Agent or any Second Lien Claimholders, without incurring any liabilities to Second Lien Agent or any Second Lien

Claimholders and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of Second Lien Agent or any Second Lien Claimholders is affected, impaired, or extinguished thereby) do any one or more of the following without the prior written consent of Second Lien Agent:

(i) change the manner, place, or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase, or alter, the terms of any of the First Lien Obligations or any Lien on any First Lien Collateral or guarantee thereof or any liability of any Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the First Lien Obligations, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify, or supplement in any manner any Liens held by First Lien Agent or any First Lien Claimholders, the First Lien Obligations, or any of the First Lien Loan Documents;

(ii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the First Lien Collateral or any liability of any Grantor to First Lien Claimholders or First Lien Agent, or any liability incurred directly or indirectly in respect thereof;

(iii) settle or compromise any First Lien Obligation or any other liability of any Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the First Lien Obligations) in any manner or order; and

(iv) exercise or delay in or refrain from exercising any right or remedy against any Grantor or any other person, elect any remedy and otherwise deal freely with any Grantor or any First Lien Collateral and any security and any guarantor or any liability of any Grantor to First Lien Claimholders or any liability incurred directly or indirectly in respect thereof.

(c) Except as otherwise provided herein, Second Lien Agent also agrees that First Lien Claimholders and First Lien Agent shall have no liability to Second Lien Agent or any Second Lien Claimholders, and Second Lien Agent hereby waives any claim against any First Lien Claimholder or First Lien Agent, arising out of any and all actions which First Lien Claimholders or First Lien Agent may, pursuant to the terms hereof, take, permit or omit to take with respect to:

(i) the First Lien Loan Documents;

(ii) the collection of the First Lien Obligations; or

(iii) the foreclosure upon, or sale, liquidation, or other disposition of, or the failure to foreclose upon, or sell, liquidate, or otherwise dispose of, any First Lien Collateral. Second Lien Agent agrees that First Lien Claimholders and First Lien Agent have no duty to them in respect of the maintenance or preservation of the First Lien Collateral, the First Lien Obligations, or otherwise.

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

7.4 Obligations Unconditional. For so long as this Agreement is in full force and effect, all rights, interests, agreements and obligations of First Lien Agent and First Lien Claimholders and Second Lien Agent and Second Lien Claimholders, respectively, hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any First Lien Loan Documents or any Second Lien Loan Documents;

(b) except as otherwise expressly restricted in this Agreement, any change in the time, manner, or place of payment of, or in any other terms of, all or any of the First Lien Obligations or Second Lien Obligations, including any increase in the amount thereof, or any amendment or waiver or other modification, whether by course of conduct or otherwise, of the terms of any First Lien Loan Document or any Second Lien Loan Document;

(c) except as otherwise expressly restricted in this Agreement, any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the First Lien Obligations or Second Lien Obligations or any guarantee thereof;

(d) the commencement of any Insolvency Proceeding in respect of any Grantor; or

(e) any other circumstances which otherwise might constitute a defense available to, or a discharge of, any Grantor in respect of First Lien Agent, the First Lien Obligations, any First Lien Claimholder, Second Lien Agent, the Second Lien Obligations or any Second Lien Claimholder in respect of this Agreement.

SECTION 8. Representations and Warranties.

8.1 Representations and Warranties of Each Party. Each party hereto represents and warrants to the other parties hereto as follows:

(a) Such party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

(b) This Agreement has been duly executed and delivered by such party and constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms.

(c) The execution, delivery, and performance by such party of this Agreement (i) do not require any consent or approval of, registration or filing with or any other action by any

governmental authority and (ii) will not violate any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents or by-laws of such party or any order of any governmental authority or any provision of any indenture, agreement or other instrument binding upon such party.

8.2 Representations and Warranties of Each Agent. First Lien Agent and Second Lien Agent each represents and warrants to the other that it has been authorized by First Lien Lenders or Second Lien Lenders, as applicable, under the First Lien Credit Agreement or the Second Lien Credit Agreement, as applicable, to enter into this Agreement and that each of the agreements, covenants, waivers, and other provisions hereof is valid, binding, and enforceable against the First Lien Lenders or Second Lien Lenders, as applicable, as fully as if they were parties hereto.

SECTION 9. Miscellaneous.

9.1 Conflicts. In the event of any conflict between the provisions of this Agreement and the provisions of any of the First Lien Loan Documents or any of the Second Lien Loan Documents, the provisions of this Agreement shall govern and control.

9.2 Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination and First Lien Claimholders may continue, at any time and without notice to Second Lien Agent or any Second Lien Claimholder, to extend credit and other financial accommodations to or for the benefit of any Grantor constituting First Lien Obligations in reliance hereof. Second Lien Agent hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency Proceeding. Any provision of this Agreement that is prohibited or unenforceable shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to any Grantor shall include such Grantor as debtor and debtor-in-possession and any receiver or trustee for such Grantor in any Insolvency Proceeding. This Agreement shall terminate and be of no further force and effect:

(a) with respect to First Lien Agent, First Lien Claimholders, and the First Lien Obligations, on the date that the First Lien Obligations are paid in full; and

(b) with respect to Second Lien Agent, Second Lien Claimholders, and the Second Lien Obligations, on the date that the Second Lien Obligations are paid in full.

9.3 Amendments; Waivers. No amendment, modification, or waiver of any of the provisions of this Agreement shall be effective unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time.

9.4 Information Concerning Financial Condition of Borrower and Guarantors. First Lien Agent and First Lien Claimholders, on the one hand, and Second Lien Claimholders and Second Lien Agent, on the other hand, shall each be responsible for keeping themselves informed of (a) the financial condition of Borrower and Guarantors and all endorsers or guarantors of the First Lien Obligations or the Second Lien Obligations and (b) all other circumstances bearing upon the risk of nonpayment of the First Lien Obligations or the Second Lien Obligations. First Lien Agent and First Lien Claimholders shall have no duty to advise Second Lien Agent or any Second Lien Claimholder of information known to it or them regarding such condition or any such circumstances or otherwise. Second Lien Agent and Second Lien Claimholders shall have no duty to advise First Lien Agent or any First Lien Claimholder of information known to it or them regarding such condition or any such circumstances or otherwise. In the event First Lien Agent or any First Lien Claimholders, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to Second Lien Agent or any Second Lien Claimholder, it or they shall be under no obligation:

(a) to make, and First Lien Agent and First Lien Claimholders shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness, or validity of any such information so provided;

(b) to provide any additional information or to provide any such information on any subsequent occasion;

(c) to undertake any investigation; or

(d) to disclose any information, which pursuant to accepted or reasonable commercial practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

9.5 Subrogation. With respect to any payments or distributions in cash, property, or other assets that any Second Lien Claimholders or Second Lien Agent pays over to First Lien Agent or First Lien Claimholders under the terms of this Agreement, Second Lien Claimholders and Second Lien Agent shall be subrogated to the rights of First Lien Agent and First Lien Claimholders; provided, however, that Second Lien Agent hereby agrees not to assert or enforce any such rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of all First Lien Obligations has occurred. Any payments or distributions in cash, property or other assets received by Second Lien Agent or Second Lien Claimholders that are paid over to First Lien Agent or First Lien Claimholders pursuant to this Agreement shall not reduce any of the Second Lien Obligations.

9.6 **SUBMISSION TO JURISDICTION; WAIVERS.**

(a) **ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY, AND CITY OF NEW YORK. BY EXECUTING AND**

DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY:

(i) **ACCEPTS GENERALLY AND UNCONDITIONALLY THE JURISDICTION AND VENUE OF SUCH COURTS;**

(ii) **WAIVES ANY DEFENSE OF FORUM NON CONVENIENS;**

(iii) **AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 9.7; AND**

(iv) **AGREES THAT SERVICE AS PROVIDED IN CLAUSE (iii) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT.**

(b) **EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREOF, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE; MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 9.6(b) AND EXECUTED BY FIRST LIEN AGENT AND SECOND LIEN AGENT), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS HERETO. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

9.7 Notices. All notices to Second Lien Claimholders and First Lien Claimholders permitted or required under this Agreement shall also be sent to Second Lien Agent and First Lien Agent, respectively. Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served or sent by telefacsimile or United States mail or

courier service or electronic mail and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or electronic mail, or three (3) Business Days after depositing it in the United States mail with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto shall be as may be designated by such party in a written notice to all of the other parties.

9.8 Further Assurances. First Lien Agent and Second Lien Agent each agrees to take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as First Lien Agent or Second Lien Agent may reasonably request to effectuate the terms of, and the Lien priorities contemplated by, this Agreement, all at the expense of Borrower.

9.9 **APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA.**

9.10 Binding on Successors and Assigns. This Agreement shall be binding upon First Lien Agent, First Lien Claimholders, Second Lien Agent, Second Lien Claimholders, and their respective successors and assigns.

9.11 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

9.12 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

9.13 No Third Party Beneficiaries. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of and bind each of First Lien Claimholders and Second Lien Claimholders. In no event shall any Grantor be a third party beneficiary of this Agreement.

9.14 Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of First Lien Agent and First Lien Claimholders on the one hand and Second Lien Agent and Second Lien Claimholders on the other hand. No Grantor or any other creditor thereof shall have any rights hereunder and no Grantor may rely on the terms hereof. Nothing in this Agreement shall impair, as between Grantors and First Lien Agent and First Lien Claimholders, or as between Grantors and Second Lien Agent and Second Lien Claimholders, the obligations of Grantors to pay principal, interest, fees and other amounts as provided in the First Lien Loan Documents and the Second Lien Loan Documents, respectively.

9.15 Costs and Attorneys Fees. In the event it becomes necessary for First Lien Agent, any First Lien Claimholder, Second Lien Agent, or any Second Lien Claimholder to commence

or become a party to any proceeding or action to enforce the provisions of this Agreement, the court or body before which the same shall be tried shall award to the prevailing party all costs and expenses thereof, including reasonable attorneys fees, the usual and customary and lawfully recoverable court costs, and all other expenses in connection therewith.

[signature pages follow]

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

FIRST LIEN AGENT:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

SECOND LIEN AGENT:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

Borrower and each Guarantor each hereby acknowledge that they have received a copy of the foregoing Intercreditor Agreement and consent thereto, agree to recognize all rights granted thereby to First Lien Agent, First Lien Claimholders, Second Lien Agent, and Second Lien Claimholders, and will not do any act or perform any obligation which is not in accordance with the agreements set forth therein; provided, however, that nothing hereby shall be construed as a consent to any amendment, modification, supplement or restatement of the First Lien Loan Documents or Second Lien Loan Documents, as the case may be. Borrower and each Guarantor each further acknowledge and agree that they are not an intended beneficiary or third party beneficiary under the foregoing Intercreditor Agreement.

ACKNOWLEDGED AS OF THE DATE FIRST WRITTEN ABOVE:

BORROWER:

BUILDING MATERIALS HOLDING CORPORATION

By _____
Name: Paul Street
Title: Chief Executive Officer

GUARANTORS:

BMC WEST CORPORATION

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD CONSTRUCTION, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD NORTHERN CALIFORNIA, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

C CONSTRUCTION, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

TWF CONSTRUCTION, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

H.N.R. FRAMING SYSTEMS, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD SOUTHERN CALIFORNIA, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD NEVADA, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD ARIZONA, LLC

By _____
Name: Paul Street
Title: Chief Executive Officer

SELECTBUILD ILLINOIS, LLC

By _____
Name: Paul Street
Title: Chief Executive Officer

ILLINOIS FRAMING, INC.

By _____
Name: Paul Street
Title: Chief Executive Officer

EXHIBIT F
[Restructuring Transactions Memorandum]

RESTRUCTURING TRANSACTIONS MEMORANDUM

THIS RESTRUCTURING TRANSACTIONS MEMORANDUM (the "**Memorandum**") is made as of December 7, 2009 pursuant to the Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended December 7, 2009 (With Technical Modifications) (the "**Plan**"). Unless otherwise defined herein, all capitalized terms used herein shall have the meaning given to them in Appendix A to the Plan.

In order to effect and implement the transactions contemplated by the Plan, the following transactions may occur:

1. Contribution of Reorganized Subsidiary Equity Interests Under Plan Section 5.5.2. In the event that, pursuant to Section 5.5.2 of the Plan, the distributions to Holders of Equity Interests in Classes 9(b)-9(l) are eliminated, then (a) such Equity Interests shall be canceled and the Reorganized Subsidiary Equity Interests shall be issued and deemed to be distributed to the Holders of Class 2(b)-2(l) Claims, as may be applicable, and (b) the Holders of Class 2(b)-2(l) Claims shall then be deemed to contribute (immediately, automatically, without any further action and at no cost) those newly issued Reorganized Subsidiary Equity Interests to the Holders of the Equity Interests in Classes 9(b)-9(l), as may be applicable, as such entities have been reorganized.

Nothing in this Memorandum shall limit or minimize the ability of the Reorganized Debtors to manage and control their respective affairs.

EXHIBIT G

[New Certificates of Incorporation/Certificates of Formation]

1. Building Materials Holding Corporation

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF BUILDING MATERIALS HOLDING CORPORATION

Building Materials Holding Corporation, a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"), DOES HEREBY CERTIFY:

FIRST, the original Certificate of Incorporation of Building Materials Holding Corporation was filed with the Secretary of State of Delaware on April 14, 1997.

SECOND, a Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on September 23, 1997.

THIRD, a Certificate of Correction was filed with the Secretary of State of Delaware on September 30, 1997.

FOURTH, a Certificate of Amendment was filed with the Secretary of State of Delaware on February 24, 2006.

FIFTH, this Amended and Restated Certificate of Incorporation was directed by an order of the United States Bankruptcy Court for the District of Delaware in accordance with the applicable provisions of Section 303 of the General Corporation Law.

SIXTH, the Certificate of Incorporation of Building Materials Holding Corporation is amended and restated in its entirety as follows:

ARTICLE I

NAME

The name of this corporation is Building Materials Holding Corporation (hereinafter the "Company").

ARTICLE II

REGISTERED OFFICE AND REGISTERED AGENT

The street address of the registered office of the Company in the State of Delaware is [_____]. The name of the registered agent of the Company at such address is [_____].

ARTICLE III

CORPORATE PURPOSE

The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE IV

CAPITAL STOCK

SECTION 4.01 Classes of Stock. The Company is authorized to issue one class of stock to be designated "Common Stock." The total number of shares of Common Stock that the Company is authorized to issue is _____ (_____) shares, each with a par value of $0.001 per share.

SECTION 4.02 Prohibition on the Issuance of Non-Voting Stock. Notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), the Company will not issue non-voting equity securities; provided, however that the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

SECTION 4.03 Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Section 4.03.

(a) Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the board of directors of the Company (the "Board of Directors"), out of any assets of the Company legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. In the event of a voluntary or involuntary liquidation, dissolution or winding-up of the Company, the holders of shares of Common Stock shall be entitled, after payment or provision for payment of the debts and other liabilities of the Company, to share in the distribution of any remaining assets available for distribution to its stockholders ratably.

(c) Redemption. The Common Stock is not redeemable.

(d) Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

DURATION

The Company is to have perpetual existence.

ARTICLE VI

DIRECTORS

The number of directors of the Company shall be determined in the manner set forth in the bylaws of the Company (the "Bylaws"). Elections of directors of the Company need not be by written ballot, except and to the extent provided in the Bylaws.

ARTICLE VII

INDEMNIFICATION

SECTION 7.01 To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which the General Corporation Law permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

SECTION 7.02 Any amendment, repeal or modification of this Article VII shall not adversely affect any right or protection of any director, officer or other agent of the Company existing at the time of such amendment, repeal or modification.

ARTICLE VIII

BYLAWS

Except as otherwise provided in this Certificate of Incorporation, the Board of Directors or the stockholders shall have the power to adopt, amend or repeal the Bylaws of the Company; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the percentage of the holders of capital stock as provided therein.

ARTICLE IX

PERSONAL LIABILITY OF DIRECTORS OR OFFICERS

To the fullest extent permitted by the General Corporation Law as it now exists and as it may hereafter be amended, no director or officer of the Company shall be personally

liable to the Company or its stockholders for monetary damages for breach of any duty owed to the Company or its stockholders. Any repeal or modification of this Article IX shall be prospective and shall not affect the rights under this Article IX in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability.

ARTICLE X

MEETINGS; BOOKS

Meetings of stockholders of the Company may be held within or without the State of Delaware, as the Bylaws of the Company may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors of the Company or in the Bylaws of the Company.

ARTICLE XI

AMENDMENT

The Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by law, and all rights conferred upon stockholders herein are granted subject to this reservation; provided, that any such amendment, alteration, change or repeal shall require the affirmative vote of holders of at least a majority of the outstanding voting stock of the Company entitled to vote at the election of directors.

* * *

IN WITNESS WHEREOF, I have executed this Amended and Restated Certificate of Incorporation this ____ day of December, 2009 in accordance with Section 303 of the General Corporation Law.

_____

Name:
Title:

2. BMC West Corporation

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF BMC WEST CORPORATION

BMC West Corporation, a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"), DOES HEREBY CERTIFY:

FIRST, the original Certificate of Incorporation of BMC West Corporation was filed with the Secretary of State of Delaware on October 13, 1987 as BMC Holdings Inc.

SECOND, a Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on September 23, 1997.

THIRD, a Certificate of Merger of BMCW Southcentral, L.P. with and into BMC West Corporation was filed with the Secretary of State of Delaware on February 28, 2007.

FOURTH, a Certificate of Merger of BMCW, LLC and BMC West Corporation Southcentral with and into BMC West Corporation was filed with the Secretary of State of Delaware on February 28, 2007.

FIFTH, this Amended and Restated Certificate of Incorporation was directed by an order of the United States Bankruptcy Court for the District of Delaware in accordance with the applicable provisions of Section 303 of the General Corporation Law.

SIXTH, the Certificate of Incorporation of BMC West Corporation is amended and restated in its entirety as follows:

ARTICLE I

NAME

The name of this corporation is BMC West Corporation (hereinafter the "Company").

ARTICLE II

REGISTERED OFFICE AND REGISTERED AGENT

The street address of the registered office of the Company in the State of Delaware is [_____]. The name of the registered agent of the Company at such address is [_____].

ARTICLE III

CORPORATE PURPOSE

The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE IV

CAPITAL STOCK

SECTION 4.01 Classes of Stock. The Company is authorized to issue one class of stock to be designated "Common Stock." The total number of shares of Common Stock that the Company is authorized to issue is _____ (_____) shares, each with a par value of $0.001 per share.

SECTION 4.02 Prohibition on the Issuance of Non-Voting Stock. Notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), the Company will not issue non-voting equity securities; provided, however that the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

SECTION 4.03 Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Section 4.03.

(a) Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the board of directors of the Company (the "Board of Directors"), out of any assets of the Company legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. In the event of a voluntary or involuntary liquidation, dissolution or winding-up of the Company, the holders of shares of Common Stock shall be entitled, after payment or provision for payment of the debts and other liabilities of the Company, to share in the distribution of any remaining assets available for distribution to its stockholders ratably.

(c) Redemption. The Common Stock is not redeemable.

(d) Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

DURATION

The Company is to have perpetual existence.

ARTICLE VI

DIRECTORS

The number of directors of the Company shall be determined in the manner set forth in the bylaws of the Company (the "Bylaws"). Elections of directors of the Company need not be by written ballot, except and to the extent provided in the Bylaws.

ARTICLE VII

INDEMNIFICATION

SECTION 7.01 To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which the General Corporation Law permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

SECTION 7.02 Any amendment, repeal or modification of this Article VII shall not adversely affect any right or protection of any director, officer or other agent of the Company existing at the time of such amendment, repeal or modification.

ARTICLE VIII

BYLAWS

Except as otherwise provided in this Certificate of Incorporation, the Board of Directors or the stockholders shall have the power to adopt, amend or repeal the Bylaws of the Company; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the percentage of the holders of capital stock as provided therein.

ARTICLE IX

PERSONAL LIABILITY OF DIRECTORS OR OFFICERS

To the fullest extent permitted by the General Corporation Law as it now exists and as it may hereafter be amended, no director or officer of the Company shall be personally

liable to the Company or its stockholders for monetary damages for breach of any duty owed to the Company or its stockholders. Any repeal or modification of this Article IX shall be prospective and shall not affect the rights under this Article IX in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability.

ARTICLE X

MEETINGS; BOOKS

Meetings of stockholders of the Company may be held within or without the State of Delaware, as the Bylaws of the Company may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors of the Company or in the Bylaws of the Company.

ARTICLE XI

AMENDMENT

The Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by law, and all rights conferred upon stockholders herein are granted subject to this reservation; provided, that any such amendment, alteration, change or repeal shall require the affirmative vote of holders of at least a majority of the outstanding voting stock of the Company entitled to vote at the election of directors.

* * *

IN WITNESS WHEREOF, I have executed this Amended and Restated Certificate of Incorporation this ____ day of December, 2009 in accordance with Section 303 of the General Corporation Law.

_____

Name:
Title:

3. SelectBuild Construction, Inc.

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF SELECTBUILD CONSTRUCTION, INC.

SelectBuild Construction, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"), DOES HEREBY CERTIFY:

FIRST, the original Certificate of Incorporation of SelectBuild Construction, Inc. was filed with the Secretary of State of Delaware on March 19, 1999 as BMHC Framing Inc.

SECOND, a Certificate of Change of Location of Registered Office and of Registered Agent was filed with the Secretary of State of Delaware on August 4, 1999 as BMHC Framing Inc.

THIRD, a Certificate of Amendment to Certificate of Incorporation was filed with the Secretary of State of Delaware on December 26, 2000.

FOURTH, a Certificate of Amendment to Certificate of Incorporation was filed with the Secretary of State of Delaware on October 28, 2002.

FIFTH, a Certificate of Amendment to Certificate of Incorporation was filed with the Secretary of State of Delaware on December 29, 2005.

SIXTH, this Amended and Restated Certificate of Incorporation was directed by an order of the United States Bankruptcy Court for the District of Delaware in accordance with the applicable provisions of Section 303 of the General Corporation Law.

SEVENTH, the Certificate of Incorporation of SelectBuild Construction, Inc. is amended and restated in its entirety as follows:

ARTICLE I

NAME

The name of this corporation is SelectBuild Construction, Inc. (hereinafter the "Company").

ARTICLE II

REGISTERED OFFICE AND REGISTERED AGENT

The street address of the registered office of the Company in the State of Delaware is [_____]. The name of the registered agent of the Company at such address is [_____].

ARTICLE III

CORPORATE PURPOSE

The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE IV

CAPITAL STOCK

SECTION 4.01 Classes of Stock. The Company is authorized to issue one class of stock to be designated "Common Stock." The total number of shares of Common Stock that the Company is authorized to issue is _____ (_____) shares, each with a par value of $0.001 per share.

SECTION 4.02 Prohibition on the Issuance of Non-Voting Stock. Notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), the Company will not issue non-voting equity securities; provided, however that the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

SECTION 4.03 Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Section 4.03.

(a) Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the board of directors of the Company (the "Board of Directors"), out of any assets of the Company legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. In the event of a voluntary or involuntary liquidation, dissolution or winding-up of the Company, the holders of shares of Common Stock shall be entitled, after payment or provision for payment of the debts and other liabilities of the Company, to share in the distribution of any remaining assets available for distribution to its stockholders ratably.

(c) Redemption. The Common Stock is not redeemable.

(d) Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

DURATION

The Company is to have perpetual existence.

ARTICLE VI

DIRECTORS

The number of directors of the Company shall be determined in the manner set forth in the bylaws of the Company (the "Bylaws"). Elections of directors of the Company need not be by written ballot, except and to the extent provided in the Bylaws.

ARTICLE VII

INDEMNIFICATION

SECTION 7.01 To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which the General Corporation Law permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

SECTION 7.02 Any amendment, repeal or modification of this Article VII shall not adversely affect any right or protection of any director, officer or other agent of the Company existing at the time of such amendment, repeal or modification.

ARTICLE VIII

BYLAWS

Except as otherwise provided in this Certificate of Incorporation, the Board of Directors or the stockholders shall have the power to adopt, amend or repeal the Bylaws of the Company; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the percentage of the holders of capital stock as provided therein.

ARTICLE IX

PERSONAL LIABILITY OF DIRECTORS OR OFFICERS

To the fullest extent permitted by the General Corporation Law as it now exists and as it may hereafter be amended, no director or officer of the Company shall be personally

liable to the Company or its stockholders for monetary damages for breach of any duty owed to the Company or its stockholders. Any repeal or modification of this Article IX shall be prospective and shall not affect the rights under this Article IX in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability.

ARTICLE X

MEETINGS; BOOKS

Meetings of stockholders of the Company may be held within or without the State of Delaware, as the Bylaws of the Company may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors of the Company or in the Bylaws of the Company.

ARTICLE XI

AMENDMENT

The Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by law, and all rights conferred upon stockholders herein are granted subject to this reservation; provided, that any such amendment, alteration, change or repeal shall require the affirmative vote of holders of at least a majority of the outstanding voting stock of the Company entitled to vote at the election of directors.

* * *

IN WITNESS WHEREOF, I have executed this Amended and Restated Certificate of Incorporation this ____ day of December, 2009 in accordance with Section 303 of the General Corporation Law.

_____

Name:
Title:

4. SelectBuild Northern California, Inc.

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF SELECTBUILD NORTHERN CALIFORNIA, INC.

SelectBuild Northern California, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"), DOES HEREBY CERTIFY:

FIRST, the original Certificate of Incorporation of SelectBuild Northern California, Inc. was filed with the Secretary of State of Delaware on December 18, 2006.

SECOND, a Certificate of Merger of Vaughn Road L.L.C. with and into SelectBuild Northern California, Inc. was filed with the Secretary of State of Delaware on February 28, 2007.

THIRD, this Amended and Restated Certificate of Incorporation was directed by an order of the United States Bankruptcy Court for the District of Delaware in accordance with the applicable provisions of Section 303 of the General Corporation Law.

FOURTH, the Certificate of Incorporation of SelectBuild Northern California, Inc. is amended and restated in its entirety as follows:

ARTICLE I

NAME

The name of this corporation is SelectBuild Northern California, Inc. (hereinafter the "Company").

ARTICLE II

REGISTERED OFFICE AND REGISTERED AGENT

The street address of the registered office of the Company in the State of Delaware is [_____]. The name of the registered agent of the Company at such address is [_____].

ARTICLE III

CORPORATE PURPOSE

The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE IV

CAPITAL STOCK

SECTION 4.01 Classes of Stock. The Company is authorized to issue one class of stock to be designated "Common Stock." The total number of shares of Common Stock that the Company is authorized to issue is _____ (_____) shares, each with a par value of $0.001 per share.

SECTION 4.02 Prohibition on the Issuance of Non-Voting Stock. Notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), the Company will not issue non-voting equity securities; provided, however that the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

SECTION 4.03 Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Section 4.03.

(a) Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the board of directors of the Company (the "Board of Directors"), out of any assets of the Company legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. In the event of a voluntary or involuntary liquidation, dissolution or winding-up of the Company, the holders of shares of Common Stock shall be entitled, after payment or provision for payment of the debts and other liabilities of the Company, to share in the distribution of any remaining assets available for distribution to its stockholders ratably.

(c) Redemption. The Common Stock is not redeemable.

(d) Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

DURATION

The Company is to have perpetual existence.

ARTICLE VI

DIRECTORS

The number of directors of the Company shall be determined in the manner set forth in the bylaws of the Company (the "Bylaws"). Elections of directors of the Company need not be by written ballot, except and to the extent provided in the Bylaws.

ARTICLE VII

INDEMNIFICATION

SECTION 7.01 To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which the General Corporation Law permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

SECTION 7.02 Any amendment, repeal or modification of this Article VII shall not adversely affect any right or protection of any director, officer or other agent of the Company existing at the time of such amendment, repeal or modification.

ARTICLE VIII

BYLAWS

Except as otherwise provided in this Certificate of Incorporation, the Board of Directors or the stockholders shall have the power to adopt, amend or repeal the Bylaws of the Company; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the percentage of the holders of capital stock as provided therein.

ARTICLE IX

PERSONAL LIABILITY OF DIRECTORS OR OFFICERS

To the fullest extent permitted by the General Corporation Law as it now exists and as it may hereafter be amended, no director or officer of the Company shall be personally liable to the Company or its stockholders for monetary damages for breach of any duty owed to the Company or its stockholders. Any repeal or modification of this Article IX shall be prospective and shall not affect the rights under this Article IX in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability.

ARTICLE X

MEETINGS; BOOKS

Meetings of stockholders of the Company may be held within or without the State of Delaware, as the Bylaws of the Company may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors of the Company or in the Bylaws of the Company.

ARTICLE XI

AMENDMENT

The Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by law, and all rights conferred upon stockholders herein are granted subject to this reservation; provided, that any such amendment, alteration, change or repeal shall require the affirmative vote of holders of at least a majority of the outstanding voting stock of the Company entitled to vote at the election of directors.

* * *

IN WITNESS WHEREOF, I have executed this Amended and Restated Certificate of Incorporation this ____ day of December, 2009 in accordance with Section 303 of the General Corporation Law.

_____

Name:
Title:

5. Illinois Framing, Inc.

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF ILLINOIS FRAMING, INC

Illinois Framing, Inc, a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"), DOES HEREBY CERTIFY:

FIRST, the original Certificate of Incorporation of Illinois Framing, Inc was filed with the Secretary of State of Delaware on September 2, 2008

THIRD, this Amended and Restated Certificate of Incorporation was directed by an order of the United States Bankruptcy Court for the District of Delaware in accordance with the applicable provisions of Section 303 of the General Corporation Law.

FOURTH, the Certificate of Incorporation of Illinois Framing, Inc is amended and restated in its entirety as follows:

ARTICLE I

NAME

The name of this corporation is Illinois Framing, Inc (hereinafter the "Company").

ARTICLE II

REGISTERED OFFICE AND REGISTERED AGENT

The street address of the registered office of the Company in the State of Delaware is [_____]. The name of the registered agent of the Company at such address is [_____].

ARTICLE III

CORPORATE PURPOSE

The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE IV

CAPITAL STOCK

SECTION 4.01 Classes of Stock. The Company is authorized to issue one class of stock to be designated "Common Stock." The total number of shares of Common Stock that

the Company is authorized to issue is _____ (_____) shares, each with a par value of $0.001 per share.

SECTION 4.02 Prohibition on the Issuance of Non-Voting Stock. Notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), the Company will not issue non-voting equity securities; provided, however that the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

SECTION 4.03 Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Section 4.03.

(a) Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the board of directors of the Company (the "Board of Directors"), out of any assets of the Company legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. In the event of a voluntary or involuntary liquidation, dissolution or winding-up of the Company, the holders of shares of Common Stock shall be entitled, after payment or provision for payment of the debts and other liabilities of the Company, to share in the distribution of any remaining assets available for distribution to its stockholders ratably.

(c) Redemption. The Common Stock is not redeemable.

(d) Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

DURATION

The Company is to have perpetual existence.

ARTICLE VI

DIRECTORS

The number of directors of the Company shall be determined in the manner set forth in the bylaws of the Company (the "Bylaws"). Elections of directors of the Company need not be by written ballot, except and to the extent provided in the Bylaws.

ARTICLE VII

INDEMNIFICATION

SECTION 7.01 To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which the General Corporation Law permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

SECTION 7.02 Any amendment, repeal or modification of this Article VII shall not adversely affect any right or protection of any director, officer or other agent of the Company existing at the time of such amendment, repeal or modification.

ARTICLE VIII

BYLAWS

Except as otherwise provided in this Certificate of Incorporation, the Board of Directors or the stockholders shall have the power to adopt, amend or repeal the Bylaws of the Company; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the percentage of the holders of capital stock as provided therein.

ARTICLE IX

PERSONAL LIABILITY OF DIRECTORS OR OFFICERS

To the fullest extent permitted by the General Corporation Law as it now exists and as it may hereafter be amended, no director or officer of the Company shall be personally liable to the Company or its stockholders for monetary damages for breach of any duty owed to the Company or its stockholders. Any repeal or modification of this Article IX shall be prospective and shall not affect the rights under this Article IX in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability.

ARTICLE X

MEETINGS; BOOKS

Meetings of stockholders of the Company may be held within or without the State of Delaware, as the Bylaws of the Company may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors of the Company or in the Bylaws of the Company.

ARTICLE XI

AMENDMENT

The Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by law, and all rights conferred upon stockholders herein are granted subject to this reservation; provided, that any such amendment, alteration, change or repeal shall require the affirmative vote of holders of at least a majority of the outstanding voting stock of the Company entitled to vote at the election of directors.

* * *

IN WITNESS WHEREOF, I have executed this Amended and Restated Certificate of Incorporation this ____ day of December, 2009 in accordance with Section 303 of the General Corporation Law.

_____

Name:
Title:

6. C Construction, Inc.

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF C CONSTRUCTION, INC.

C Construction, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"), DOES HEREBY CERTIFY:

FIRST, the original Certificate of Incorporation of C Construction, Inc. was filed with the Secretary of State of Delaware on June 20, 2005.

SECOND, a Certificate of Merger of domestic corporation and foreign limited liability companies was filed with the Secretary of State of Delaware on December 28, 2005.

THIRD, this Amended and Restated Certificate of Incorporation was directed by an order of the United States Bankruptcy Court for the District of Delaware in accordance with the applicable provisions of Section 303 of the General Corporation Law.

FOURTH, the Certificate of Incorporation of C Construction, Inc. is amended and restated in its entirety as follows:

ARTICLE I

NAME

The name of this corporation is C Construction, Inc. (hereinafter the "Company").

ARTICLE II

REGISTERED OFFICE AND REGISTERED AGENT

The street address of the registered office of the Company in the State of Delaware is [_____]. The name of the registered agent of the Company at such address is [_____].

ARTICLE III

CORPORATE PURPOSE

The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE IV

CAPITAL STOCK

SECTION 4.01 Classes of Stock. The Company is authorized to issue one class of stock to be designated "Common Stock." The total number of shares of Common Stock that the Company is authorized to issue is _____ (_____) shares, each with a par value of $0.001 per share.

SECTION 4.02 Prohibition on the Issuance of Non-Voting Stock. Notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), the Company will not issue non-voting equity securities; provided, however that the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

SECTION 4.03 Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Section 4.03.

(a) Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the board of directors of the Company (the "Board of Directors"), out of any assets of the Company legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. In the event of a voluntary or involuntary liquidation, dissolution or winding-up of the Company, the holders of shares of Common Stock shall be entitled, after payment or provision for payment of the debts and other liabilities of the Company, to share in the distribution of any remaining assets available for distribution to its stockholders ratably.

(c) Redemption. The Common Stock is not redeemable.

(d) Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

DURATION

The Company is to have perpetual existence.

ARTICLE VI

DIRECTORS

The number of directors of the Company shall be determined in the manner set forth in the bylaws of the Company (the "Bylaws"). Elections of directors of the Company need not be by written ballot, except and to the extent provided in the Bylaws.

ARTICLE VII

INDEMNIFICATION

SECTION 7.01 To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which the General Corporation Law permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

SECTION 7.02 Any amendment, repeal or modification of this Article VII shall not adversely affect any right or protection of any director, officer or other agent of the Company existing at the time of such amendment, repeal or modification.

ARTICLE VIII

BYLAWS

Except as otherwise provided in this Certificate of Incorporation, the Board of Directors or the stockholders shall have the power to adopt, amend or repeal the Bylaws of the Company; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the percentage of the holders of capital stock as provided therein.

ARTICLE IX

PERSONAL LIABILITY OF DIRECTORS OR OFFICERS

To the fullest extent permitted by the General Corporation Law as it now exists and as it may hereafter be amended, no director or officer of the Company shall be personally liable to the Company or its stockholders for monetary damages for breach of any duty owed to the Company or its stockholders. Any repeal or modification of this Article IX shall be prospective and shall not affect the rights under this Article IX in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability.

ARTICLE X

MEETINGS; BOOKS

Meetings of stockholders of the Company may be held within or without the State of Delaware, as the Bylaws of the Company may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors of the Company or in the Bylaws of the Company.

ARTICLE XI

AMENDMENT

The Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by law, and all rights conferred upon stockholders herein are granted subject to this reservation; provided, that any such amendment, alteration, change or repeal shall require the affirmative vote of holders of at least a majority of the outstanding voting stock of the Company entitled to vote at the election of directors.

* * *

IN WITNESS WHEREOF, I have executed this Amended and Restated Certificate of Incorporation this ____ day of December, 2009 in accordance with Section 303 of the General Corporation Law.

_____

Name:
Title:

7. TWF Construction, Inc.

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF TWF CONSTRUCTION, INC.

TWF Construction, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"), DOES HEREBY CERTIFY:

FIRST, the original Certificate of Incorporation of TWF Construction, Inc. was filed with the Secretary of State of Delaware on September 26, 2005.

SECOND, this Amended and Restated Certificate of Incorporation was directed by an order of the United States Bankruptcy Court for the District of Delaware in accordance with the applicable provisions of Section 303 of the General Corporation Law.

THIRD, the Certificate of Incorporation of TWF Construction, Inc. is amended and restated in its entirety as follows:

ARTICLE I

NAME

The name of this corporation is TWF Construction, Inc. (hereinafter the "Company").

ARTICLE II

REGISTERED OFFICE AND REGISTERED AGENT

The street address of the registered office of the Company in the State of Delaware is [_____]. The name of the registered agent of the Company at such address is [_____].

ARTICLE III

CORPORATE PURPOSE

The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE IV

CAPITAL STOCK

SECTION 4.01 Classes of Stock. The Company is authorized to issue one class of stock to be designated "Common Stock." The total number of shares of Common Stock that

the Company is authorized to issue is _____ (_____) shares, each with a par value of $0.001 per share.

SECTION 4.02 Prohibition on the Issuance of Non-Voting Stock. Notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), the Company will not issue non-voting equity securities; provided, however that the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

SECTION 4.03 Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Section 4.03.

(a) Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the board of directors of the Company (the "Board of Directors"), out of any assets of the Company legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. In the event of a voluntary or involuntary liquidation, dissolution or winding-up of the Company, the holders of shares of Common Stock shall be entitled, after payment or provision for payment of the debts and other liabilities of the Company, to share in the distribution of any remaining assets available for distribution to its stockholders ratably.

(c) Redemption. The Common Stock is not redeemable.

(d) Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

DURATION

The Company is to have perpetual existence.

ARTICLE VI

DIRECTORS

The number of directors of the Company shall be determined in the manner set forth in the bylaws of the Company (the "Bylaws"). Elections of directors of the Company need not be by written ballot, except and to the extent provided in the Bylaws.

ARTICLE VII

INDEMNIFICATION

SECTION 7.01 To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which the General Corporation Law permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

SECTION 7.02 Any amendment, repeal or modification of this Article VII shall not adversely affect any right or protection of any director, officer or other agent of the Company existing at the time of such amendment, repeal or modification.

ARTICLE VIII

BYLAWS

Except as otherwise provided in this Certificate of Incorporation, the Board of Directors or the stockholders shall have the power to adopt, amend or repeal the Bylaws of the Company; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the percentage of the holders of capital stock as provided therein.

ARTICLE IX

PERSONAL LIABILITY OF DIRECTORS OR OFFICERS

To the fullest extent permitted by the General Corporation Law as it now exists and as it may hereafter be amended, no director or officer of the Company shall be personally liable to the Company or its stockholders for monetary damages for breach of any duty owed to the Company or its stockholders. Any repeal or modification of this Article IX shall be prospective and shall not affect the rights under this Article IX in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability.

ARTICLE X

MEETINGS; BOOKS

Meetings of stockholders of the Company may be held within or without the State of Delaware, as the Bylaws of the Company may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors of the Company or in the Bylaws of the Company.

ARTICLE XI

AMENDMENT

The Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by law, and all rights conferred upon stockholders herein are granted subject to this reservation; provided, that any such amendment, alteration, change or repeal shall require the affirmative vote of holders of at least a majority of the outstanding voting stock of the Company entitled to vote at the election of directors.

* * *

IN WITNESS WHEREOF, I have executed this Amended and Restated Certificate of Incorporation this ____ day of December, 2009 in accordance with Section 303 of the General Corporation Law.

_____

Name:
Title:

8. H.N.R. Framing Systems, Inc.

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF H.N.R. FRAMING SYSTEMS, INC.

H.N.R. Framing Systems, Inc., a corporation organized and existing under and by virtue of the provisions of the Corporations Code of California (the "California Corporations Code"), DOES HEREBY CERTIFY:

FIRST, the original Certificate of Incorporation of H.N.R. Framing Systems, Inc. was filed with the Secretary of State of the State of California on August 23, 1989.

SECOND, a Certificate of Amendment to the original Certificate of Incorporation of H.N.R. Framing Systems, Inc. was filed with the Secretary of State of the State of California on February 22, 1999.

THIRD, an Agreement of Merger of FSC Construction, Inc into H.N.R. Framing Systems, Inc. was filed with the Secretary of State of the State of California on December 29, 2006.

FOURTH, this Amended and Restated Certificate of Incorporation was directed by an order of the United States Bankruptcy Court for the District of Delaware in accordance with the applicable provisions of Section 1401 of the California Corporations Code.

FIFTH, the Certificate of Incorporation of H.N.R. Framing Systems, Inc. is amended and restated in its entirety as follows:

ARTICLE I

NAME

The name of this corporation is H.N.R. Framing Systems, Inc. (hereinafter the "Company").

ARTICLE II

REGISTERED OFFICE AND REGISTERED AGENT

The street address of the registered office of the Company in the State of California is [_____]. The name of the registered agent of the Company at such address is [_____].

ARTICLE III

CORPORATE PURPOSE

The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the California Corporations Code.

ARTICLE IV

CAPITAL STOCK

SECTION 4.01 Classes of Stock. The Company is authorized to issue one class of stock to be designated "Common Stock." The total number of shares of Common Stock that the Company is authorized to issue is _____ (_____) shares, each with a par value of $0.001 per share.

SECTION 4.02 Prohibition on the Issuance of Non-Voting Stock. Notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), the Company will not issue non-voting equity securities; provided, however that the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

SECTION 4.03 Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Section 4.03.

(a) Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the board of directors of the Company (the "Board of Directors"), out of any assets of the Company legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. In the event of a voluntary or involuntary liquidation, dissolution or winding-up of the Company, the holders of shares of Common Stock shall be entitled, after payment or provision for payment of the debts and other liabilities of the Company, to share in the distribution of any remaining assets available for distribution to its stockholders ratably.

(c) Redemption. The Common Stock is not redeemable.

(d) Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

DURATION

The Company is to have perpetual existence.

ARTICLE VI

DIRECTORS

The number of directors of the Company shall be determined in the manner set forth in the bylaws of the Company (the "Bylaws"). Elections of directors of the Company need not be by written ballot, except and to the extent provided in the Bylaws.

ARTICLE VII

INDEMNIFICATION

SECTION 7.01 To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which the California Corporations Code permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 204 of the California Corporations Code.

SECTION 7.02 Any amendment, repeal or modification of this Article VII shall not adversely affect any right or protection of any director, officer or other agent of the Company existing at the time of such amendment, repeal or modification.

ARTICLE VIII

BYLAWS

Except as otherwise provided in this Certificate of Incorporation, the Board of Directors or the stockholders shall have the power to adopt, amend or repeal the Bylaws of the Company; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the percentage of the holders of capital stock as provided therein.

ARTICLE IX

PERSONAL LIABILITY OF DIRECTORS OR OFFICERS

To the fullest extent permitted by the California Corporations Code as it now exists and as it may hereafter be amended, no director or officer of the Company shall be

personally liable to the Company or its stockholders for monetary damages for breach of any duty owed to the Company or its stockholders. Any repeal or modification of this Article IX shall be prospective and shall not affect the rights under this Article IX in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability.

ARTICLE X

MEETINGS; BOOKS

Meetings of stockholders of the Company may be held within or without the State of California, as the Bylaws of the Company may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside the State of California at such place or places as may be designated from time to time by the Board of Directors of the Company or in the Bylaws of the Company.

ARTICLE XI

AMENDMENT

The Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by law, and all rights conferred upon stockholders herein are granted subject to this reservation; provided, that any such amendment, alteration, change or repeal shall require the affirmative vote of holders of at least a majority of the outstanding voting stock of the Company entitled to vote at the election of directors.

* * *

IN WITNESS WHEREOF, I have executed this Amended and Restated Certificate of Incorporation this ____ day of December 2009 in accordance with Section 1401 of the California Corporations Code.

_____

Name:
Title:

9. SelectBuild Southern California, Inc.

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF SELECTBUILD SOUTHERN CALIFORNIA, INC.

SelectBuild Southern California, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"), DOES HEREBY CERTIFY:

FIRST, the original Certificate of Incorporation of SelectBuild Southern California, Inc. was filed with the Secretary of State of Delaware on July 11, 2007.

SECOND, this Amended and Restated Certificate of Incorporation was directed by an order of the United States Bankruptcy Court for the District of Delaware in accordance with the applicable provisions of Section 303 of the General Corporation Law.

THIRD, the Certificate of Incorporation of SelectBuild Southern California, Inc. is amended and restated in its entirety as follows:

ARTICLE I

NAME

The name of this corporation is SelectBuild Southern California, Inc. (hereinafter the "Company").

ARTICLE II

REGISTERED OFFICE AND REGISTERED AGENT

The street address of the registered office of the Company in the State of Delaware is [_____]. The name of the registered agent of the Company at such address is [_____].

ARTICLE III

CORPORATE PURPOSE

The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE IV

CAPITAL STOCK

SECTION 4.01 Classes of Stock. The Company is authorized to issue one class of stock to be designated "Common Stock." The total number of shares of Common Stock that

the Company is authorized to issue is _____ (_____) shares, each with a par value of $0.001 per share.

SECTION 4.02 Prohibition on the Issuance of Non-Voting Stock. Notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), the Company will not issue non-voting equity securities; provided, however that the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

SECTION 4.03 Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Section 4.03.

(a) Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the board of directors of the Company (the "Board of Directors"), out of any assets of the Company legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. In the event of a voluntary or involuntary liquidation, dissolution or winding-up of the Company, the holders of shares of Common Stock shall be entitled, after payment or provision for payment of the debts and other liabilities of the Company, to share in the distribution of any remaining assets available for distribution to its stockholders ratably.

(c) Redemption. The Common Stock is not redeemable.

(d) Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

DURATION

The Company is to have perpetual existence.

ARTICLE VI

DIRECTORS

The number of directors of the Company shall be determined in the manner set forth in the bylaws of the Company (the "Bylaws"). Elections of directors of the Company need not be by written ballot, except and to the extent provided in the Bylaws.

ARTICLE VII

INDEMNIFICATION

SECTION 7.01 To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which the General Corporation Law permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

SECTION 7.02 Any amendment, repeal or modification of this Article VII shall not adversely affect any right or protection of any director, officer or other agent of the Company existing at the time of such amendment, repeal or modification.

ARTICLE VIII

BYLAWS

Except as otherwise provided in this Certificate of Incorporation, the Board of Directors or the stockholders shall have the power to adopt, amend or repeal the Bylaws of the Company; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the percentage of the holders of capital stock as provided therein.

ARTICLE IX

PERSONAL LIABILITY OF DIRECTORS OR OFFICERS

To the fullest extent permitted by the General Corporation Law as it now exists and as it may hereafter be amended, no director or officer of the Company shall be personally liable to the Company or its stockholders for monetary damages for breach of any duty owed to the Company or its stockholders. Any repeal or modification of this Article IX shall be prospective and shall not affect the rights under this Article IX in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability.

ARTICLE X

MEETINGS; BOOKS

Meetings of stockholders of the Company may be held within or without the State of Delaware, as the Bylaws of the Company may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors of the Company or in the Bylaws of the Company.

ARTICLE XI

AMENDMENT

The Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by law, and all rights conferred upon stockholders herein are granted subject to this reservation; provided, that any such amendment, alteration, change or repeal shall require the affirmative vote of holders of at least a majority of the outstanding voting stock of the Company entitled to vote at the election of directors.

* * *

IN WITNESS WHEREOF, I have executed this Amended and Restated Certificate of Incorporation this ____ day of December, 2009 in accordance with Section 303 of the General Corporation Law.

_____

Name:
Title:

10. SelectBuild Nevada, Inc.

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF SELECTBUILD NEVADA, INC.

SelectBuild Nevada, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"), DOES HEREBY CERTIFY:

FIRST, the original Certificate of Incorporation of SelectBuild Nevada, Inc. was filed with the Secretary of State of Delaware on December 28, 1998 as Knipp Brothers, LLC.

SECOND, a Certificate of Amendment, changing its name to Knipp Brothers Industries, LLC was filed with the Secretary of State of Delaware on March 29, 1999.

THIRD, a Certificate of Merger of KBI Distribution, LLC with and into Knipp Brothers Industries, LLC was filed with the Secretary of State of Delaware on July 26, 2001.

FOURTH, a Certificate of Amendment, changing its name to KBI Construction, LLC was filed with the Secretary of State of Delaware on September 29, 2003.

FIFTH, a Certificate of Amendment, changing its name to SelectBuild Nevada, LLC., was filed with the Secretary of State of Delaware on December 22, 2006.

SIXTH, a Certificate of Conversion changing its name to SelectBuild Nevada, Inc. was filed with the Secretary of State of Delaware on June 1, 2007.

SEVENTH, a Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on June 1, 2007.

EIGHTH, this Amended and Restated Certificate of Incorporation was directed by an order of the United States Bankruptcy Court for the District of Delaware in accordance with the applicable provisions of Section 303 of the General Corporation Law.

NINTH, the Restated Certificate of Incorporation of SelectBuild Nevada, Inc. is amended and restated in its entirety as follows:

ARTICLE I

NAME

The name of this corporation is SelectBuild Nevada, Inc. (hereinafter the "Company").

ARTICLE II

REGISTERED OFFICE AND REGISTERED AGENT

The street address of the registered office of the Company in the State of Delaware is [_____]. The name of the registered agent of the Company at such address is [_____].

ARTICLE III

CORPORATE PURPOSE

The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE IV

CAPITAL STOCK

SECTION 4.01 Classes of Stock. The Company is authorized to issue one class of stock to be designated "Common Stock." The total number of shares of Common Stock that the Company is authorized to issue is _____ (_____) shares, each with a par value of $0.001 per share.

SECTION 4.02 Prohibition on the Issuance of Non-Voting Stock. Notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), the Company will not issue non-voting equity securities; provided, however that the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

SECTION 4.03 Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Section 4.03.

(a) Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the board of directors of the Company (the "Board of Directors"), out of any assets of the Company legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. In the event of a voluntary or involuntary liquidation, dissolution or winding-up of the Company, the holders of shares of Common Stock shall be entitled, after payment or provision for payment of the debts and other liabilities of the Company, to share in the distribution of any remaining assets available for distribution to its stockholders ratably.

(c) Redemption. The Common Stock is not redeemable.

(d) Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

DURATION

The Company is to have perpetual existence.

ARTICLE VI

DIRECTORS

The number of directors of the Company shall be determined in the manner set forth in the bylaws of the Company (the "Bylaws"). Elections of directors of the Company need not be by written ballot, except and to the extent provided in the Bylaws.

ARTICLE VII

INDEMNIFICATION

SECTION 7.01 To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which the General Corporation Law permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

SECTION 7.02 Any amendment, repeal or modification of this Article VII shall not adversely affect any right or protection of any director, officer or other agent of the Company existing at the time of such amendment, repeal or modification.

ARTICLE VIII

BYLAWS

Except as otherwise provided in this Certificate of Incorporation, the Board of Directors or the stockholders shall have the power to adopt, amend or repeal the Bylaws of the Company; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the percentage of the holders of capital stock as provided therein.

ARTICLE IX

PERSONAL LIABILITY OF DIRECTORS OR OFFICERS

To the fullest extent permitted by the General Corporation Law as it now exists and as it may hereafter be amended, no director or officer of the Company shall be personally liable to the Company or its stockholders for monetary damages for breach of any duty owed to the Company or its stockholders. Any repeal or modification of this Article IX shall be prospective and shall not affect the rights under this Article IX in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability.

ARTICLE X

MEETINGS; BOOKS

Meetings of stockholders of the Company may be held within or without the State of Delaware, as the Bylaws of the Company may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors of the Company or in the Bylaws of the Company.

ARTICLE XI

AMENDMENT

The Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by law, and all rights conferred upon stockholders herein are granted subject to this reservation; provided, that any such amendment, alteration, change or repeal shall require the affirmative vote of holders of at least a majority of the outstanding voting stock of the Company entitled to vote at the election of directors.

* * *

IN WITNESS WHEREOF, I have executed this Amended and Restated Certificate of Incorporation this ____ day of December 2009 in accordance with Section 303 of the General Corporation Law.

_____

Name:
Title:

11. SelectBuild Arizona, LLC

AMENDED AND RESTATED CERTIFICATE OF FORMATION OF SELECTBUILD ARIZONA, LLC

SelectBuild Arizona, LLC, a limited liability company organized and existing under and by virtue of the provisions of the Delaware Limited Liability Company Act, DOES HEREBY CERTIFY:

FIRST, the original Certificate of Formation of SelectBuild Arizona, LLC was filed with the Secretary of State of Delaware on September 21, 2006.

SECOND, a Certificate of Merger was filed with the Secretary of the State of Delaware on January 17, 2007.

THIRD, a Certificate of Merger was filed with the Secretary of the State of Delaware on March 11, 2008.

FOURTH, this Amended and Restated Certificate of Formation was directed by an order of the United States Bankruptcy Court for the District of Delaware in accordance with the applicable provisions of the Delaware Limited Liability Company Act.

FIFTH, the Certificate of Formation of SelectBuild Arizona, LLC is amended and restated in its entirety as is contained herein.

SIXTH, the name of the limited liability company is

SelectBuild Arizona, LLC (hereinafter the "LLC").

SEVENTH, the address of the registered office of the LLC in State of Delaware is _____ _____.

EIGHTH, the name and address of the registered agent for service of process on the LLC in the State of Delaware is _____.

NINTH, notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), the LLC will not issue non-voting equity securities; provided, however that the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the LLC, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

* * *

IN WITNESS WHEREOF, I have executed this Amended and Restated Certificate of Formation as of the date first above written.

_____

Name:
Title:

12. SelectBuild Illinois, LLC

AMENDED AND RESTATED CERTIFICATE OF FORMATION OF SELECTBUILD ILLINOIS, LLC

SelectBuild Illinois, LLC, a limited liability company organized and existing under and by virtue of the provisions of the Delaware Limited Liability Company Act, DOES HEREBY CERTIFY:

FIRST, the original Certificate of Formation of SelectBuild Illinois, LLC was filed with the Secretary of State of Delaware on December 9, 2004 as RCI Construction, LLC.

SECOND, a Certificate of Amendment changing its name to SelectBuild Illinois, LLC was filed with the Secretary of the State of Delaware on November 1, 2006.

THIRD, this Amended and Restated Certificate of Formation was directed by an order of the United States Bankruptcy Court for the District of Delaware in accordance with the applicable provisions of the Delaware Limited Liability Company Act.

FIFTH, the Certificate of Formation of SelectBuild Illinois, LLC is amended and restated in its entirety as is contained herein.

SIXTH, the name of the limited liability company is

SelectBuild Illinois, LLC (hereinafter the "LLC").

SEVENTH, the address of the registered office of the LLC in State of Delaware is _____ _____.

EIGHTH, the name and address of the registered agent for service of process on the LLC in the State of Delaware is _____.

NINTH, notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), the LLC will not issue non-voting equity securities; provided, however that the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the LLC, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

* * *

IN WITNESS WHEREOF, I have executed this Amended and Restated Certificate of Formation as of the date first above written.

_____

Name:
Title:

EXHIBIT H
[New Bylaws]

1. Building Materials Holding Corporation

AMENDED AND RESTATED BYLAWS

OF

BUILDING MATERIALS HOLDING CORPORATION

Amended and Restated Bylaws

of

Building Materials Holding Corporation
a Delaware corporation

ARTICLE I

OFFICES

Section 1.01 REGISTERED OFFICE. The registered office of Building Materials Holding Corporation (hereinafter called the "Corporation") shall be at such place in the State of Delaware as shall be designated by the Board of Directors (hereinafter called the "Board").

Section 1.02 PRINCIPAL OFFICE. The principal office for the transaction of the business of the Corporation shall be at such location, within or without the State of Delaware, as shall be designated by the Board.

Section 1.03 OTHER OFFICES. The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board may from time to time determine or as the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.01 ANNUAL MEETINGS. Annual meetings of the stockholders of the Corporation for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings shall be held each year at such time, date and place as the Board shall determine by resolution.

Section 2.02 SPECIAL MEETINGS. Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Board, or by a committee of the Board which has been duly designated by the Board and whose powers and authority, as provided in a resolution of the Board or in the Bylaws, include the power to call such meetings, or by one or more stockholders holding shares in the aggregate entitled to cast not less than a majority of the votes at that meeting, but such special meetings may not be called by any other person or persons; provided, however, that if and to the extent that any special meeting of stockholders may be called by any other person or persons specified in any provisions of the Certificate of Incorporation or any amendment thereto or any certificate filed under Section 151(g) of

the General Corporation Law of the State of Delaware (or its successor statute as in effect from time to time hereafter), then such special meeting may also be called by the person or persons, in the manner, at the time and for the purposes so specified.

Section 2.03 PLACE OF MEETINGS. All meetings of the stockholders shall be held at such places, within or without the State of Delaware, as may from time to time be designated by the person or persons calling the respective meetings and specified in the respective notices or waivers of notice thereof.

Section 2.04 NOTICE OF MEETINGS. Except as otherwise required by law, notice of each meeting of the stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting by delivering a typewritten or printed notice thereof to him personally, or by depositing such notice in the United States mail, in a postage prepaid envelope, directed to him at his address furnished by him to the Secretary of the Corporation for such purpose or, if he shall not have furnished to the Secretary his address for such purpose, then at his address last known to the Secretary, or by transmitting a notice thereof to him at such address by telegraph, cable or wireless. Except as otherwise expressly required by law, no publication of any notice of a meeting of the stockholders shall be required. Every notice of a meeting of the stockholders shall state the place, date and hour of the meeting, and, in the case of a special meeting shall also state the purpose or purposes for which the meeting is called. Except as otherwise expressly required by law, notice of any adjourned meeting of the stockholders need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken.

Whenever notice is required to be given to any stockholder to whom (i) notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve month period, have been mailed addressed to such person at his address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall have been taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the Corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated.

No notice need be given to any person with whom communication is unlawful, nor shall there be any duty to apply for any permission or license to give notice to any such person.

Section 2.05 QUORUM. Except as provided by law, the holders of record of a majority in voting interest of the shares of stock of the Corporation entitled to be voted, present in person or by proxy, shall constitute a quorum for the transaction of

business at any meeting of the stockholders of the Corporation or any adjournment thereof. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. In the absence of a quorum at any meeting or any adjournment thereof, a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat or, in the absence therefrom of all the stockholders, any officer entitled to preside at or to act as secretary of such meeting may adjourn such meeting from time to time. At any such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally called.

Section 2.06 VOTING.

(a) At each meeting of the stockholders, each stockholder shall be entitled to vote in person or by proxy each share or fractional share of the stock of the Corporation which has voting rights on the matter in question and which shall have been held by him and registered in his name on the books of the Corporation:

(i) on the date fixed pursuant to Section 2.10 of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting, or

(ii) if no such record date shall have been so fixed, then (A) at the close of business on the day next preceding the day on which notice of the meeting shall be given or (B) if notice of the meeting shall be waived, at the close of business on the day next preceding the day on which the meeting shall be held.

(b) Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors in such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Persons holding stock of the Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy, may represent such stock and vote thereon. Stock having voting power standing of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or with respect to which two or more persons have the same fiduciary relationship, shall be voted in accordance with the provisions of the General Corporation Law of Delaware.

(c) Any such voting rights may be exercised by the stockholder entitled thereto in person or by his proxy appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized and delivered to the secretary of the meeting; provided, however, that no proxy shall be voted or acted upon after three years from its date unless said proxy shall provide for a longer period.

The attendance at any meeting of a stockholder who may theretofore have given a proxy shall not have the effect of revoking the same unless he shall in writing so notify the secretary of the meeting prior to the voting of the proxy. At any meeting of the stockholders, all matters, except as otherwise provided in the Certificate of Incorporation, in these Bylaws or by law, shall be decided by the vote of a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat and thereon. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. The vote at any meeting of the stockholders on any question need not be by ballot, unless so directed by the chairman of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy if there be such proxy, and it shall state the number of shares voted.

Section 2.07 LIST OF STOCKHOLDERS. The Secretary of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the entire duration thereof, and may be inspected by any stockholder who is present.

Section 2.08 INSPECTOR OF ELECTION. If at any meeting of the stockholders a vote by written ballot shall be taken on any question, the chairman of such meeting may appoint an inspector or inspectors of election to act with respect to such vote. Each inspector so appointed shall first subscribe an oath faithfully to execute the duties of an inspector at such meeting with strict impartiality and according to the best of his ability. Such inspectors shall decide upon the qualification of the voters and shall report the number of shares represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and, when the voting is completed, shall ascertain and report the number of shares voted respectively for and against the question. Reports of the inspectors shall be in writing and subscribed and delivered by them to the Secretary of the Corporation. Inspectors need not be stockholders of the Corporation, and any officer of the Corporation may be an inspector on any question other than a vote for or against a proposal in which he shall have a material interest.

Section 2.09 STOCKHOLDER ACTION WITHOUT MEETINGS. Any action required by the General Corporation Law of the State of Delaware to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a

meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing; provided, however, that in the case of the election of directors of the Corporation, notice of such election shall be given to all stockholders not less than ten (10) days before the date such election is to take place, unless such election is by unanimous written consent of the stockholders.

Section 2.10 RECORD DATE. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date: (i) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting; (ii) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days from the date upon which the resolution fixing the record date is adopted by the Board; and (iii) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (ii) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, or, if prior action by the Board is required by law, shall be at the close of business on the day on which the Board adopts the resolution taking such prior action; and (iii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

ARTICLE III

BOARD OF DIRECTORS

Section 3.01 GENERAL POWERS. The property, business and affairs of the Corporation shall be managed by or under the direction of the Board, which may

exercise all of the powers of the Corporation, except such as are by the Certificate of Incorporation, by these Bylaws or by law conferred upon or reserved to the stockholders.

Section 3.02 NUMBER AND TERM. The authorized number of directors of the Corporation shall be established from time to time by the Board. Until changed by an amendment to this Section 3.02, the authorized number of directors of the Corporation shall be not less than five (5) nor more than nine (9), with the exact number to be fixed from time to time by resolution of the Board. Directors need not be stockholders of the Corporation. Each director shall hold office until a successor is elected and qualified or until the director resigns or is removed. Directors shall be elected each year at the annual meeting of the stockholders of the Corporation.

Section 3.03 NOMINATION AND ELECTION OF DIRECTORS. The directors shall be elected by the stockholders of the Corporation, and at each election the persons receiving the greatest number of votes, up to the number of directors then to be elected, shall be the persons then elected. The election of directors is subject to any provisions contained in the Certificate of Incorporation relating thereto, including any provisions for a classified board. There shall not be cumulative voting for the election of directors.

Nominations for election to the Board must be made by the Board or by a committee appointed by the Board for such purpose or by any stockholder of any outstanding class of capital stock of the Corporation entitled to vote for the election of directors. Nominations by stockholders must be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than 5 days nor more than 30 days prior to the date on which the election of the directors is to take place (either by a meeting of the stockholders or by written consent of the stockholders as provided in these Bylaws), provided that the stockholder has received notice of such election as required by these Bylaws. A stockholder's notice to the Secretary shall contain the written consent of each proposed nominee to serve as a director if so elected and the following information as to each proposed nominee and as to each person, acting alone or in conjunction with one or more other persons as a partnership, limited partnership, syndicate or other group, who participates or is expected to participate in making such nomination or in organizing, directing or financing such nomination or solicitation of proxies to vote for the nominee:

(a) the name, age, residence, address, and business address of each proposed nominee and of each such person;

(b) the principal occupation or employment and the name, type of business and address of the corporation or other organization in which such employment is carried on of each proposed nominee and of each such person;

(c) the amount of stock of the Corporation owned beneficially, either directly or indirectly, by each proposed nominee and each such person; and

(d) a description of any arrangement or understanding of each proposed nominee and of each such person with each other or any other person regarding future employment or any future transaction to which the Corporation will or may be a party.

Section 3.04 RESIGNATION AND REMOVAL. Any director of the Corporation may resign at any time upon notice given in writing or by electronic transmission to the Board or to the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time is not specified, it shall take effect immediately upon its receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Except as otherwise provided by the Certificate of Incorporation or by law, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of shares then entitled to vote at an election of directors.

Section 3.05 VACANCIES. Except as otherwise provided in the Certificate of Incorporation, any vacancy in the Board, whether because of death, resignation, disqualification, an increase in the number of directors, or any other cause, may be filled by vote of the majority of the remaining directors, although less than a quorum, or by a sole remaining director. Each director so chosen to fill a vacancy shall hold office until his successor shall have been elected and shall qualify or until he shall resign or shall have been removed. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of his term of office.

Upon the resignation of one or more directors from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided hereinabove in the filling of other vacancies.

Section 3.06 PLACE OF MEETING; TELEPHONE CONFERENCE MEETING. The Board may hold any of its meetings at such place or places within or without the State of Delaware as the Board may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board by means of conference telephone or similar communications equipment pursuant to which all persons participating in the meeting of the Board can hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.07 FIRST MEETING. The Board shall meet as soon as practicable after each annual election of directors and notice of such first meeting shall not be required.

Section 3.08 REGULAR MEETINGS. Regular meetings of the Board may be held at such times as the Board shall from time to time by resolution determine. If any day fixed for a meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting shall be held at the same hour and place on the next succeeding business day which is not a legal holiday. Except as provided by law, notice of regular meetings need not be given.

Section 3.09 SPECIAL MEETINGS. Special meetings of the Board may be called at any time by the Chairman of the Board or the President or by any two (2) directors, to be held at the principal office of the Corporation, or at such other place or places, within or without the State of Delaware, as the person or persons calling the meeting may designate.

Notice of the time and place of special meetings shall be given to each director either (i) by mailing or otherwise sending to him a written notice of such meeting, charges prepaid, addressed to him at his address as it is shown upon the records of the Corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held, at least seventy-two (72) hours prior to the time of the holding of such meeting; or (ii) by oral or electronic notice of such meeting at least forty-eight (48) hours prior to the time of the holding of such meeting. Either of the notices as above provided shall be due, legal and personal notice to such director.

Section 3.10 QUORUM AND ACTION. Except as otherwise provided in these Bylaws or by law, the presence of a majority of the authorized number of directors shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a majority of the directors present. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given. The directors shall act only as a Board, and the individual directors shall have no power as such.

Section 3.11 ACTION BY CONSENT. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing or by electronic transmission(s), and such written consent or electronic transmission(s) are filed with the minutes of proceedings of the Board or such committee. Such action by written consent or electronic transmission shall have the same force and effect as the unanimous vote of such directors.

Section 3.12 COMPENSATION. No stated salary need be paid to directors, as such, for their services but, as fixed from time to time by resolution of the Board, the directors may receive directors' fees, compensation and reimbursement for expenses for attendance at directors' meetings, for serving on committees and for discharging their duties; provided that nothing herein contained shall be construed to

preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.13 COMMITTEES. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board conducts its business pursuant to these Bylaws. Any such committee shall keep written minutes of its meetings and report the same to the Board when required.

Section 3.14 OFFICERS OF THE BOARD. A Chairman of the Board or a Vice Chairman may be appointed from time to time by the Board and shall have such powers and duties as shall be designated by the Board.

ARTICLE IV

OFFICERS

Section 4.01 OFFICERS. The officers of the Corporation shall be a President, a Secretary and a Treasurer. The Corporation may also have, at the discretion of the Board, a Chairman of the Board, a Chief Executive Officer, one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers and such other officers as may be appointed in accordance with the provisions of Section 4.03 of these Bylaws. Any number of offices may be held by the same person. The salaries of all officers of the Corporation shall be fixed from time to time by the Board.

Section 4.02 ELECTION AND TERM. The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 4.03 or Section 4.05 of these Bylaws, shall be chosen annually by the Board, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or until his successor shall be elected and qualified.

Section 4.03 SUBORDINATE OFFICERS. The Board may appoint, or may authorize the President or Chief Executive Officer, if any, to appoint, such other officers as the business of the Corporation may require, each of whom shall have such authority and perform such duties as are provided in these Bylaws or as the Board, the President or the Chief Executive Officer, if any, from time to time may specify, and shall hold office until he shall resign or shall be removed or otherwise disqualified to serve.

Section 4.04 REMOVAL AND RESIGNATION. Any officer may be removed, with or without cause, by a majority of the directors at the time in office, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board, by the President or Chief Executive Officer, if any, upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Board, the Chairman of the Board, the President, the Chief Executive Officer or the Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.05 VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for the regular appointments to such office.

Section 4.06 CHAIRMAN OF THE BOARD. The Chairman of the Board, if such an officer be elected, shall, if present, preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the Bylaws. If there is no Chief Executive Officer or President, the Chairman of the Board shall in addition be the Chief Executive Officer of the Corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.07 CHIEF EXECUTIVE OFFICER. The Chief Executive Officer, if such an officer be elected, shall, subject to the control of the Board, have general supervision, direction and control of the business and affairs of the Corporation. In the absence or disability of the Chairman of the Board, or if no such officer is elected, the Chief Executive Officer shall preside at all meetings of shareholders and the Board of Directors. He shall have the general powers and duties of management usually vested in the chief executive officer of a corporation, and shall have such other powers and duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to him by the Board of Directors or as prescribed by the Bylaws.

Section 4.08 PRESIDENT. Subject to such supervisory powers as may be given by the Board of Directors to the Chairman of the Board or the Chief Executive Officer, if there be such officers, the President shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have

such other powers and duties as may from time to time be prescribed by the Board of Directors or Chief Executive Officer, if any, or as prescribed by the Bylaws. If there is no Chief Executive Officer, the President shall be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.09 VICE PRESIDENT. The Vice President(s), if any, shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Corporation as from time to time may be assigned to each of them by the President, by the Chief Executive Officer, if any, by the Chairman of the Board, if any, by the Board or as is prescribed by the Bylaws. In the absence or disability of the President and Chief Executive Officer, if any, the Vice Presidents, in order of their rank as fixed by the Board, or if not ranked, the Vice President designated by the Board, shall perform all of the duties of the President and when so acting shall have all of the powers of and be subject to all the restrictions upon the President.

Section 4.10 SECRETARY. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office for the transaction of the business of the Corporation, or such other place as the Board may order, of all meetings of directors and stockholders, with the time and place of holding, whether regular or special, and if special, how authorized and the notice thereof given, the names of those present at directors' meetings, the number of shares present or represented at stockholders' meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office for the transaction of the business of the Corporation or at the office of the Corporation's transfer agent, a share register, or a duplicate share register, showing the names of the stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all the meetings of the stockholders and of the Board required by these Bylaws or by law to be given, and he shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws. If for any reason the Secretary shall fail to give notice of any special meeting of the Board called by one or more of the persons identified in Section 3.09 of these Bylaws, or if he shall fail to give notice of any special meeting of the stockholders called by one or more of the persons identified in Section 2.02 of these Bylaws, then any such person or persons may give notice of any such special meeting.

Section 4.11 TREASURER. The Treasurer shall keep and maintain or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and shares. Any surplus, including earned surplus, paid-in surplus and surplus arising from a reduction of capital, shall be

classified according to source and shown in a separate account. The books of account at all reasonable times shall be open to inspection by any director.

The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. He shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the President, to the Chief Executive Officer, if any, and to the directors, whenever they request it, an account of all of his transactions as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

Section 4.12 COMPENSATION. The compensation of the officers of the Corporation, if any, shall be fixed from time to time by the Board.

ARTICLE V

CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

Section 5.01 EXECUTION OF CONTRACTS. The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board or by these Bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount. Notwithstanding the foregoing, the President or Chief Executive Officer, or such other person as the President or Chief Executive Officer may designate, shall have authority to enter into contracts which are usual and customary in the ordinary course of the Corporation's business on behalf of the Corporation.

Section 5.02 CHECKS, DRAFTS, ETC. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. Each such person shall give such bond, if any, as the Board may require.

Section 5.03 DEPOSIT. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select, or as may be selected by any officer or officers, assistant or assistants, agent or agents, attorney or attorneys, of the Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the President, the Chief Executive Officer, any Vice President or the Treasurer (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation who shall be determined by the Board from time

to time) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

Section 5.04 GENERAL AND SPECIAL BANK ACCOUNTS. The Board from time to time may authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may select or as may be selected by an officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

ARTICLE VI

SHARES AND THEIR TRANSFER

Section 6.01 CERTIFICATES FOR STOCK. Every owner of stock of the Corporation shall be entitled to have a certificate or certificates, in such form as the Board shall prescribe, certifying the number and class of shares of the stock of the Corporation owned by him. The certificates representing shares of such stock shall be numbered in the order in which they shall be issued and shall be signed in the name of the Corporation by the Chairman of the Board, the Chief Executive Officer, the President or a Vice President and by the Secretary or an Assistant Secretary or by the Treasurer or an Assistant Treasurer. Any or all of the signatures on the certificates may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon any such certificate shall thereafter have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by the Corporation with the same effect as though the person who signed such certificate, or whose facsimile signature shall have been placed thereupon, were such officer, transfer agent or registrar at the date of issue. A record shall be kept of the respective names of the persons, firms or corporations owning the stock represented by such certificates, the number and class of shares represented by such certificates, respectively, and the respective dates thereof, and in case of cancellation, the respective dates of cancellation. Every certificate surrendered to the Corporation for exchange or transfer shall be cancelled, and no new certificate or certificates shall be issued in exchange for any existing certificate until such existing certificate shall have been so cancelled, except in cases provided for in Section 6.04 of these Bylaws.

Section 6.02 TRANSFER OF STOCK. Transfer of shares of stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, or with a transfer clerk or a transfer agent appointed as provided in Section 6.03 of these Bylaws, and upon surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner

thereof for all purposes as regards the Corporation. Whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact shall be stated expressly in the entry of transfer if, when the certificate or certificates shall be presented to the Corporation for transfer, both the transferor and the transferee request the Corporation to do so.

Section 6.03 REGULATIONS. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. The Board may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

Section 6.04 LOST, STOLEN, DESTROYED AND MUTILATED CERTIFICATES. In any case of loss, theft, destruction, or mutilation of any certificate of stock, another may be issued in its place upon proof of such loss, theft, destruction, or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sums as the Board may direct; provided, however, that a new certificate may be issued without requiring any bond when, in the judgment of the Board, it is proper to do so.

Section 6.05 REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The President or Chief Executive Officer, or any other officer from time to time authorized by the Board, are authorized to vote, represent and exercise on behalf of this Corporation all rights incident to all shares of any other corporation or corporations standing in the name of this Corporation. The authority herein granted to said officers to vote or represent on behalf of this Corporation any and all shares held by this Corporation in any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by said officers.

ARTICLE VII

INDEMNIFICATION

Section 7.01 ACTIONS OTHER THAN BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such

action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

Section 7.02 ACTIONS BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or as a member of any committee or similar body, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 7.03 DETERMINATION OF RIGHT OF INDEMNIFICATION. Any indemnification under Section 7.01 or 7.02 of these Bylaws (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 7.01 and 7.02 of these Bylaws. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders voting in accordance with Section 2.06.

Section 7.04 INDEMNIFICATION AGAINST EXPENSES OF SUCCESSFUL PARTY. Notwithstanding the other provisions of this Article VII, to the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 7.01 or 7.02 of these Bylaws, or in defense of any claim, issue or matter therein, he may be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 7.05 ADVANCE OF EXPENSES. Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board upon receipt of an undertaking by or on behalf of the director or officer, to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VII. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

Section 7.06 OTHER RIGHTS AND REMEDIES. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VII shall not be deemed exclusive and are declared expressly to be nonexclusive of any other rights to which those seeking indemnification or advancements of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Section 7.07 INSURANCE. Upon resolution passed by the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article VII.

Section 7.08 CONSTITUENT CORPORATIONS. For the purposes of this Article VII, references to "the Corporation" include in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body shall stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

Section 7.09 EMPLOYEE BENEFIT PLANS. For the purposes of this Article VII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or

agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VII.

Section 7.10 TERM. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7.11 SEVERABILITY. If any part of this Article VII shall be found, in any action, suit or proceeding or appeal therefrom or in any other circumstances or as to any particular officer, director, employee or agent to be unenforceable, ineffective or invalid for any reason, the enforceability, effect and validity of the remaining parts or of such parts in other circumstances shall not be affected, except as otherwise required by applicable law.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 SEAL. The Board shall provide a corporate seal, which shall be in the form of a circle and shall bear the name of the Corporation and words and figures showing that the Corporation was incorporated in the State of Delaware and showing the year of incorporation.

Section 8.02 WAIVER OF NOTICES. Whenever notice is required to be given under any provision of these Bylaws, the Certificate of Incorporation or by law, a written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when a person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless required by the Certificate of Incorporation.

Section 8.03 GENDER. All personal pronouns used in these Bylaws shall include the other genders, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

Section 8.04 AMENDMENTS. These Bylaws, or any of them, may be rescinded, altered, amended or repealed, and new Bylaws may be made (i) by the Board, by vote of a majority of the number of directors then in office as directors, acting at any meeting of the Board or (ii) by the stockholders, by the vote of a majority of the outstanding shares of voting stock of the Corporation; provided, however, that Section 2.02 of these Bylaws can only be amended if that Section as amended would not conflict with the Corporation's Certificate of Incorporation. Any Bylaw made or altered by the Board may be altered or repealed by the Board or may be altered or repealed by the stockholders.

CERTIFICATE OF SECRETARY

The undersigned certifies that:

(1) He is duly elected and acting Secretary of Building Materials Holding Corporation, a Delaware corporation; and

(2) The foregoing Amended and Restated Bylaws constitute the Bylaws of the Corporation as duly adopted by Unanimous Written Consent of the Board of Directors dated as of _____.

IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____.

_____

[_____], Secretary

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2. BMC West Corporation

AMENDED AND RESTATED BYLAWS

OF

BMC WEST CORPORATION

Amended and Restated Bylaws

of

BMC West Corporation
a Delaware corporation

ARTICLE I

OFFICES

Section 1.01 REGISTERED OFFICE. The registered office of BMC West Corporation (hereinafter called the "Corporation") shall be at such place in the State of Delaware as shall be designated by the Board of Directors (hereinafter called the "Board").

Section 1.02 PRINCIPAL OFFICE. The principal office for the transaction of the business of the Corporation shall be at such location, within or without the State of Delaware, as shall be designated by the Board.

Section 1.03 OTHER OFFICES. The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board may from time to time determine or as the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.01 ANNUAL MEETINGS. Annual meetings of the stockholders of the Corporation for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings may be held at such time, date and place as the Board shall determine by resolution.

Section 2.02 SPECIAL MEETINGS. Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Board, or by a committee of the Board which has been duly designated by the Board and whose powers and authority, as provided in a resolution of the Board or in the Bylaws, include the power to call such meetings, or by one or more stockholders holding shares in the aggregate entitled to cast not less than a majority of the votes at that meeting, but such special meetings may not be called by any other person or persons; provided, however, that if and to the extent that any special meeting of stockholders may be called by any other person or persons specified in any provisions of the Certificate of Incorporation or any amendment thereto or any certificate filed under Section 151(g) of

the General Corporation Law of the State of Delaware (or its successor statute as in effect from time to time hereafter), then such special meeting may also be called by the person or persons, in the manner, at the time and for the purposes so specified.

Section 2.03 PLACE OF MEETINGS. All meetings of the stockholders shall be held at such places, within or without the State of Delaware, as may from time to time be designated by the person or persons calling the respective meetings and specified in the respective notices or waivers of notice thereof.

Section 2.04 NOTICE OF MEETINGS. Except as otherwise required by law, notice of each meeting of the stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting by delivering a typewritten or printed notice thereof to him personally, or by depositing such notice in the United States mail, in a postage prepaid envelope, directed to him at his address furnished by him to the Secretary of the Corporation for such purpose or, if he shall not have furnished to the Secretary his address for such purpose, then at his address last known to the Secretary, or by transmitting a notice thereof to him at such address by telegraph, cable or wireless. Except as otherwise expressly required by law, no publication of any notice of a meeting of the stockholders shall be required. Every notice of a meeting of the stockholders shall state the place, date and hour of the meeting, and, in the case of a special meeting shall also state the purpose or purposes for which the meeting is called. Except as otherwise expressly required by law, notice of any adjourned meeting of the stockholders need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken.

Whenever notice is required to be given to any stockholder to whom (i) notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve month period, have been mailed addressed to such person at his address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall have been taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the Corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated.

No notice need be given to any person with whom communication is unlawful, nor shall there be any duty to apply for any permission or license to give notice to any such person.

Section 2.05 QUORUM. Except as provided by law, the holders of record of a majority in voting interest of the shares of stock of the Corporation entitled to be voted, present in person or by proxy, shall constitute a quorum for the transaction of

business at any meeting of the stockholders of the Corporation or any adjournment thereof. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. In the absence of a quorum at any meeting or any adjournment thereof, a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat or, in the absence therefrom of all the stockholders, any officer entitled to preside at or to act as secretary of such meeting may adjourn such meeting from time to time. At any such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally called.

Section 2.06 VOTING.

(a) At each meeting of the stockholders, each stockholder shall be entitled to vote in person or by proxy each share or fractional share of the stock of the Corporation which has voting rights on the matter in question and which shall have been held by him and registered in his name on the books of the Corporation:

(i) on the date fixed pursuant to Section 2.10 of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting, or

(ii) if no such record date shall have been so fixed, then (A) at the close of business on the day next preceding the day on which notice of the meeting shall be given or (B) if notice of the meeting shall be waived, at the close of business on the day next preceding the day on which the meeting shall be held.

(b) Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors in such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Persons holding stock of the Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy, may represent such stock and vote thereon. Stock having voting power standing of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or with respect to which two or more persons have the same fiduciary relationship, shall be voted in accordance with the provisions of the General Corporation Law of Delaware.

(c) Any such voting rights may be exercised by the stockholder entitled thereto in person or by his proxy appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized and delivered to the secretary of the meeting; provided, however, that no proxy shall be voted or acted upon after three years from its date unless said proxy shall provide for a longer period.

The attendance at any meeting of a stockholder who may theretofore have given a proxy shall not have the effect of revoking the same unless he shall in writing so notify the secretary of the meeting prior to the voting of the proxy. At any meeting of the stockholders, all matters, except as otherwise provided in the Certificate of Incorporation, in these Bylaws or by law, shall be decided by the vote of a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat and thereon. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. The vote at any meeting of the stockholders on any question need not be by ballot, unless so directed by the chairman of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy if there be such proxy, and it shall state the number of shares voted.

Section 2.07 LIST OF STOCKHOLDERS. The Secretary of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the entire duration thereof, and may be inspected by any stockholder who is present.

Section 2.08 INSPECTOR OF ELECTION. If at any meeting of the stockholders a vote by written ballot shall be taken on any question, the chairman of such meeting may appoint an inspector or inspectors of election to act with respect to such vote. Each inspector so appointed shall first subscribe an oath faithfully to execute the duties of an inspector at such meeting with strict impartiality and according to the best of his ability. Such inspectors shall decide upon the qualification of the voters and shall report the number of shares represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and, when the voting is completed, shall ascertain and report the number of shares voted respectively for and against the question. Reports of the inspectors shall be in writing and subscribed and delivered by them to the Secretary of the Corporation. Inspectors need not be stockholders of the Corporation, and any officer of the Corporation may be an inspector on any question other than a vote for or against a proposal in which he shall have a material interest.

Section 2.09 STOCKHOLDER ACTION WITHOUT MEETINGS. Any action required by the General Corporation Law of the State of Delaware to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a

meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 2.10 RECORD DATE. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date: (i) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting; (ii) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days from the date upon which the resolution fixing the record date is adopted by the Board; and (iii) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (ii) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, or, if prior action by the Board is required by law, shall be at the close of business on the day on which the Board adopts the resolution taking such prior action; and (iii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

ARTICLE III

BOARD OF DIRECTORS

Section 3.01 GENERAL POWERS. The property, business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all of the powers of the Corporation, except such as are by the Certificate of Incorporation, by these Bylaws or by law conferred upon or reserved to the stockholders.

Section 3.02 NUMBER AND TERM. The authorized number of directors of the Corporation shall be established from time to time by the Board. Directors need not be stockholders of the Corporation. Each director shall hold office until a successor is elected and qualified or until the director resigns or is removed.

Section 3.03 ELECTION OF DIRECTORS. The directors shall be elected by the stockholders of the Corporation, and at each election the persons receiving the greatest number of votes, up to the number of directors then to be elected, shall be the persons then elected. The election of directors is subject to any provisions contained in the Certificate of Incorporation relating thereto, including any provisions for a classified board.

Section 3.04 RESIGNATION AND REMOVAL. Any director of the Corporation may resign at any time upon notice given in writing or by electronic transmission to the Board or to the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time is not specified, it shall take effect immediately upon its receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Except as otherwise provided by the Certificate of Incorporation or by law, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of shares then entitled to vote at an election of directors.

Section 3.05 VACANCIES. Except as otherwise provided in the Certificate of Incorporation, any vacancy in the Board, whether because of death, resignation, disqualification, an increase in the number of directors, or any other cause, may be filled by vote of the majority of the remaining directors, although less than a quorum, or by a sole remaining director. Each director so chosen to fill a vacancy shall hold office until his successor shall have been elected and shall qualify or until he shall resign or shall have been removed. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of his term of office.

Upon the resignation of one or more directors from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided hereinabove in the filling of other vacancies.

Section 3.06 PLACE OF MEETING; TELEPHONE CONFERENCE MEETING. The Board may hold any of its meetings at such place or places within or without the State of Delaware as the Board may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board by means of conference telephone or similar communications equipment pursuant to which all persons participating in the meeting of the Board can

hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.07 FIRST MEETING. The Board shall meet as soon as practicable after each annual election of directors and notice of such first meeting shall not be required.

Section 3.08 REGULAR MEETINGS. Regular meetings of the Board may be held at such times as the Board shall from time to time by resolution determine. If any day fixed for a meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting shall be held at the same hour and place on the next succeeding business day which is not a legal holiday. Except as provided by law, notice of regular meetings need not be given.

Section 3.09 SPECIAL MEETINGS. Special meetings of the Board may be called at any time by the Chairman of the Board or the President or by any two (2) directors, to be held at the principal office of the Corporation, or at such other place or places, within or without the State of Delaware, as the person or persons calling the meeting may designate.

Notice of the time and place of special meetings shall be given to each director either (i) by mailing or otherwise sending to him a written notice of such meeting, charges prepaid, addressed to him at his address as it is shown upon the records of the Corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held, at least seventy-two (72) hours prior to the time of the holding of such meeting; or (ii) by oral or electronic notice of such meeting at least forty-eight (48) hours prior to the time of the holding of such meeting. Either of the notices as above provided shall be due, legal and personal notice to such director.

Section 3.10 QUORUM AND ACTION. Except as otherwise provided in these Bylaws or by law, the presence of a majority of the authorized number of directors shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a majority of the directors present. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given. The directors shall act only as a Board, and the individual directors shall have no power as such.

Section 3.11 ACTION BY CONSENT. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing or by electronic transmission(s), and such written consent or electronic transmission(s) are filed with the minutes of proceedings of the Board or such

committee. Such action by written consent or electronic transmission shall have the same force and effect as the unanimous vote of such directors.

Section 3.12 COMPENSATION. No stated salary need be paid to directors, as such, for their services but, as fixed from time to time by resolution of the Board, the directors may receive directors' fees, compensation and reimbursement for expenses for attendance at directors' meetings, for serving on committees and for discharging their duties; provided that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.13 COMMITTEES. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board conducts its business pursuant to these Bylaws. Any such committee shall keep written minutes of its meetings and report the same to the Board when required.

Section 3.14 OFFICERS OF THE BOARD. A Chairman of the Board or a Vice Chairman may be appointed from time to time by the Board and shall have such powers and duties as shall be designated by the Board.

ARTICLE IV

OFFICERS

Section 4.01 OFFICERS. The officers of the Corporation shall be a President, a Secretary and a Treasurer. The Corporation may also have, at the discretion of the Board, a Chairman of the Board, a Chief Executive Officer, one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers and such other officers as may be appointed in accordance with the provisions of Section 4.03 of these Bylaws. Any number of offices may be held

by the same person. The salaries of all officers of the Corporation shall be fixed from time to time by the Board.

Section 4.02 ELECTION AND TERM. The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 4.03 or Section 4.05 of these Bylaws, shall be chosen annually by the Board, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or until his successor shall be elected and qualified.

Section 4.03 SUBORDINATE OFFICERS. The Board may appoint, or may authorize the President or Chief Executive Officer, if any, to appoint, such other officers as the business of the Corporation may require, each of whom shall have such authority and perform such duties as are provided in these Bylaws or as the Board, the President or the Chief Executive Officer, if any, from time to time may specify, and shall hold office until he shall resign or shall be removed or otherwise disqualified to serve.

Section 4.04 REMOVAL AND RESIGNATION. Any officer may be removed, with or without cause, by a majority of the directors at the time in office, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board, by the President or Chief Executive Officer, if any, upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Board, the Chairman of the Board, the President, the Chief Executive Officer or the Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.05 VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for the regular appointments to such office.

Section 4.06 CHAIRMAN OF THE BOARD. The Chairman of the Board, if such an officer be elected, shall, if present, preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the Bylaws. If there is no Chief Executive Officer or President, the Chairman of the Board shall in addition be the Chief Executive Officer of the Corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.07 CHIEF EXECUTIVE OFFICER. The Chief Executive Officer, if such an officer be elected, shall, subject to the control of the Board, have general supervision, direction and control of the business and affairs of the Corporation. In the absence or disability of the Chairman of the Board, or if no such officer is elected, the Chief Executive Officer shall preside at all meetings of shareholders and the Board of Directors. He shall have the general powers and duties of management usually vested in

the chief executive officer of a corporation, and shall have such other powers and duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to him by the Board of Directors or as prescribed by the Bylaws.

Section 4.08 PRESIDENT. Subject to such supervisory powers as may be given by the Board of Directors to the Chairman of the Board or the Chief Executive Officer, if there be such officers, the President shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may from time to time be prescribed by the Board of Directors or Chief Executive Officer, if any, or as prescribed by the Bylaws. If there is no Chief Executive Officer, the President shall be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.09 VICE PRESIDENT. The Vice President(s), if any, shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Corporation as from time to time may be assigned to each of them by the President, by the Chief Executive Officer, if any, by the Chairman of the Board, if any, by the Board or as is prescribed by the Bylaws. In the absence or disability of the President and Chief Executive Officer, if any, the Vice Presidents, in order of their rank as fixed by the Board, or if not ranked, the Vice President designated by the Board, shall perform all of the duties of the President and when so acting shall have all of the powers of and be subject to all the restrictions upon the President.

Section 4.10 SECRETARY. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office for the transaction of the business of the Corporation, or such other place as the Board may order, of all meetings of directors and stockholders, with the time and place of holding, whether regular or special, and if special, how authorized and the notice thereof given, the names of those present at directors' meetings, the number of shares present or represented at stockholders' meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office for the transaction of the business of the Corporation or at the office of the Corporation's transfer agent, a share register, or a duplicate share register, showing the names of the stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all the meetings of the stockholders and of the Board required by these Bylaws or by law to be given, and he shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws. If for any reason the Secretary shall fail to give notice of any special meeting of the Board called by one or more of the persons identified in Section 3.09 of these Bylaws, or if he

shall fail to give notice of any special meeting of the stockholders called by one or more of the persons identified in Section 2.02 of these Bylaws, then any such person or persons may give notice of any such special meeting.

Section 4.11 TREASURER. The Treasurer shall keep and maintain or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and shares. Any surplus, including earned surplus, paid-in surplus and surplus arising from a reduction of capital, shall be classified according to source and shown in a separate account. The books of account at all reasonable times shall be open to inspection by any director.

The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. He shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the President, to the Chief Executive Officer, if any, and to the directors, whenever they request it, an account of all of his transactions as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

Section 4.12 COMPENSATION. The compensation of the officers of the Corporation, if any, shall be fixed from time to time by the Board.

ARTICLE V

CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

Section 5.01 EXECUTION OF CONTRACTS. The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board or by these Bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount. Notwithstanding the foregoing, the President or Chief Executive Officer, or such other person as the President or Chief Executive Officer may designate, shall have authority to enter into contracts which are usual and customary in the ordinary course of the Corporation's business on behalf of the Corporation.

Section 5.02 CHECKS, DRAFTS, ETC. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. Each such person shall give such bond, if any, as the Board may require.

Section 5.03 DEPOSIT. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select, or as may be selected by any officer or officers, assistant or assistants, agent or agents, attorney or attorneys, of the Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the President, the Chief Executive Officer, any Vice President or the Treasurer (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation who shall be determined by the Board from time to time) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

Section 5.04 GENERAL AND SPECIAL BANK ACCOUNTS. The Board from time to time may authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may select or as may be selected by an officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

ARTICLE VI

SHARES AND THEIR TRANSFER

Section 6.01 CERTIFICATES FOR STOCK. Every owner of stock of the Corporation shall be entitled to have a certificate or certificates, in such form as the Board shall prescribe, certifying the number and class of shares of the stock of the Corporation owned by him. The certificates representing shares of such stock shall be numbered in the order in which they shall be issued and shall be signed in the name of the Corporation by the Chairman of the Board, the President or a Vice President and by the Secretary or an Assistant Secretary or by the Treasurer or an Assistant Treasurer. Any or all of the signatures on the certificates may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon any such certificate shall thereafter have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by the Corporation with the same effect as though the person who signed such certificate, or whose facsimile signature shall have been placed thereupon, were such officer, transfer agent or registrar at the date of issue. A record shall be kept of the respective names of the persons, firms or corporations owning the stock represented by such certificates, the number and class of shares represented by such certificates, respectively, and the respective dates thereof, and in case of cancellation, the respective dates of cancellation. Every certificate surrendered to the Corporation for exchange or transfer shall be cancelled, and no new certificate or certificates shall be issued in exchange for any

existing certificate until such existing certificate shall have been so cancelled, except in cases provided for in Section 6.04 of these Bylaws.

Section 6.02 TRANSFER OF STOCK. Transfer of shares of stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, or with a transfer clerk or a transfer agent appointed as provided in Section 6.03 of these Bylaws, and upon surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation. Whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact shall be stated expressly in the entry of transfer if, when the certificate or certificates shall be presented to the Corporation for transfer, both the transferor and the transferee request the Corporation to do so.

Section 6.03 REGULATIONS. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. The Board may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

Section 6.04 LOST, STOLEN, DESTROYED AND MUTILATED CERTIFICATES. In any case of loss, theft, destruction, or mutilation of any certificate of stock, another may be issued in its place upon proof of such loss, theft, destruction, or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sums as the Board may direct; provided, however, that a new certificate may be issued without requiring any bond when, in the judgment of the Board, it is proper to do so.

Section 6.05 REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The President or Chief Executive Officer, or any other officer from time to time authorized by the Board, are authorized to vote, represent and exercise on behalf of this Corporation all rights incident to all shares of any other corporation or corporations standing in the name of this Corporation. The authority herein granted to said officers to vote or represent on behalf of this Corporation any and all shares held by this Corporation in any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by said officers.

ARTICLE VII

INDEMNIFICATION

Section 7.01 ACTIONS OTHER THAN BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

Section 7.02 ACTIONS BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or as a member of any committee or similar body, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 7.03 DETERMINATION OF RIGHT OF INDEMNIFICATION. Any indemnification under Section 7.01 or 7.02 of these Bylaws (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in

the circumstances because he has met the applicable standard of conduct set forth in Sections 7.01 and 7.02 of these Bylaws. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders voting in accordance with Section 2.06.

Section 7.04 INDEMNIFICATION AGAINST EXPENSES OF SUCCESSFUL PARTY. Notwithstanding the other provisions of this Article VII, to the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 7.01 or 7.02 of these Bylaws, or in defense of any claim, issue or matter therein, he may be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 7.05 ADVANCE OF EXPENSES. Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board upon receipt of an undertaking by or on behalf of the director or officer, to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VII. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

Section 7.06 OTHER RIGHTS AND REMEDIES. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VII shall not be deemed exclusive and are declared expressly to be nonexclusive of any other rights to which those seeking indemnification or advancements of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Section 7.07 INSURANCE. Upon resolution passed by the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article VII.

Section 7.08 CONSTITUENT CORPORATIONS. For the purposes of this Article VII, references to "the Corporation" include in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued,

would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body shall stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

Section 7.09 EMPLOYEE BENEFIT PLANS. For the purposes of this Article VII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VII.

Section 7.10 TERM. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7.11 SEVERABILITY. If any part of this Article VII shall be found, in any action, suit or proceeding or appeal therefrom or in any other circumstances or as to any particular officer, director, employee or agent to be unenforceable, ineffective or invalid for any reason, the enforceability, effect and validity of the remaining parts or of such parts in other circumstances shall not be affected, except as otherwise required by applicable law.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 SEAL. The Board shall provide a corporate seal, which shall be in the form of a circle and shall bear the name of the Corporation and words and figures showing that the Corporation was incorporated in the State of Delaware and showing the year of incorporation.

Section 8.02 WAIVER OF NOTICES. Whenever notice is required to be given under any provision of these Bylaws, the Certificate of Incorporation or by law, a

written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when a person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless required by the Certificate of Incorporation.

Section 8.03 LOANS AND GUARANTIES. The Corporation may lend money to, or guarantee any obligation of, and otherwise assist any officer or other employee of the Corporation or of its subsidiaries, including any officer who is a director, whenever, in the judgment of the Board, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty, or other assistance may be with or without interest, and may be unsecured or secured in such manner as the Board shall approve, including, without limitation, a pledge of shares of stock of the Corporation.

Section 8.04 GENDER. All personal pronouns used in these Bylaws shall include the other genders, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

Section 8.05 AMENDMENTS. These Bylaws, or any of them, may be rescinded, altered, amended or repealed, and new Bylaws may be made (i) by the Board, by vote of a majority of the number of directors then in office as directors, acting at any meeting of the Board or (ii) by the stockholders, by the vote of two-thirds of the outstanding shares of voting stock of the Corporation, at an annual meeting of stockholders, without previous notice, or at any special meeting of stockholders, provided that notice of such proposed amendment, modification, repeal or adoption is given in the notice of special meeting; provided, however, that Section 2.02 of these Bylaws can only be amended if that Section as amended would not conflict with the Corporation's Certificate of Incorporation. Any Bylaw made or altered by the stockholders may be altered or repealed by the Board or may be altered or repealed by the stockholders.

CERTIFICATE OF SECRETARY

The undersigned certifies that:

(1) He is duly elected and acting Secretary of BMC West Corporation, a Delaware corporation; and

(2) The foregoing Amended and Restated Bylaws constitute the Bylaws of the Corporation as duly adopted by Unanimous Written Consent of the Board of Directors dated as of _____.

IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____.

_____

[_____], Secretary

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3. SelectBuild Construction, Inc.

AMENDED AND RESTATED BYLAWS
OF
SELECTBUILD CONSTRUCTION, INC.

Amended and Restated Bylaws

of

SelectBuild Construction, Inc.,
a Delaware corporation

ARTICLE I

OFFICES

Section 1.01 REGISTERED OFFICE. The registered office of SelectBuild Construction, Inc. (hereinafter called the "Corporation") shall be at such place in the State of Delaware as shall be designated by the Board of Directors (hereinafter called the "Board").

Section 1.02 PRINCIPAL OFFICE. The principal office for the transaction of the business of the Corporation shall be at such location, within or without the State of Delaware, as shall be designated by the Board.

Section 1.03 OTHER OFFICES. The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board may from time to time determine or as the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.01 ANNUAL MEETINGS. Annual meetings of the stockholders of the Corporation for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings may be held at such time, date and place as the Board shall determine by resolution.

Section 2.02 SPECIAL MEETINGS. Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Board, or by a committee of the Board which has been duly designated by the Board and whose powers and authority, as provided in a resolution of the Board or in the Bylaws, include the power to call such meetings, or by one or more stockholders holding shares in the aggregate entitled to cast not less than a majority of the votes at that meeting, but such special meetings may not be called by any other person or persons; provided, however, that if and to the extent that any special meeting of stockholders may be called by any other person or persons specified in any provisions of the Certificate of Incorporation or any amendment thereto or any certificate filed under Section 151(g) of

the General Corporation Law of the State of Delaware (or its successor statute as in effect from time to time hereafter), then such special meeting may also be called by the person or persons, in the manner, at the time and for the purposes so specified.

Section 2.03 PLACE OF MEETINGS. All meetings of the stockholders shall be held at such places, within or without the State of Delaware, as may from time to time be designated by the person or persons calling the respective meetings and specified in the respective notices or waivers of notice thereof.

Section 2.04 NOTICE OF MEETINGS. Except as otherwise required by law, notice of each meeting of the stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting by delivering a typewritten or printed notice thereof to him personally, or by depositing such notice in the United States mail, in a postage prepaid envelope, directed to him at his address furnished by him to the Secretary of the Corporation for such purpose or, if he shall not have furnished to the Secretary his address for such purpose, then at his address last known to the Secretary, or by transmitting a notice thereof to him at such address by telegraph, cable or wireless. Except as otherwise expressly required by law, no publication of any notice of a meeting of the stockholders shall be required. Every notice of a meeting of the stockholders shall state the place, date and hour of the meeting, and, in the case of a special meeting shall also state the purpose or purposes for which the meeting is called. Except as otherwise expressly required by law, notice of any adjourned meeting of the stockholders need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken.

Whenever notice is required to be given to any stockholder to whom (i) notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve month period, have been mailed addressed to such person at his address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall have been taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the Corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated.

No notice need be given to any person with whom communication is unlawful, nor shall there be any duty to apply for any permission or license to give notice to any such person.

Section 2.05 QUORUM. Except as provided by law, the holders of record of a majority in voting interest of the shares of stock of the Corporation entitled to be voted, present in person or by proxy, shall constitute a quorum for the transaction of

business at any meeting of the stockholders of the Corporation or any adjournment thereof. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. In the absence of a quorum at any meeting or any adjournment thereof, a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat or, in the absence therefrom of all the stockholders, any officer entitled to preside at or to act as secretary of such meeting may adjourn such meeting from time to time. At any such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally called.

Section 2.06 VOTING.

(a) At each meeting of the stockholders, each stockholder shall be entitled to vote in person or by proxy each share or fractional share of the stock of the Corporation which has voting rights on the matter in question and which shall have been held by him and registered in his name on the books of the Corporation:

(i) on the date fixed pursuant to Section 2.10 of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting, or

(ii) if no such record date shall have been so fixed, then (A) at the close of business on the day next preceding the day on which notice of the meeting shall be given or (B) if notice of the meeting shall be waived, at the close of business on the day next preceding the day on which the meeting shall be held.

(b) Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors in such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Persons holding stock of the Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy, may represent such stock and vote thereon. Stock having voting power standing of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or with respect to which two or more persons have the same fiduciary relationship, shall be voted in accordance with the provisions of the General Corporation Law of Delaware.

(c) Any such voting rights may be exercised by the stockholder entitled thereto in person or by his proxy appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized and delivered to the secretary of the meeting; provided, however, that no proxy shall be voted or acted upon after three years from its date unless said proxy shall provide for a longer period.

The attendance at any meeting of a stockholder who may theretofore have given a proxy shall not have the effect of revoking the same unless he shall in writing so notify the secretary of the meeting prior to the voting of the proxy. At any meeting of the stockholders, all matters, except as otherwise provided in the Certificate of Incorporation, in these Bylaws or by law, shall be decided by the vote of a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat and thereon. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. The vote at any meeting of the stockholders on any question need not be by ballot, unless so directed by the chairman of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy if there be such proxy, and it shall state the number of shares voted.

Section 2.07 LIST OF STOCKHOLDERS. The Secretary of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the entire duration thereof, and may be inspected by any stockholder who is present.

Section 2.08 INSPECTOR OF ELECTION. If at any meeting of the stockholders a vote by written ballot shall be taken on any question, the chairman of such meeting may appoint an inspector or inspectors of election to act with respect to such vote. Each inspector so appointed shall first subscribe an oath faithfully to execute the duties of an inspector at such meeting with strict impartiality and according to the best of his ability. Such inspectors shall decide upon the qualification of the voters and shall report the number of shares represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and, when the voting is completed, shall ascertain and report the number of shares voted respectively for and against the question. Reports of the inspectors shall be in writing and subscribed and delivered by them to the Secretary of the Corporation. Inspectors need not be stockholders of the Corporation, and any officer of the Corporation may be an inspector on any question other than a vote for or against a proposal in which he shall have a material interest.

Section 2.09 STOCKHOLDER ACTION WITHOUT MEETINGS. Any action required by the General Corporation Law of the State of Delaware to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a

meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 2.10 RECORD DATE. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date: (i) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting; (ii) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days from the date upon which the resolution fixing the record date is adopted by the Board; and (iii) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (ii) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, or, if prior action by the Board is required by law, shall be at the close of business on the day on which the Board adopts the resolution taking such prior action; and (iii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

ARTICLE III

BOARD OF DIRECTORS

Section 3.01 GENERAL POWERS. The property, business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all of the powers of the Corporation, except such as are by the Certificate of Incorporation, by these Bylaws or by law conferred upon or reserved to the stockholders.

Section 3.02 NUMBER AND TERM. The authorized number of directors of the Corporation shall be established from time to time by the Board. Directors need not be stockholders of the Corporation. Each director shall hold office until a successor is elected and qualified or until the director resigns or is removed.

Section 3.03 ELECTION OF DIRECTORS. The directors shall be elected by the stockholders of the Corporation, and at each election the persons receiving the greatest number of votes, up to the number of directors then to be elected, shall be the persons then elected. The election of directors is subject to any provisions contained in the Certificate of Incorporation relating thereto, including any provisions for a classified board.

Section 3.04 RESIGNATION AND REMOVAL. Any director of the Corporation may resign at any time upon notice given in writing or by electronic transmission to the Board or to the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time is not specified, it shall take effect immediately upon its receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Except as otherwise provided by the Certificate of Incorporation or by law, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of shares then entitled to vote at an election of directors.

Section 3.05 VACANCIES. Except as otherwise provided in the Certificate of Incorporation, any vacancy in the Board, whether because of death, resignation, disqualification, an increase in the number of directors, or any other cause, may be filled by vote of the majority of the remaining directors, although less than a quorum, or by a sole remaining director. Each director so chosen to fill a vacancy shall hold office until his successor shall have been elected and shall qualify or until he shall resign or shall have been removed. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of his term of office.

Upon the resignation of one or more directors from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided hereinabove in the filling of other vacancies.

Section 3.06 PLACE OF MEETING; TELEPHONE CONFERENCE MEETING. The Board may hold any of its meetings at such place or places within or without the State of Delaware as the Board may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board by means of conference telephone or similar communications equipment pursuant to which all persons participating in the meeting of the Board can

hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.07 FIRST MEETING. The Board shall meet as soon as practicable after each annual election of directors and notice of such first meeting shall not be required.

Section 3.08 REGULAR MEETINGS. Regular meetings of the Board may be held at such times as the Board shall from time to time by resolution determine. If any day fixed for a meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting shall be held at the same hour and place on the next succeeding business day which is not a legal holiday. Except as provided by law, notice of regular meetings need not be given.

Section 3.09 SPECIAL MEETINGS. Special meetings of the Board may be called at any time by the Chairman of the Board or the President or by any two (2) directors, to be held at the principal office of the Corporation, or at such other place or places, within or without the State of Delaware, as the person or persons calling the meeting may designate.

Notice of the time and place of special meetings shall be given to each director either (i) by mailing or otherwise sending to him a written notice of such meeting, charges prepaid, addressed to him at his address as it is shown upon the records of the Corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held, at least seventy-two (72) hours prior to the time of the holding of such meeting; or (ii) by oral or electronic notice of such meeting at least forty-eight (48) hours prior to the time of the holding of such meeting. Either of the notices as above provided shall be due, legal and personal notice to such director.

Section 3.10 QUORUM AND ACTION. Except as otherwise provided in these Bylaws or by law, the presence of a majority of the authorized number of directors shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a majority of the directors present. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given. The directors shall act only as a Board, and the individual directors shall have no power as such.

Section 3.11 ACTION BY CONSENT. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing or by electronic transmission(s), and such written consent or electronic transmission(s) are filed with the minutes of proceedings of the Board or such

committee. Such action by written consent or electronic transmission shall have the same force and effect as the unanimous vote of such directors.

Section 3.12 COMPENSATION. No stated salary need be paid to directors, as such, for their services but, as fixed from time to time by resolution of the Board, the directors may receive directors' fees, compensation and reimbursement for expenses for attendance at directors' meetings, for serving on committees and for discharging their duties; provided that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.13 COMMITTEES. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board conducts its business pursuant to these Bylaws. Any such committee shall keep written minutes of its meetings and report the same to the Board when required.

Section 3.14 OFFICERS OF THE BOARD. A Chairman of the Board or a Vice Chairman may be appointed from time to time by the Board and shall have such powers and duties as shall be designated by the Board.

ARTICLE IV

OFFICERS

Section 4.01 OFFICERS. The officers of the Corporation shall be a President, a Secretary and a Treasurer. The Corporation may also have, at the discretion of the Board, a Chairman of the Board, a Chief Executive Officer, one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers and such other officers as may be appointed in accordance with the provisions of Section 4.03 of these Bylaws. Any number of offices may be held

by the same person. The salaries of all officers of the Corporation shall be fixed from time to time by the Board.

Section 4.02 ELECTION AND TERM. The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 4.03 or Section 4.05 of these Bylaws, shall be chosen annually by the Board, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or until his successor shall be elected and qualified.

Section 4.03 SUBORDINATE OFFICERS. The Board may appoint, or may authorize the President or Chief Executive Officer, if any, to appoint, such other officers as the business of the Corporation may require, each of whom shall have such authority and perform such duties as are provided in these Bylaws or as the Board, the President or the Chief Executive Officer, if any, from time to time may specify, and shall hold office until he shall resign or shall be removed or otherwise disqualified to serve.

Section 4.04 REMOVAL AND RESIGNATION. Any officer may be removed, with or without cause, by a majority of the directors at the time in office, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board, by the President or Chief Executive Officer, if any, upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Board, the Chairman of the Board, the President, the Chief Executive Officer or the Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.05 VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for the regular appointments to such office.

Section 4.06 CHAIRMAN OF THE BOARD. The Chairman of the Board, if such an officer be elected, shall, if present, preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the Bylaws. If there is no Chief Executive Officer or President, the Chairman of the Board shall in addition be the Chief Executive Officer of the Corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.07 CHIEF EXECUTIVE OFFICER. The Chief Executive Officer, if such an officer be elected, shall, subject to the control of the Board, have general supervision, direction and control of the business and affairs of the Corporation. In the absence or disability of the Chairman of the Board, or if no such officer is elected, the Chief Executive Officer shall preside at all meetings of shareholders and the Board of Directors. He shall have the general powers and duties of management usually vested in

the chief executive officer of a corporation, and shall have such other powers and duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to him by the Board of Directors or as prescribed by the Bylaws.

Section 4.08 PRESIDENT. Subject to such supervisory powers as may be given by the Board of Directors to the Chairman of the Board or the Chief Executive Officer, if there be such officers, the President shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may from time to time be prescribed by the Board of Directors or Chief Executive Officer, if any, or as prescribed by the Bylaws. If there is no Chief Executive Officer, the President shall be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.09 VICE PRESIDENT. The Vice President(s), if any, shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Corporation as from time to time may be assigned to each of them by the President, by the Chief Executive Officer, if any, by the Chairman of the Board, if any, by the Board or as is prescribed by the Bylaws. In the absence or disability of the President and Chief Executive Officer, if any, the Vice Presidents, in order of their rank as fixed by the Board, or if not ranked, the Vice President designated by the Board, shall perform all of the duties of the President and when so acting shall have all of the powers of and be subject to all the restrictions upon the President.

Section 4.10 SECRETARY. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office for the transaction of the business of the Corporation, or such other place as the Board may order, of all meetings of directors and stockholders, with the time and place of holding, whether regular or special, and if special, how authorized and the notice thereof given, the names of those present at directors' meetings, the number of shares present or represented at stockholders' meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office for the transaction of the business of the Corporation or at the office of the Corporation's transfer agent, a share register, or a duplicate share register, showing the names of the stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all the meetings of the stockholders and of the Board required by these Bylaws or by law to be given, and he shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws. If for any reason the Secretary shall fail to give notice of any special meeting of the Board called by one or more of the persons identified in Section 3.09 of these Bylaws, or if he

shall fail to give notice of any special meeting of the stockholders called by one or more of the persons identified in Section 2.02 of these Bylaws, then any such person or persons may give notice of any such special meeting.

Section 4.11 TREASURER. The Treasurer shall keep and maintain or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and shares. Any surplus, including earned surplus, paid-in surplus and surplus arising from a reduction of capital, shall be classified according to source and shown in a separate account. The books of account at all reasonable times shall be open to inspection by any director.

The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. He shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the President, to the Chief Executive Officer, if any, and to the directors, whenever they request it, an account of all of his transactions as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

Section 4.12 COMPENSATION. The compensation of the officers of the Corporation, if any, shall be fixed from time to time by the Board.

ARTICLE V

CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

Section 5.01 EXECUTION OF CONTRACTS. The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board or by these Bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount. Notwithstanding the foregoing, the President or Chief Executive Officer, or such other person as the President or Chief Executive Officer may designate, shall have authority to enter into contracts which are usual and customary in the ordinary course of the Corporation's business on behalf of the Corporation.

Section 5.02 CHECKS, DRAFTS, ETC. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. Each such person shall give such bond, if any, as the Board may require.

Section 5.03 DEPOSIT. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select, or as may be selected by any officer or officers, assistant or assistants, agent or agents, attorney or attorneys, of the Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the President, the Chief Executive Officer, any Vice President or the Treasurer (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation who shall be determined by the Board from time to time) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

Section 5.04 GENERAL AND SPECIAL BANK ACCOUNTS. The Board from time to time may authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may select or as may be selected by an officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

ARTICLE VI

SHARES AND THEIR TRANSFER

Section 6.01 CERTIFICATES FOR STOCK. Every owner of stock of the Corporation shall be entitled to have a certificate or certificates, in such form as the Board shall prescribe, certifying the number and class of shares of the stock of the Corporation owned by him. The certificates representing shares of such stock shall be numbered in the order in which they shall be issued and shall be signed in the name of the Corporation by the Chairman of the Board, the President or a Vice President and by the Secretary or an Assistant Secretary or by the Treasurer or an Assistant Treasurer. Any or all of the signatures on the certificates may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon any such certificate shall thereafter have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by the Corporation with the same effect as though the person who signed such certificate, or whose facsimile signature shall have been placed thereupon, were such officer, transfer agent or registrar at the date of issue. A record shall be kept of the respective names of the persons, firms or corporations owning the stock represented by such certificates, the number and class of shares represented by such certificates, respectively, and the respective dates thereof, and in case of cancellation, the respective dates of cancellation. Every certificate surrendered to the Corporation for exchange or transfer shall be cancelled, and no new certificate or certificates shall be issued in exchange for any

existing certificate until such existing certificate shall have been so cancelled, except in cases provided for in Section 6.04 of these Bylaws.

Section 6.02 TRANSFER OF STOCK. Transfer of shares of stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, or with a transfer clerk or a transfer agent appointed as provided in Section 6.03 of these Bylaws, and upon surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation. Whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact shall be stated expressly in the entry of transfer if, when the certificate or certificates shall be presented to the Corporation for transfer, both the transferor and the transferee request the Corporation to do so.

Section 6.03 REGULATIONS. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. The Board may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

Section 6.04 LOST, STOLEN, DESTROYED AND MUTILATED CERTIFICATES. In any case of loss, theft, destruction, or mutilation of any certificate of stock, another may be issued in its place upon proof of such loss, theft, destruction, or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sums as the Board may direct; provided, however, that a new certificate may be issued without requiring any bond when, in the judgment of the Board, it is proper to do so.

Section 6.05 REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The President or Chief Executive Officer, or any other officer from time to time authorized by the Board, are authorized to vote, represent and exercise on behalf of this Corporation all rights incident to all shares of any other corporation or corporations standing in the name of this Corporation. The authority herein granted to said officers to vote or represent on behalf of this Corporation any and all shares held by this Corporation in any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by said officers.

ARTICLE VII

INDEMNIFICATION

Section 7.01 ACTIONS OTHER THAN BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

Section 7.02 ACTIONS BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or as a member of any committee or similar body, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 7.03 DETERMINATION OF RIGHT OF INDEMNIFICATION. Any indemnification under Section 7.01 or 7.02 of these Bylaws (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in

the circumstances because he has met the applicable standard of conduct set forth in Sections 7.01 and 7.02 of these Bylaws. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders voting in accordance with Section 2.06.

Section 7.04 INDEMNIFICATION AGAINST EXPENSES OF SUCCESSFUL PARTY. Notwithstanding the other provisions of this Article VII, to the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 7.01 or 7.02 of these Bylaws, or in defense of any claim, issue or matter therein, he may be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 7.05 ADVANCE OF EXPENSES. Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board upon receipt of an undertaking by or on behalf of the director or officer, to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VII. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

Section 7.06 OTHER RIGHTS AND REMEDIES. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VII shall not be deemed exclusive and are declared expressly to be nonexclusive of any other rights to which those seeking indemnification or advancements of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Section 7.07 INSURANCE. Upon resolution passed by the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article VII.

Section 7.08 CONSTITUENT CORPORATIONS. For the purposes of this Article VII, references to "the Corporation" include in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued,

would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body shall stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

Section 7.09 EMPLOYEE BENEFIT PLANS. For the purposes of this Article VII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VII.

Section 7.10 TERM. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7.11 SEVERABILITY. If any part of this Article VII shall be found, in any action, suit or proceeding or appeal therefrom or in any other circumstances or as to any particular officer, director, employee or agent to be unenforceable, ineffective or invalid for any reason, the enforceability, effect and validity of the remaining parts or of such parts in other circumstances shall not be affected, except as otherwise required by applicable law.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 SEAL. The Board shall provide a corporate seal, which shall be in the form of a circle and shall bear the name of the Corporation and words and figures showing that the Corporation was incorporated in the State of Delaware and showing the year of incorporation.

Section 8.02 WAIVER OF NOTICES. Whenever notice is required to be given under any provision of these Bylaws, the Certificate of Incorporation or by law, a

written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when a person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless required by the Certificate of Incorporation.

Section 8.03 LOANS AND GUARANTIES. The Corporation may lend money to, or guarantee any obligation of, and otherwise assist any officer or other employee of the Corporation or of its subsidiaries, including any officer who is a director, whenever, in the judgment of the Board, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty, or other assistance may be with or without interest, and may be unsecured or secured in such manner as the Board shall approve, including, without limitation, a pledge of shares of stock of the Corporation.

Section 8.04 GENDER. All personal pronouns used in these Bylaws shall include the other genders, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

Section 8.05 AMENDMENTS. These Bylaws, or any of them, may be rescinded, altered, amended or repealed, and new Bylaws may be made (i) by the Board, by vote of a majority of the number of directors then in office as directors, acting at any meeting of the Board or (ii) by the stockholders, by the vote of two-thirds of the outstanding shares of voting stock of the Corporation, at an annual meeting of stockholders, without previous notice, or at any special meeting of stockholders, provided that notice of such proposed amendment, modification, repeal or adoption is given in the notice of special meeting; provided, however, that Section 2.02 of these Bylaws can only be amended if that Section as amended would not conflict with the Corporation's Certificate of Incorporation. Any Bylaw made or altered by the stockholders may be altered or repealed by the Board or may be altered or repealed by the stockholders.

CERTIFICATE OF SECRETARY

The undersigned certifies that:

(1) He is duly elected and acting Secretary of SelectBuild Construction, Inc., a Delaware corporation; and

(2) The foregoing Amended and Restated Bylaws constitute the Bylaws of the Corporation as duly adopted by Unanimous Written Consent of the Board of Directors dated as of _____.

IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____.

_____

[_____], Secretary

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4. SelectBuild Northern California, Inc.

AMENDED AND RESTATED BYLAWS
OF
SELECTBUILD NORTHERN CALIFORNIA, INC.

Amended and Restated Bylaws

of

SelectBuild Northern California, Inc.,
a Delaware corporation

ARTICLE I

OFFICES

Section 1.01 REGISTERED OFFICE. The registered office of SelectBuild Northern California, Inc. (hereinafter called the "Corporation") shall be at such place in the State of Delaware as shall be designated by the Board of Directors (hereinafter called the "Board").

Section 1.02 PRINCIPAL OFFICE. The principal office for the transaction of the business of the Corporation shall be at such location, within or without the State of Delaware, as shall be designated by the Board.

Section 1.03 OTHER OFFICES. The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board may from time to time determine or as the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.01 ANNUAL MEETINGS. Annual meetings of the stockholders of the Corporation for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings may be held at such time, date and place as the Board shall determine by resolution.

Section 2.02 SPECIAL MEETINGS. Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Board, or by a committee of the Board which has been duly designated by the Board and whose powers and authority, as provided in a resolution of the Board or in the Bylaws, include the power to call such meetings, or by one or more stockholders holding shares in the aggregate entitled to cast not less than a majority of the votes at that meeting, but such special meetings may not be called by any other person or persons; provided, however, that if and to the extent that any special meeting of stockholders may be called by any other person or persons specified in any provisions of the Certificate of Incorporation or any amendment thereto or any certificate filed under Section 151(g) of

the General Corporation Law of the State of Delaware (or its successor statute as in effect from time to time hereafter), then such special meeting may also be called by the person or persons, in the manner, at the time and for the purposes so specified.

Section 2.03 PLACE OF MEETINGS. All meetings of the stockholders shall be held at such places, within or without the State of Delaware, as may from time to time be designated by the person or persons calling the respective meetings and specified in the respective notices or waivers of notice thereof.

Section 2.04 NOTICE OF MEETINGS. Except as otherwise required by law, notice of each meeting of the stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting by delivering a typewritten or printed notice thereof to him personally, or by depositing such notice in the United States mail, in a postage prepaid envelope, directed to him at his address furnished by him to the Secretary of the Corporation for such purpose or, if he shall not have furnished to the Secretary his address for such purpose, then at his address last known to the Secretary, or by transmitting a notice thereof to him at such address by telegraph, cable or wireless. Except as otherwise expressly required by law, no publication of any notice of a meeting of the stockholders shall be required. Every notice of a meeting of the stockholders shall state the place, date and hour of the meeting, and, in the case of a special meeting shall also state the purpose or purposes for which the meeting is called. Except as otherwise expressly required by law, notice of any adjourned meeting of the stockholders need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken.

Whenever notice is required to be given to any stockholder to whom (i) notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve month period, have been mailed addressed to such person at his address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall have been taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the Corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated.

No notice need be given to any person with whom communication is unlawful, nor shall there be any duty to apply for any permission or license to give notice to any such person.

Section 2.05 QUORUM. Except as provided by law, the holders of record of a majority in voting interest of the shares of stock of the Corporation entitled to be voted, present in person or by proxy, shall constitute a quorum for the transaction of

business at any meeting of the stockholders of the Corporation or any adjournment thereof. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. In the absence of a quorum at any meeting or any adjournment thereof, a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat or, in the absence therefrom of all the stockholders, any officer entitled to preside at or to act as secretary of such meeting may adjourn such meeting from time to time. At any such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally called.

Section 2.06 VOTING.

(a) At each meeting of the stockholders, each stockholder shall be entitled to vote in person or by proxy each share or fractional share of the stock of the Corporation which has voting rights on the matter in question and which shall have been held by him and registered in his name on the books of the Corporation:

(i) on the date fixed pursuant to Section 2.10 of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting, or

(ii) if no such record date shall have been so fixed, then (A) at the close of business on the day next preceding the day on which notice of the meeting shall be given or (B) if notice of the meeting shall be waived, at the close of business on the day next preceding the day on which the meeting shall be held.

(b) Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors in such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Persons holding stock of the Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy, may represent such stock and vote thereon. Stock having voting power standing of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or with respect to which two or more persons have the same fiduciary relationship, shall be voted in accordance with the provisions of the General Corporation Law of Delaware.

(c) Any such voting rights may be exercised by the stockholder entitled thereto in person or by his proxy appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized and delivered to the secretary of the meeting; provided, however, that no proxy shall be voted or acted upon after three years from its date unless said proxy shall provide for a longer period.

The attendance at any meeting of a stockholder who may theretofore have given a proxy shall not have the effect of revoking the same unless he shall in writing so notify the secretary of the meeting prior to the voting of the proxy. At any meeting of the stockholders, all matters, except as otherwise provided in the Certificate of Incorporation, in these Bylaws or by law, shall be decided by the vote of a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat and thereon. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. The vote at any meeting of the stockholders on any question need not be by ballot, unless so directed by the chairman of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy if there be such proxy, and it shall state the number of shares voted.

Section 2.07 LIST OF STOCKHOLDERS. The Secretary of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the entire duration thereof, and may be inspected by any stockholder who is present.

Section 2.08 INSPECTOR OF ELECTION. If at any meeting of the stockholders a vote by written ballot shall be taken on any question, the chairman of such meeting may appoint an inspector or inspectors of election to act with respect to such vote. Each inspector so appointed shall first subscribe an oath faithfully to execute the duties of an inspector at such meeting with strict impartiality and according to the best of his ability. Such inspectors shall decide upon the qualification of the voters and shall report the number of shares represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and, when the voting is completed, shall ascertain and report the number of shares voted respectively for and against the question. Reports of the inspectors shall be in writing and subscribed and delivered by them to the Secretary of the Corporation. Inspectors need not be stockholders of the Corporation, and any officer of the Corporation may be an inspector on any question other than a vote for or against a proposal in which he shall have a material interest.

Section 2.09 STOCKHOLDER ACTION WITHOUT MEETINGS. Any action required by the General Corporation Law of the State of Delaware to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a

meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 2.10 RECORD DATE. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date: (i) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting; (ii) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days from the date upon which the resolution fixing the record date is adopted by the Board; and (iii) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (ii) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, or, if prior action by the Board is required by law, shall be at the close of business on the day on which the Board adopts the resolution taking such prior action; and (iii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

ARTICLE III

BOARD OF DIRECTORS

Section 3.01 GENERAL POWERS. The property, business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all of the powers of the Corporation, except such as are by the Certificate of Incorporation, by these Bylaws or by law conferred upon or reserved to the stockholders.

Section 3.02 NUMBER AND TERM. The authorized number of directors of the Corporation shall be established from time to time by the Board. Directors need not be stockholders of the Corporation. Each director shall hold office until a successor is elected and qualified or until the director resigns or is removed.

Section 3.03 ELECTION OF DIRECTORS. The directors shall be elected by the stockholders of the Corporation, and at each election the persons receiving the greatest number of votes, up to the number of directors then to be elected, shall be the persons then elected. The election of directors is subject to any provisions contained in the Certificate of Incorporation relating thereto, including any provisions for a classified board.

Section 3.04 RESIGNATION AND REMOVAL. Any director of the Corporation may resign at any time upon notice given in writing or by electronic transmission to the Board or to the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time is not specified, it shall take effect immediately upon its receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Except as otherwise provided by the Certificate of Incorporation or by law, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of shares then entitled to vote at an election of directors.

Section 3.05 VACANCIES. Except as otherwise provided in the Certificate of Incorporation, any vacancy in the Board, whether because of death, resignation, disqualification, an increase in the number of directors, or any other cause, may be filled by vote of the majority of the remaining directors, although less than a quorum, or by a sole remaining director. Each director so chosen to fill a vacancy shall hold office until his successor shall have been elected and shall qualify or until he shall resign or shall have been removed. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of his term of office.

Upon the resignation of one or more directors from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided hereinabove in the filling of other vacancies.

Section 3.06 PLACE OF MEETING; TELEPHONE CONFERENCE MEETING. The Board may hold any of its meetings at such place or places within or without the State of Delaware as the Board may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board by means of conference telephone or similar communications equipment pursuant to which all persons participating in the meeting of the Board can

hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.07 FIRST MEETING. The Board shall meet as soon as practicable after each annual election of directors and notice of such first meeting shall not be required.

Section 3.08 REGULAR MEETINGS. Regular meetings of the Board may be held at such times as the Board shall from time to time by resolution determine. If any day fixed for a meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting shall be held at the same hour and place on the next succeeding business day which is not a legal holiday. Except as provided by law, notice of regular meetings need not be given.

Section 3.09 SPECIAL MEETINGS. Special meetings of the Board may be called at any time by the Chairman of the Board or the President or by any two (2) directors, to be held at the principal office of the Corporation, or at such other place or places, within or without the State of Delaware, as the person or persons calling the meeting may designate.

Notice of the time and place of special meetings shall be given to each director either (i) by mailing or otherwise sending to him a written notice of such meeting, charges prepaid, addressed to him at his address as it is shown upon the records of the Corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held, at least seventy-two (72) hours prior to the time of the holding of such meeting; or (ii) by oral or electronic notice of such meeting at least forty-eight (48) hours prior to the time of the holding of such meeting. Either of the notices as above provided shall be due, legal and personal notice to such director.

Section 3.10 QUORUM AND ACTION. Except as otherwise provided in these Bylaws or by law, the presence of a majority of the authorized number of directors shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a majority of the directors present. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given. The directors shall act only as a Board, and the individual directors shall have no power as such.

Section 3.11 ACTION BY CONSENT. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing or by electronic transmission(s), and such written consent or electronic transmission(s) are filed with the minutes of proceedings of the Board or such

committee. Such action by written consent or electronic transmission shall have the same force and effect as the unanimous vote of such directors.

Section 3.12 COMPENSATION. No stated salary need be paid to directors, as such, for their services but, as fixed from time to time by resolution of the Board, the directors may receive directors' fees, compensation and reimbursement for expenses for attendance at directors' meetings, for serving on committees and for discharging their duties; provided that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.13 COMMITTEES. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board conducts its business pursuant to these Bylaws. Any such committee shall keep written minutes of its meetings and report the same to the Board when required.

Section 3.14 OFFICERS OF THE BOARD. A Chairman of the Board or a Vice Chairman may be appointed from time to time by the Board and shall have such powers and duties as shall be designated by the Board.

ARTICLE IV

OFFICERS

Section 4.01 OFFICERS. The officers of the Corporation shall be a President, a Secretary and a Treasurer. The Corporation may also have, at the discretion of the Board, a Chairman of the Board, a Chief Executive Officer, one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers and such other officers as may be appointed in accordance with the provisions of Section 4.03 of these Bylaws. Any number of offices may be held

by the same person. The salaries of all officers of the Corporation shall be fixed from time to time by the Board.

Section 4.02 ELECTION AND TERM. The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 4.03 or Section 4.05 of these Bylaws, shall be chosen annually by the Board, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or until his successor shall be elected and qualified.

Section 4.03 SUBORDINATE OFFICERS. The Board may appoint, or may authorize the President or Chief Executive Officer, if any, to appoint, such other officers as the business of the Corporation may require, each of whom shall have such authority and perform such duties as are provided in these Bylaws or as the Board, the President or the Chief Executive Officer, if any, from time to time may specify, and shall hold office until he shall resign or shall be removed or otherwise disqualified to serve.

Section 4.04 REMOVAL AND RESIGNATION. Any officer may be removed, with or without cause, by a majority of the directors at the time in office, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board, by the President or Chief Executive Officer, if any, upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Board, the Chairman of the Board, the President, the Chief Executive Officer or the Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.05 VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for the regular appointments to such office.

Section 4.06 CHAIRMAN OF THE BOARD. The Chairman of the Board, if such an officer be elected, shall, if present, preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the Bylaws. If there is no Chief Executive Officer or President, the Chairman of the Board shall in addition be the Chief Executive Officer of the Corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.07 CHIEF EXECUTIVE OFFICER. The Chief Executive Officer, if such an officer be elected, shall, subject to the control of the Board, have general supervision, direction and control of the business and affairs of the Corporation. In the absence or disability of the Chairman of the Board, or if no such officer is elected, the Chief Executive Officer shall preside at all meetings of shareholders and the Board of Directors. He shall have the general powers and duties of management usually vested in

the chief executive officer of a corporation, and shall have such other powers and duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to him by the Board of Directors or as prescribed by the Bylaws.

Section 4.08 PRESIDENT. Subject to such supervisory powers as may be given by the Board of Directors to the Chairman of the Board or the Chief Executive Officer, if there be such officers, the President shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may from time to time be prescribed by the Board of Directors or Chief Executive Officer, if any, or as prescribed by the Bylaws. If there is no Chief Executive Officer, the President shall be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.09 VICE PRESIDENT. The Vice President(s), if any, shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Corporation as from time to time may be assigned to each of them by the President, by the Chief Executive Officer, if any, by the Chairman of the Board, if any, by the Board or as is prescribed by the Bylaws. In the absence or disability of the President and Chief Executive Officer, if any, the Vice Presidents, in order of their rank as fixed by the Board, or if not ranked, the Vice President designated by the Board, shall perform all of the duties of the President and when so acting shall have all of the powers of and be subject to all the restrictions upon the President.

Section 4.10 SECRETARY. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office for the transaction of the business of the Corporation, or such other place as the Board may order, of all meetings of directors and stockholders, with the time and place of holding, whether regular or special, and if special, how authorized and the notice thereof given, the names of those present at directors' meetings, the number of shares present or represented at stockholders' meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office for the transaction of the business of the Corporation or at the office of the Corporation's transfer agent, a share register, or a duplicate share register, showing the names of the stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all the meetings of the stockholders and of the Board required by these Bylaws or by law to be given, and he shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws. If for any reason the Secretary shall fail to give notice of any special meeting of the Board called by one or more of the persons identified in Section 3.09 of these Bylaws, or if he

shall fail to give notice of any special meeting of the stockholders called by one or more of the persons identified in Section 2.02 of these Bylaws, then any such person or persons may give notice of any such special meeting.

Section 4.11 TREASURER. The Treasurer shall keep and maintain or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and shares. Any surplus, including earned surplus, paid-in surplus and surplus arising from a reduction of capital, shall be classified according to source and shown in a separate account. The books of account at all reasonable times shall be open to inspection by any director.

The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. He shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the President, to the Chief Executive Officer, if any, and to the directors, whenever they request it, an account of all of his transactions as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

Section 4.12 COMPENSATION. The compensation of the officers of the Corporation, if any, shall be fixed from time to time by the Board.

ARTICLE V

CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

Section 5.01 EXECUTION OF CONTRACTS. The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board or by these Bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount. Notwithstanding the foregoing, the President or Chief Executive Officer, or such other person as the President or Chief Executive Officer may designate, shall have authority to enter into contracts which are usual and customary in the ordinary course of the Corporation's business on behalf of the Corporation.

Section 5.02 CHECKS, DRAFTS, ETC. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. Each such person shall give such bond, if any, as the Board may require.

Section 5.03 DEPOSIT. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select, or as may be selected by any officer or officers, assistant or assistants, agent or agents, attorney or attorneys, of the Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the President, the Chief Executive Officer, any Vice President or the Treasurer (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation who shall be determined by the Board from time to time) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

Section 5.04 GENERAL AND SPECIAL BANK ACCOUNTS. The Board from time to time may authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may select or as may be selected by an officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

ARTICLE VI

SHARES AND THEIR TRANSFER

Section 6.01 CERTIFICATES FOR STOCK. Every owner of stock of the Corporation shall be entitled to have a certificate or certificates, in such form as the Board shall prescribe, certifying the number and class of shares of the stock of the Corporation owned by him. The certificates representing shares of such stock shall be numbered in the order in which they shall be issued and shall be signed in the name of the Corporation by the Chairman of the Board, the President or a Vice President and by the Secretary or an Assistant Secretary or by the Treasurer or an Assistant Treasurer. Any or all of the signatures on the certificates may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon any such certificate shall thereafter have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by the Corporation with the same effect as though the person who signed such certificate, or whose facsimile signature shall have been placed thereupon, were such officer, transfer agent or registrar at the date of issue. A record shall be kept of the respective names of the persons, firms or corporations owning the stock represented by such certificates, the number and class of shares represented by such certificates, respectively, and the respective dates thereof, and in case of cancellation, the respective dates of cancellation. Every certificate surrendered to the Corporation for exchange or transfer shall be cancelled, and no new certificate or certificates shall be issued in exchange for any

existing certificate until such existing certificate shall have been so cancelled, except in cases provided for in Section 6.04 of these Bylaws.

Section 6.02 TRANSFER OF STOCK. Transfer of shares of stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, or with a transfer clerk or a transfer agent appointed as provided in Section 6.03 of these Bylaws, and upon surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation. Whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact shall be stated expressly in the entry of transfer if, when the certificate or certificates shall be presented to the Corporation for transfer, both the transferor and the transferee request the Corporation to do so.

Section 6.03 REGULATIONS. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. The Board may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

Section 6.04 LOST, STOLEN, DESTROYED AND MUTILATED CERTIFICATES. In any case of loss, theft, destruction, or mutilation of any certificate of stock, another may be issued in its place upon proof of such loss, theft, destruction, or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sums as the Board may direct; provided, however, that a new certificate may be issued without requiring any bond when, in the judgment of the Board, it is proper to do so.

Section 6.05 REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The President or Chief Executive Officer, or any other officer from time to time authorized by the Board, are authorized to vote, represent and exercise on behalf of this Corporation all rights incident to all shares of any other corporation or corporations standing in the name of this Corporation. The authority herein granted to said officers to vote or represent on behalf of this Corporation any and all shares held by this Corporation in any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by said officers.

ARTICLE VII

INDEMNIFICATION

Section 7.01 ACTIONS OTHER THAN BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

Section 7.02 ACTIONS BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or as a member of any committee or similar body, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 7.03 DETERMINATION OF RIGHT OF INDEMNIFICATION. Any indemnification under Section 7.01 or 7.02 of these Bylaws (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in

the circumstances because he has met the applicable standard of conduct set forth in Sections 7.01 and 7.02 of these Bylaws. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders voting in accordance with Section 2.06.

Section 7.04 INDEMNIFICATION AGAINST EXPENSES OF SUCCESSFUL PARTY. Notwithstanding the other provisions of this Article VII, to the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 7.01 or 7.02 of these Bylaws, or in defense of any claim, issue or matter therein, he may be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 7.05 ADVANCE OF EXPENSES. Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board upon receipt of an undertaking by or on behalf of the director or officer, to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VII. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

Section 7.06 OTHER RIGHTS AND REMEDIES. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VII shall not be deemed exclusive and are declared expressly to be nonexclusive of any other rights to which those seeking indemnification or advancements of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Section 7.07 INSURANCE. Upon resolution passed by the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article VII.

Section 7.08 CONSTITUENT CORPORATIONS. For the purposes of this Article VII, references to "the Corporation" include in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued,

would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body shall stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

Section 7.09 EMPLOYEE BENEFIT PLANS. For the purposes of this Article VII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VII.

Section 7.10 TERM. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7.11 SEVERABILITY. If any part of this Article VII shall be found, in any action, suit or proceeding or appeal therefrom or in any other circumstances or as to any particular officer, director, employee or agent to be unenforceable, ineffective or invalid for any reason, the enforceability, effect and validity of the remaining parts or of such parts in other circumstances shall not be affected, except as otherwise required by applicable law.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 SEAL. The Board shall provide a corporate seal, which shall be in the form of a circle and shall bear the name of the Corporation and words and figures showing that the Corporation was incorporated in the State of Delaware and showing the year of incorporation.

Section 8.02 WAIVER OF NOTICES. Whenever notice is required to be given under any provision of these Bylaws, the Certificate of Incorporation or by law, a

written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when a person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless required by the Certificate of Incorporation.

Section 8.03 LOANS AND GUARANTIES. The Corporation may lend money to, or guarantee any obligation of, and otherwise assist any officer or other employee of the Corporation or of its subsidiaries, including any officer who is a director, whenever, in the judgment of the Board, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty, or other assistance may be with or without interest, and may be unsecured or secured in such manner as the Board shall approve, including, without limitation, a pledge of shares of stock of the Corporation.

Section 8.04 GENDER. All personal pronouns used in these Bylaws shall include the other genders, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

Section 8.05 AMENDMENTS. These Bylaws, or any of them, may be rescinded, altered, amended or repealed, and new Bylaws may be made (i) by the Board, by vote of a majority of the number of directors then in office as directors, acting at any meeting of the Board or (ii) by the stockholders, by the vote of two-thirds of the outstanding shares of voting stock of the Corporation, at an annual meeting of stockholders, without previous notice, or at any special meeting of stockholders, provided that notice of such proposed amendment, modification, repeal or adoption is given in the notice of special meeting; provided, however, that Section 2.02 of these Bylaws can only be amended if that Section as amended would not conflict with the Corporation's Certificate of Incorporation. Any Bylaw made or altered by the stockholders may be altered or repealed by the Board or may be altered or repealed by the stockholders.

CERTIFICATE OF SECRETARY

The undersigned certifies that:

(1) He is duly elected and acting Secretary of SelectBuild Northern California, Inc., a Delaware corporation; and

(2) The foregoing Amended and Restated Bylaws constitute the Bylaws of the Corporation as duly adopted by Unanimous Written Consent of the Board of Directors dated as of _____.

IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____.

_____

[_____], Secretary

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5. Illinois Framing, Inc.

AMENDED AND RESTATED BYLAWS

OF

ILLINOIS FRAMING, INC

Amended and Restated Bylaws

of

Illinois Framing, Inc,
a Delaware corporation

ARTICLE I

OFFICES

Section 1.01 REGISTERED OFFICE. The registered office of Illinois Framing, Inc (hereinafter called the "Corporation") shall be at such place in the State of Delaware as shall be designated by the Board of Directors (hereinafter called the "Board").

Section 1.02 PRINCIPAL OFFICE. The principal office for the transaction of the business of the Corporation shall be at such location, within or without the State of Delaware, as shall be designated by the Board.

Section 1.03 OTHER OFFICES. The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board may from time to time determine or as the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.01 ANNUAL MEETINGS. Annual meetings of the stockholders of the Corporation for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings may be held at such time, date and place as the Board shall determine by resolution.

Section 2.02 SPECIAL MEETINGS. Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Board, or by a committee of the Board which has been duly designated by the Board and whose powers and authority, as provided in a resolution of the Board or in the Bylaws, include the power to call such meetings, or by one or more stockholders holding shares in the aggregate entitled to cast not less than a majority of the votes at that meeting, but such special meetings may not be called by any other person or persons; provided, however, that if and to the extent that any special meeting of stockholders may be called by any other person or persons specified in any provisions of the Certificate of Incorporation or any amendment thereto or any certificate filed under Section 151(g) of

the General Corporation Law of the State of Delaware (or its successor statute as in effect from time to time hereafter), then such special meeting may also be called by the person or persons, in the manner, at the time and for the purposes so specified.

Section 2.03 PLACE OF MEETINGS. All meetings of the stockholders shall be held at such places, within or without the State of Delaware, as may from time to time be designated by the person or persons calling the respective meetings and specified in the respective notices or waivers of notice thereof.

Section 2.04 NOTICE OF MEETINGS. Except as otherwise required by law, notice of each meeting of the stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting by delivering a typewritten or printed notice thereof to him personally, or by depositing such notice in the United States mail, in a postage prepaid envelope, directed to him at his address furnished by him to the Secretary of the Corporation for such purpose or, if he shall not have furnished to the Secretary his address for such purpose, then at his address last known to the Secretary, or by transmitting a notice thereof to him at such address by telegraph, cable or wireless. Except as otherwise expressly required by law, no publication of any notice of a meeting of the stockholders shall be required. Every notice of a meeting of the stockholders shall state the place, date and hour of the meeting, and, in the case of a special meeting shall also state the purpose or purposes for which the meeting is called. Except as otherwise expressly required by law, notice of any adjourned meeting of the stockholders need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken.

Whenever notice is required to be given to any stockholder to whom (i) notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve month period, have been mailed addressed to such person at his address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall have been taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the Corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated.

No notice need be given to any person with whom communication is unlawful, nor shall there be any duty to apply for any permission or license to give notice to any such person.

Section 2.05 QUORUM. Except as provided by law, the holders of record of a majority in voting interest of the shares of stock of the Corporation entitled to be voted, present in person or by proxy, shall constitute a quorum for the transaction of

business at any meeting of the stockholders of the Corporation or any adjournment thereof. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. In the absence of a quorum at any meeting or any adjournment thereof, a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat or, in the absence therefrom of all the stockholders, any officer entitled to preside at or to act as secretary of such meeting may adjourn such meeting from time to time. At any such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally called.

Section 2.06 VOTING.

(a) At each meeting of the stockholders, each stockholder shall be entitled to vote in person or by proxy each share or fractional share of the stock of the Corporation which has voting rights on the matter in question and which shall have been held by him and registered in his name on the books of the Corporation:

(i) on the date fixed pursuant to Section 2.10 of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting, or

(ii) if no such record date shall have been so fixed, then (A) at the close of business on the day next preceding the day on which notice of the meeting shall be given or (B) if notice of the meeting shall be waived, at the close of business on the day next preceding the day on which the meeting shall be held.

(b) Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors in such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Persons holding stock of the Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy, may represent such stock and vote thereon. Stock having voting power standing of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or with respect to which two or more persons have the same fiduciary relationship, shall be voted in accordance with the provisions of the General Corporation Law of Delaware.

(c) Any such voting rights may be exercised by the stockholder entitled thereto in person or by his proxy appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized and delivered to the secretary of the meeting; provided, however, that no proxy shall be voted or acted upon after three years from its date unless said proxy shall provide for a longer period.

The attendance at any meeting of a stockholder who may theretofore have given a proxy shall not have the effect of revoking the same unless he shall in writing so notify the secretary of the meeting prior to the voting of the proxy. At any meeting of the stockholders, all matters, except as otherwise provided in the Certificate of Incorporation, in these Bylaws or by law, shall be decided by the vote of a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat and thereon. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. The vote at any meeting of the stockholders on any question need not be by ballot, unless so directed by the chairman of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy if there be such proxy, and it shall state the number of shares voted.

Section 2.07 LIST OF STOCKHOLDERS. The Secretary of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the entire duration thereof, and may be inspected by any stockholder who is present.

Section 2.08 INSPECTOR OF ELECTION. If at any meeting of the stockholders a vote by written ballot shall be taken on any question, the chairman of such meeting may appoint an inspector or inspectors of election to act with respect to such vote. Each inspector so appointed shall first subscribe an oath faithfully to execute the duties of an inspector at such meeting with strict impartiality and according to the best of his ability. Such inspectors shall decide upon the qualification of the voters and shall report the number of shares represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and, when the voting is completed, shall ascertain and report the number of shares voted respectively for and against the question. Reports of the inspectors shall be in writing and subscribed and delivered by them to the Secretary of the Corporation. Inspectors need not be stockholders of the Corporation, and any officer of the Corporation may be an inspector on any question other than a vote for or against a proposal in which he shall have a material interest.

Section 2.09 STOCKHOLDER ACTION WITHOUT MEETINGS. Any action required by the General Corporation Law of the State of Delaware to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a

meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 2.10 RECORD DATE. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date: (i) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting; (ii) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days from the date upon which the resolution fixing the record date is adopted by the Board; and (iii) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (ii) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, or, if prior action by the Board is required by law, shall be at the close of business on the day on which the Board adopts the resolution taking such prior action; and (iii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

ARTICLE III

BOARD OF DIRECTORS

Section 3.01 GENERAL POWERS. The property, business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all of the powers of the Corporation, except such as are by the Certificate of Incorporation, by these Bylaws or by law conferred upon or reserved to the stockholders.

Section 3.02 NUMBER AND TERM. The authorized number of directors of the Corporation shall be established from time to time by the Board. Directors need not be stockholders of the Corporation. Each director shall hold office until a successor is elected and qualified or until the director resigns or is removed.

Section 3.03 ELECTION OF DIRECTORS. The directors shall be elected by the stockholders of the Corporation, and at each election the persons receiving the greatest number of votes, up to the number of directors then to be elected, shall be the persons then elected. The election of directors is subject to any provisions contained in the Certificate of Incorporation relating thereto, including any provisions for a classified board.

Section 3.04 RESIGNATION AND REMOVAL. Any director of the Corporation may resign at any time upon notice given in writing or by electronic transmission to the Board or to the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time is not specified, it shall take effect immediately upon its receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Except as otherwise provided by the Certificate of Incorporation or by law, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of shares then entitled to vote at an election of directors.

Section 3.05 VACANCIES. Except as otherwise provided in the Certificate of Incorporation, any vacancy in the Board, whether because of death, resignation, disqualification, an increase in the number of directors, or any other cause, may be filled by vote of the majority of the remaining directors, although less than a quorum, or by a sole remaining director. Each director so chosen to fill a vacancy shall hold office until his successor shall have been elected and shall qualify or until he shall resign or shall have been removed. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of his term of office.

Upon the resignation of one or more directors from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided hereinabove in the filling of other vacancies.

Section 3.06 PLACE OF MEETING; TELEPHONE CONFERENCE MEETING. The Board may hold any of its meetings at such place or places within or without the State of Delaware as the Board may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board by means of conference telephone or similar communications equipment pursuant to which all persons participating in the meeting of the Board can

hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.07 FIRST MEETING. The Board shall meet as soon as practicable after each annual election of directors and notice of such first meeting shall not be required.

Section 3.08 REGULAR MEETINGS. Regular meetings of the Board may be held at such times as the Board shall from time to time by resolution determine. If any day fixed for a meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting shall be held at the same hour and place on the next succeeding business day which is not a legal holiday. Except as provided by law, notice of regular meetings need not be given.

Section 3.09 SPECIAL MEETINGS. Special meetings of the Board may be called at any time by the Chairman of the Board or the President or by any two (2) directors, to be held at the principal office of the Corporation, or at such other place or places, within or without the State of Delaware, as the person or persons calling the meeting may designate.

Notice of the time and place of special meetings shall be given to each director either (i) by mailing or otherwise sending to him a written notice of such meeting, charges prepaid, addressed to him at his address as it is shown upon the records of the Corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held, at least seventy-two (72) hours prior to the time of the holding of such meeting; or (ii) by oral or electronic notice of such meeting at least forty-eight (48) hours prior to the time of the holding of such meeting. Either of the notices as above provided shall be due, legal and personal notice to such director.

Section 3.10 QUORUM AND ACTION. Except as otherwise provided in these Bylaws or by law, the presence of a majority of the authorized number of directors shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a majority of the directors present. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given. The directors shall act only as a Board, and the individual directors shall have no power as such.

Section 3.11 ACTION BY CONSENT. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing or by electronic transmission(s), and such written consent or electronic transmission(s) are filed with the minutes of proceedings of the Board or such

committee. Such action by written consent or electronic transmission shall have the same force and effect as the unanimous vote of such directors.

Section 3.12 COMPENSATION. No stated salary need be paid to directors, as such, for their services but, as fixed from time to time by resolution of the Board, the directors may receive directors' fees, compensation and reimbursement for expenses for attendance at directors' meetings, for serving on committees and for discharging their duties; provided that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.13 COMMITTEES. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board conducts its business pursuant to these Bylaws. Any such committee shall keep written minutes of its meetings and report the same to the Board when required.

Section 3.14 OFFICERS OF THE BOARD. A Chairman of the Board or a Vice Chairman may be appointed from time to time by the Board and shall have such powers and duties as shall be designated by the Board.

ARTICLE IV

OFFICERS

Section 4.01 OFFICERS. The officers of the Corporation shall be a President, a Secretary and a Treasurer. The Corporation may also have, at the discretion of the Board, a Chairman of the Board, a Chief Executive Officer, one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers and such other officers as may be appointed in accordance with the provisions of Section 4.03 of these Bylaws. Any number of offices may be held

by the same person. The salaries of all officers of the Corporation shall be fixed from time to time by the Board.

Section 4.02 ELECTION AND TERM. The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 4.03 or Section 4.05 of these Bylaws, shall be chosen annually by the Board, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or until his successor shall be elected and qualified.

Section 4.03 SUBORDINATE OFFICERS. The Board may appoint, or may authorize the President or Chief Executive Officer, if any, to appoint, such other officers as the business of the Corporation may require, each of whom shall have such authority and perform such duties as are provided in these Bylaws or as the Board, the President or the Chief Executive Officer, if any, from time to time may specify, and shall hold office until he shall resign or shall be removed or otherwise disqualified to serve.

Section 4.04 REMOVAL AND RESIGNATION. Any officer may be removed, with or without cause, by a majority of the directors at the time in office, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board, by the President or Chief Executive Officer, if any, upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Board, the Chairman of the Board, the President, the Chief Executive Officer or the Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.05 VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for the regular appointments to such office.

Section 4.06 CHAIRMAN OF THE BOARD. The Chairman of the Board, if such an officer be elected, shall, if present, preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the Bylaws. If there is no Chief Executive Officer or President, the Chairman of the Board shall in addition be the Chief Executive Officer of the Corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.07 CHIEF EXECUTIVE OFFICER. The Chief Executive Officer, if such an officer be elected, shall, subject to the control of the Board, have general supervision, direction and control of the business and affairs of the Corporation. In the absence or disability of the Chairman of the Board, or if no such officer is elected, the Chief Executive Officer shall preside at all meetings of shareholders and the Board of Directors. He shall have the general powers and duties of management usually vested in

the chief executive officer of a corporation, and shall have such other powers and duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to him by the Board of Directors or as prescribed by the Bylaws.

Section 4.08 PRESIDENT. Subject to such supervisory powers as may be given by the Board of Directors to the Chairman of the Board or the Chief Executive Officer, if there be such officers, the President shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may from time to time be prescribed by the Board of Directors or Chief Executive Officer, if any, or as prescribed by the Bylaws. If there is no Chief Executive Officer, the President shall be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.09 VICE PRESIDENT. The Vice President(s), if any, shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Corporation as from time to time may be assigned to each of them by the President, by the Chief Executive Officer, if any, by the Chairman of the Board, if any, by the Board or as is prescribed by the Bylaws. In the absence or disability of the President and Chief Executive Officer, if any, the Vice Presidents, in order of their rank as fixed by the Board, or if not ranked, the Vice President designated by the Board, shall perform all of the duties of the President and when so acting shall have all of the powers of and be subject to all the restrictions upon the President.

Section 4.10 SECRETARY. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office for the transaction of the business of the Corporation, or such other place as the Board may order, of all meetings of directors and stockholders, with the time and place of holding, whether regular or special, and if special, how authorized and the notice thereof given, the names of those present at directors' meetings, the number of shares present or represented at stockholders' meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office for the transaction of the business of the Corporation or at the office of the Corporation's transfer agent, a share register, or a duplicate share register, showing the names of the stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all the meetings of the stockholders and of the Board required by these Bylaws or by law to be given, and he shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws. If for any reason the Secretary shall fail to give notice of any special meeting of the Board called by one or more of the persons identified in Section 3.09 of these Bylaws, or if he

shall fail to give notice of any special meeting of the stockholders called by one or more of the persons identified in Section 2.02 of these Bylaws, then any such person or persons may give notice of any such special meeting.

Section 4.11 TREASURER. The Treasurer shall keep and maintain or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and shares. Any surplus, including earned surplus, paid-in surplus and surplus arising from a reduction of capital, shall be classified according to source and shown in a separate account. The books of account at all reasonable times shall be open to inspection by any director.

The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. He shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the President, to the Chief Executive Officer, if any, and to the directors, whenever they request it, an account of all of his transactions as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

Section 4.12 COMPENSATION. The compensation of the officers of the Corporation, if any, shall be fixed from time to time by the Board.

ARTICLE V

CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

Section 5.01 EXECUTION OF CONTRACTS. The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board or by these Bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount. Notwithstanding the foregoing, the President or Chief Executive Officer, or such other person as the President or Chief Executive Officer may designate, shall have authority to enter into contracts which are usual and customary in the ordinary course of the Corporation's business on behalf of the Corporation.

Section 5.02 CHECKS, DRAFTS, ETC. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. Each such person shall give such bond, if any, as the Board may require.

Section 5.03 DEPOSIT. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select, or as may be selected by any officer or officers, assistant or assistants, agent or agents, attorney or attorneys, of the Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the President, the Chief Executive Officer, any Vice President or the Treasurer (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation who shall be determined by the Board from time to time) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

Section 5.04 GENERAL AND SPECIAL BANK ACCOUNTS. The Board from time to time may authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may select or as may be selected by an officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

ARTICLE VI

SHARES AND THEIR TRANSFER

Section 6.01 CERTIFICATES FOR STOCK. Every owner of stock of the Corporation shall be entitled to have a certificate or certificates, in such form as the Board shall prescribe, certifying the number and class of shares of the stock of the Corporation owned by him. The certificates representing shares of such stock shall be numbered in the order in which they shall be issued and shall be signed in the name of the Corporation by the Chairman of the Board, the President or a Vice President and by the Secretary or an Assistant Secretary or by the Treasurer or an Assistant Treasurer. Any or all of the signatures on the certificates may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon any such certificate shall thereafter have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by the Corporation with the same effect as though the person who signed such certificate, or whose facsimile signature shall have been placed thereupon, were such officer, transfer agent or registrar at the date of issue. A record shall be kept of the respective names of the persons, firms or corporations owning the stock represented by such certificates, the number and class of shares represented by such certificates, respectively, and the respective dates thereof, and in case of cancellation, the respective dates of cancellation. Every certificate surrendered to the Corporation for exchange or transfer shall be cancelled, and no new certificate or certificates shall be issued in exchange for any

existing certificate until such existing certificate shall have been so cancelled, except in cases provided for in Section 6.04 of these Bylaws.

Section 6.02 TRANSFER OF STOCK. Transfer of shares of stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, or with a transfer clerk or a transfer agent appointed as provided in Section 6.03 of these Bylaws, and upon surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation. Whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact shall be stated expressly in the entry of transfer if, when the certificate or certificates shall be presented to the Corporation for transfer, both the transferor and the transferee request the Corporation to do so.

Section 6.03 REGULATIONS. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. The Board may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

Section 6.04 LOST, STOLEN, DESTROYED AND MUTILATED CERTIFICATES. In any case of loss, theft, destruction, or mutilation of any certificate of stock, another may be issued in its place upon proof of such loss, theft, destruction, or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sums as the Board may direct; provided, however, that a new certificate may be issued without requiring any bond when, in the judgment of the Board, it is proper to do so.

Section 6.05 REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The President or Chief Executive Officer, or any other officer from time to time authorized by the Board, are authorized to vote, represent and exercise on behalf of this Corporation all rights incident to all shares of any other corporation or corporations standing in the name of this Corporation. The authority herein granted to said officers to vote or represent on behalf of this Corporation any and all shares held by this Corporation in any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by said officers.

ARTICLE VII

INDEMNIFICATION

Section 7.01 ACTIONS OTHER THAN BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

Section 7.02 ACTIONS BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or as a member of any committee or similar body, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 7.03 DETERMINATION OF RIGHT OF INDEMNIFICATION. Any indemnification under Section 7.01 or 7.02 of these Bylaws (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in

the circumstances because he has met the applicable standard of conduct set forth in Sections 7.01 and 7.02 of these Bylaws. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders voting in accordance with Section 2.06.

Section 7.04 INDEMNIFICATION AGAINST EXPENSES OF SUCCESSFUL PARTY. Notwithstanding the other provisions of this Article VII, to the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 7.01 or 7.02 of these Bylaws, or in defense of any claim, issue or matter therein, he may be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 7.05 ADVANCE OF EXPENSES. Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board upon receipt of an undertaking by or on behalf of the director or officer, to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VII. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

Section 7.06 OTHER RIGHTS AND REMEDIES. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VII shall not be deemed exclusive and are declared expressly to be nonexclusive of any other rights to which those seeking indemnification or advancements of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Section 7.07 INSURANCE. Upon resolution passed by the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article VII.

Section 7.08 CONSTITUENT CORPORATIONS. For the purposes of this Article VII, references to "the Corporation" include in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued,

would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body shall stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

Section 7.09 EMPLOYEE BENEFIT PLANS. For the purposes of this Article VII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VII.

Section 7.10 TERM. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7.11 SEVERABILITY. If any part of this Article VII shall be found, in any action, suit or proceeding or appeal therefrom or in any other circumstances or as to any particular officer, director, employee or agent to be unenforceable, ineffective or invalid for any reason, the enforceability, effect and validity of the remaining parts or of such parts in other circumstances shall not be affected, except as otherwise required by applicable law.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 SEAL. The Board shall provide a corporate seal, which shall be in the form of a circle and shall bear the name of the Corporation and words and figures showing that the Corporation was incorporated in the State of Delaware and showing the year of incorporation.

Section 8.02 WAIVER OF NOTICES. Whenever notice is required to be given under any provision of these Bylaws, the Certificate of Incorporation or by law, a

written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when a person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless required by the Certificate of Incorporation.

Section 8.03 LOANS AND GUARANTIES. The Corporation may lend money to, or guarantee any obligation of, and otherwise assist any officer or other employee of the Corporation or of its subsidiaries, including any officer who is a director, whenever, in the judgment of the Board, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty, or other assistance may be with or without interest, and may be unsecured or secured in such manner as the Board shall approve, including, without limitation, a pledge of shares of stock of the Corporation.

Section 8.04 GENDER. All personal pronouns used in these Bylaws shall include the other genders, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

Section 8.05 AMENDMENTS. These Bylaws, or any of them, may be rescinded, altered, amended or repealed, and new Bylaws may be made (i) by the Board, by vote of a majority of the number of directors then in office as directors, acting at any meeting of the Board or (ii) by the stockholders, by the vote of two-thirds of the outstanding shares of voting stock of the Corporation, at an annual meeting of stockholders, without previous notice, or at any special meeting of stockholders, provided that notice of such proposed amendment, modification, repeal or adoption is given in the notice of special meeting; provided, however, that Section 2.02 of these Bylaws can only be amended if that Section as amended would not conflict with the Corporation's Certificate of Incorporation. Any Bylaw made or altered by the stockholders may be altered or repealed by the Board or may be altered or repealed by the stockholders.

CERTIFICATE OF SECRETARY

The undersigned certifies that:

(1) He is duly elected and acting Secretary of Illinois Framing, Inc, a Delaware corporation; and

(2) The foregoing Amended and Restated Bylaws constitute the Bylaws of the Corporation as duly adopted by Unanimous Written Consent of the Board of Directors dated as of _____.

IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____.

_____

[_____], Secretary

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6. C Construction, Inc.

AMENDED AND RESTATED BYLAWS

OF

C CONSTRUCTION, INC

Amended and Restated Bylaws

of

C Construction, Inc,
a Delaware corporation

ARTICLE I

OFFICES

Section 1.01 REGISTERED OFFICE. The registered office of C Construction, Inc (hereinafter called the "Corporation") shall be at such place in the State of Delaware as shall be designated by the Board of Directors (hereinafter called the "Board").

Section 1.02 PRINCIPAL OFFICE. The principal office for the transaction of the business of the Corporation shall be at such location, within or without the State of Delaware, as shall be designated by the Board.

Section 1.03 OTHER OFFICES. The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board may from time to time determine or as the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.01 ANNUAL MEETINGS. Annual meetings of the stockholders of the Corporation for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings may be held at such time, date and place as the Board shall determine by resolution.

Section 2.02 SPECIAL MEETINGS. Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Board, or by a committee of the Board which has been duly designated by the Board and whose powers and authority, as provided in a resolution of the Board or in the Bylaws, include the power to call such meetings, or by one or more stockholders holding shares in the aggregate entitled to cast not less than a majority of the votes at that meeting, but such special meetings may not be called by any other person or persons; provided, however, that if and to the extent that any special meeting of stockholders may be called by any other person or persons specified in any provisions of the Certificate of Incorporation or any amendment thereto or any certificate filed under Section 151(g) of

the General Corporation Law of the State of Delaware (or its successor statute as in effect from time to time hereafter), then such special meeting may also be called by the person or persons, in the manner, at the time and for the purposes so specified.

Section 2.03 PLACE OF MEETINGS. All meetings of the stockholders shall be held at such places, within or without the State of Delaware, as may from time to time be designated by the person or persons calling the respective meetings and specified in the respective notices or waivers of notice thereof.

Section 2.04 NOTICE OF MEETINGS. Except as otherwise required by law, notice of each meeting of the stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting by delivering a typewritten or printed notice thereof to him personally, or by depositing such notice in the United States mail, in a postage prepaid envelope, directed to him at his address furnished by him to the Secretary of the Corporation for such purpose or, if he shall not have furnished to the Secretary his address for such purpose, then at his address last known to the Secretary, or by transmitting a notice thereof to him at such address by telegraph, cable or wireless. Except as otherwise expressly required by law, no publication of any notice of a meeting of the stockholders shall be required. Every notice of a meeting of the stockholders shall state the place, date and hour of the meeting, and, in the case of a special meeting shall also state the purpose or purposes for which the meeting is called. Except as otherwise expressly required by law, notice of any adjourned meeting of the stockholders need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken.

Whenever notice is required to be given to any stockholder to whom (i) notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve month period, have been mailed addressed to such person at his address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall have been taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the Corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated.

No notice need be given to any person with whom communication is unlawful, nor shall there be any duty to apply for any permission or license to give notice to any such person.

Section 2.05 QUORUM. Except as provided by law, the holders of record of a majority in voting interest of the shares of stock of the Corporation entitled to be voted, present in person or by proxy, shall constitute a quorum for the transaction of

business at any meeting of the stockholders of the Corporation or any adjournment thereof. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. In the absence of a quorum at any meeting or any adjournment thereof, a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat or, in the absence therefrom of all the stockholders, any officer entitled to preside at or to act as secretary of such meeting may adjourn such meeting from time to time. At any such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally called.

Section 2.06 VOTING.

(a) At each meeting of the stockholders, each stockholder shall be entitled to vote in person or by proxy each share or fractional share of the stock of the Corporation which has voting rights on the matter in question and which shall have been held by him and registered in his name on the books of the Corporation:

(i) on the date fixed pursuant to Section 2.10 of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting, or

(ii) if no such record date shall have been so fixed, then (A) at the close of business on the day next preceding the day on which notice of the meeting shall be given or (B) if notice of the meeting shall be waived, at the close of business on the day next preceding the day on which the meeting shall be held.

(b) Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors in such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Persons holding stock of the Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy, may represent such stock and vote thereon. Stock having voting power standing of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or with respect to which two or more persons have the same fiduciary relationship, shall be voted in accordance with the provisions of the General Corporation Law of Delaware.

(c) Any such voting rights may be exercised by the stockholder entitled thereto in person or by his proxy appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized and delivered to the secretary of the meeting; provided, however, that no proxy shall be voted or acted upon after three years from its date unless said proxy shall provide for a longer period.

The attendance at any meeting of a stockholder who may theretofore have given a proxy shall not have the effect of revoking the same unless he shall in writing so notify the secretary of the meeting prior to the voting of the proxy. At any meeting of the stockholders, all matters, except as otherwise provided in the Certificate of Incorporation, in these Bylaws or by law, shall be decided by the vote of a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat and thereon. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. The vote at any meeting of the stockholders on any question need not be by ballot, unless so directed by the chairman of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy if there be such proxy, and it shall state the number of shares voted.

Section 2.07 LIST OF STOCKHOLDERS. The Secretary of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the entire duration thereof, and may be inspected by any stockholder who is present.

Section 2.08 INSPECTOR OF ELECTION. If at any meeting of the stockholders a vote by written ballot shall be taken on any question, the chairman of such meeting may appoint an inspector or inspectors of election to act with respect to such vote. Each inspector so appointed shall first subscribe an oath faithfully to execute the duties of an inspector at such meeting with strict impartiality and according to the best of his ability. Such inspectors shall decide upon the qualification of the voters and shall report the number of shares represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and, when the voting is completed, shall ascertain and report the number of shares voted respectively for and against the question. Reports of the inspectors shall be in writing and subscribed and delivered by them to the Secretary of the Corporation. Inspectors need not be stockholders of the Corporation, and any officer of the Corporation may be an inspector on any question other than a vote for or against a proposal in which he shall have a material interest.

Section 2.09 STOCKHOLDER ACTION WITHOUT MEETINGS. Any action required by the General Corporation Law of the State of Delaware to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a

meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 2.10 RECORD DATE. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date: (i) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting; (ii) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days from the date upon which the resolution fixing the record date is adopted by the Board; and (iii) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (ii) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, or, if prior action by the Board is required by law, shall be at the close of business on the day on which the Board adopts the resolution taking such prior action; and (iii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

ARTICLE III

BOARD OF DIRECTORS

Section 3.01 GENERAL POWERS. The property, business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all of the powers of the Corporation, except such as are by the Certificate of Incorporation, by these Bylaws or by law conferred upon or reserved to the stockholders.

Section 3.02 NUMBER AND TERM. The authorized number of directors of the Corporation shall be established from time to time by the Board. Directors need not be stockholders of the Corporation. Each director shall hold office until a successor is elected and qualified or until the director resigns or is removed.

Section 3.03 ELECTION OF DIRECTORS. The directors shall be elected by the stockholders of the Corporation, and at each election the persons receiving the greatest number of votes, up to the number of directors then to be elected, shall be the persons then elected. The election of directors is subject to any provisions contained in the Certificate of Incorporation relating thereto, including any provisions for a classified board.

Section 3.04 RESIGNATION AND REMOVAL. Any director of the Corporation may resign at any time upon notice given in writing or by electronic transmission to the Board or to the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time is not specified, it shall take effect immediately upon its receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Except as otherwise provided by the Certificate of Incorporation or by law, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of shares then entitled to vote at an election of directors.

Section 3.05 VACANCIES. Except as otherwise provided in the Certificate of Incorporation, any vacancy in the Board, whether because of death, resignation, disqualification, an increase in the number of directors, or any other cause, may be filled by vote of the majority of the remaining directors, although less than a quorum, or by a sole remaining director. Each director so chosen to fill a vacancy shall hold office until his successor shall have been elected and shall qualify or until he shall resign or shall have been removed. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of his term of office.

Upon the resignation of one or more directors from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided hereinabove in the filling of other vacancies.

Section 3.06 PLACE OF MEETING; TELEPHONE CONFERENCE MEETING. The Board may hold any of its meetings at such place or places within or without the State of Delaware as the Board may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board by means of conference telephone or similar communications equipment pursuant to which all persons participating in the meeting of the Board can

hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.07 FIRST MEETING. The Board shall meet as soon as practicable after each annual election of directors and notice of such first meeting shall not be required.

Section 3.08 REGULAR MEETINGS. Regular meetings of the Board may be held at such times as the Board shall from time to time by resolution determine. If any day fixed for a meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting shall be held at the same hour and place on the next succeeding business day which is not a legal holiday. Except as provided by law, notice of regular meetings need not be given.

Section 3.09 SPECIAL MEETINGS. Special meetings of the Board may be called at any time by the Chairman of the Board or the President or by any two (2) directors, to be held at the principal office of the Corporation, or at such other place or places, within or without the State of Delaware, as the person or persons calling the meeting may designate.

Notice of the time and place of special meetings shall be given to each director either (i) by mailing or otherwise sending to him a written notice of such meeting, charges prepaid, addressed to him at his address as it is shown upon the records of the Corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held, at least seventy-two (72) hours prior to the time of the holding of such meeting; or (ii) by oral or electronic notice of such meeting at least forty-eight (48) hours prior to the time of the holding of such meeting. Either of the notices as above provided shall be due, legal and personal notice to such director.

Section 3.10 QUORUM AND ACTION. Except as otherwise provided in these Bylaws or by law, the presence of a majority of the authorized number of directors shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a majority of the directors present. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given. The directors shall act only as a Board, and the individual directors shall have no power as such.

Section 3.11 ACTION BY CONSENT. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing or by electronic transmission(s), and such written consent or electronic transmission(s) are filed with the minutes of proceedings of the Board or such

committee. Such action by written consent or electronic transmission shall have the same force and effect as the unanimous vote of such directors.

Section 3.12 COMPENSATION. No stated salary need be paid to directors, as such, for their services but, as fixed from time to time by resolution of the Board, the directors may receive directors' fees, compensation and reimbursement for expenses for attendance at directors' meetings, for serving on committees and for discharging their duties; provided that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.13 COMMITTEES. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board conducts its business pursuant to these Bylaws. Any such committee shall keep written minutes of its meetings and report the same to the Board when required.

Section 3.14 OFFICERS OF THE BOARD. A Chairman of the Board or a Vice Chairman may be appointed from time to time by the Board and shall have such powers and duties as shall be designated by the Board.

ARTICLE IV

OFFICERS

Section 4.01 OFFICERS. The officers of the Corporation shall be a President, a Secretary and a Treasurer. The Corporation may also have, at the discretion of the Board, a Chairman of the Board, a Chief Executive Officer, one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers and such other officers as may be appointed in accordance with the provisions of Section 4.03 of these Bylaws. Any number of offices may be held

by the same person. The salaries of all officers of the Corporation shall be fixed from time to time by the Board.

Section 4.02 ELECTION AND TERM. The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 4.03 or Section 4.05 of these Bylaws, shall be chosen annually by the Board, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or until his successor shall be elected and qualified.

Section 4.03 SUBORDINATE OFFICERS. The Board may appoint, or may authorize the President or Chief Executive Officer, if any, to appoint, such other officers as the business of the Corporation may require, each of whom shall have such authority and perform such duties as are provided in these Bylaws or as the Board, the President or the Chief Executive Officer, if any, from time to time may specify, and shall hold office until he shall resign or shall be removed or otherwise disqualified to serve.

Section 4.04 REMOVAL AND RESIGNATION. Any officer may be removed, with or without cause, by a majority of the directors at the time in office, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board, by the President or Chief Executive Officer, if any, upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Board, the Chairman of the Board, the President, the Chief Executive Officer or the Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.05 VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for the regular appointments to such office.

Section 4.06 CHAIRMAN OF THE BOARD. The Chairman of the Board, if such an officer be elected, shall, if present, preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the Bylaws. If there is no Chief Executive Officer or President, the Chairman of the Board shall in addition be the Chief Executive Officer of the Corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.07 CHIEF EXECUTIVE OFFICER. The Chief Executive Officer, if such an officer be elected, shall, subject to the control of the Board, have general supervision, direction and control of the business and affairs of the Corporation. In the absence or disability of the Chairman of the Board, or if no such officer is elected, the Chief Executive Officer shall preside at all meetings of shareholders and the Board of Directors. He shall have the general powers and duties of management usually vested in

the chief executive officer of a corporation, and shall have such other powers and duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to him by the Board of Directors or as prescribed by the Bylaws.

Section 4.08 PRESIDENT. Subject to such supervisory powers as may be given by the Board of Directors to the Chairman of the Board or the Chief Executive Officer, if there be such officers, the President shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may from time to time be prescribed by the Board of Directors or Chief Executive Officer, if any, or as prescribed by the Bylaws. If there is no Chief Executive Officer, the President shall be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.09 VICE PRESIDENT. The Vice President(s), if any, shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Corporation as from time to time may be assigned to each of them by the President, by the Chief Executive Officer, if any, by the Chairman of the Board, if any, by the Board or as is prescribed by the Bylaws. In the absence or disability of the President and Chief Executive Officer, if any, the Vice Presidents, in order of their rank as fixed by the Board, or if not ranked, the Vice President designated by the Board, shall perform all of the duties of the President and when so acting shall have all of the powers of and be subject to all the restrictions upon the President.

Section 4.10 SECRETARY. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office for the transaction of the business of the Corporation, or such other place as the Board may order, of all meetings of directors and stockholders, with the time and place of holding, whether regular or special, and if special, how authorized and the notice thereof given, the names of those present at directors' meetings, the number of shares present or represented at stockholders' meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office for the transaction of the business of the Corporation or at the office of the Corporation's transfer agent, a share register, or a duplicate share register, showing the names of the stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all the meetings of the stockholders and of the Board required by these Bylaws or by law to be given, and he shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws. If for any reason the Secretary shall fail to give notice of any special meeting of the Board called by one or more of the persons identified in Section 3.09 of these Bylaws, or if he

shall fail to give notice of any special meeting of the stockholders called by one or more of the persons identified in Section 2.02 of these Bylaws, then any such person or persons may give notice of any such special meeting.

Section 4.11 TREASURER. The Treasurer shall keep and maintain or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and shares. Any surplus, including earned surplus, paid-in surplus and surplus arising from a reduction of capital, shall be classified according to source and shown in a separate account. The books of account at all reasonable times shall be open to inspection by any director.

The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. He shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the President, to the Chief Executive Officer, if any, and to the directors, whenever they request it, an account of all of his transactions as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

Section 4.12 COMPENSATION. The compensation of the officers of the Corporation, if any, shall be fixed from time to time by the Board.

ARTICLE V

CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

Section 5.01 EXECUTION OF CONTRACTS. The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board or by these Bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount. Notwithstanding the foregoing, the President or Chief Executive Officer, or such other person as the President or Chief Executive Officer may designate, shall have authority to enter into contracts which are usual and customary in the ordinary course of the Corporation's business on behalf of the Corporation.

Section 5.02 CHECKS, DRAFTS, ETC. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. Each such person shall give such bond, if any, as the Board may require.

Section 5.03 DEPOSIT. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select, or as may be selected by any officer or officers, assistant or assistants, agent or agents, attorney or attorneys, of the Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the President, the Chief Executive Officer, any Vice President or the Treasurer (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation who shall be determined by the Board from time to time) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

Section 5.04 GENERAL AND SPECIAL BANK ACCOUNTS. The Board from time to time may authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may select or as may be selected by an officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

ARTICLE VI

SHARES AND THEIR TRANSFER

Section 6.01 CERTIFICATES FOR STOCK. Every owner of stock of the Corporation shall be entitled to have a certificate or certificates, in such form as the Board shall prescribe, certifying the number and class of shares of the stock of the Corporation owned by him. The certificates representing shares of such stock shall be numbered in the order in which they shall be issued and shall be signed in the name of the Corporation by the Chairman of the Board, the President or a Vice President and by the Secretary or an Assistant Secretary or by the Treasurer or an Assistant Treasurer. Any or all of the signatures on the certificates may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon any such certificate shall thereafter have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by the Corporation with the same effect as though the person who signed such certificate, or whose facsimile signature shall have been placed thereupon, were such officer, transfer agent or registrar at the date of issue. A record shall be kept of the respective names of the persons, firms or corporations owning the stock represented by such certificates, the number and class of shares represented by such certificates, respectively, and the respective dates thereof, and in case of cancellation, the respective dates of cancellation. Every certificate surrendered to the Corporation for exchange or transfer shall be cancelled, and no new certificate or certificates shall be issued in exchange for any

existing certificate until such existing certificate shall have been so cancelled, except in cases provided for in Section 6.04 of these Bylaws.

Section 6.02 TRANSFER OF STOCK. Transfer of shares of stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, or with a transfer clerk or a transfer agent appointed as provided in Section 6.03 of these Bylaws, and upon surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation. Whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact shall be stated expressly in the entry of transfer if, when the certificate or certificates shall be presented to the Corporation for transfer, both the transferor and the transferee request the Corporation to do so.

Section 6.03 REGULATIONS. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. The Board may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

Section 6.04 LOST, STOLEN, DESTROYED AND MUTILATED CERTIFICATES. In any case of loss, theft, destruction, or mutilation of any certificate of stock, another may be issued in its place upon proof of such loss, theft, destruction, or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sums as the Board may direct; provided, however, that a new certificate may be issued without requiring any bond when, in the judgment of the Board, it is proper to do so.

Section 6.05 REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The President or Chief Executive Officer, or any other officer from time to time authorized by the Board, are authorized to vote, represent and exercise on behalf of this Corporation all rights incident to all shares of any other corporation or corporations standing in the name of this Corporation. The authority herein granted to said officers to vote or represent on behalf of this Corporation any and all shares held by this Corporation in any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by said officers.

ARTICLE VII

INDEMNIFICATION

Section 7.01 ACTIONS OTHER THAN BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

Section 7.02 ACTIONS BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or as a member of any committee or similar body, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 7.03 DETERMINATION OF RIGHT OF INDEMNIFICATION. Any indemnification under Section 7.01 or 7.02 of these Bylaws (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in

the circumstances because he has met the applicable standard of conduct set forth in Sections 7.01 and 7.02 of these Bylaws. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders voting in accordance with Section 2.06.

Section 7.04 INDEMNIFICATION AGAINST EXPENSES OF SUCCESSFUL PARTY. Notwithstanding the other provisions of this Article VII, to the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 7.01 or 7.02 of these Bylaws, or in defense of any claim, issue or matter therein, he may be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 7.05 ADVANCE OF EXPENSES. Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board upon receipt of an undertaking by or on behalf of the director or officer, to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VII. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

Section 7.06 OTHER RIGHTS AND REMEDIES. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VII shall not be deemed exclusive and are declared expressly to be nonexclusive of any other rights to which those seeking indemnification or advancements of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Section 7.07 INSURANCE. Upon resolution passed by the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article VII.

Section 7.08 CONSTITUENT CORPORATIONS. For the purposes of this Article VII, references to "the Corporation" include in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued,

would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body shall stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

Section 7.09 EMPLOYEE BENEFIT PLANS. For the purposes of this Article VII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VII.

Section 7.10 TERM. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7.11 SEVERABILITY. If any part of this Article VII shall be found, in any action, suit or proceeding or appeal therefrom or in any other circumstances or as to any particular officer, director, employee or agent to be unenforceable, ineffective or invalid for any reason, the enforceability, effect and validity of the remaining parts or of such parts in other circumstances shall not be affected, except as otherwise required by applicable law.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 SEAL. The Board shall provide a corporate seal, which shall be in the form of a circle and shall bear the name of the Corporation and words and figures showing that the Corporation was incorporated in the State of Delaware and showing the year of incorporation.

Section 8.02 WAIVER OF NOTICES. Whenever notice is required to be given under any provision of these Bylaws, the Certificate of Incorporation or by law, a

written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when a person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless required by the Certificate of Incorporation.

Section 8.03 LOANS AND GUARANTIES. The Corporation may lend money to, or guarantee any obligation of, and otherwise assist any officer or other employee of the Corporation or of its subsidiaries, including any officer who is a director, whenever, in the judgment of the Board, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty, or other assistance may be with or without interest, and may be unsecured or secured in such manner as the Board shall approve, including, without limitation, a pledge of shares of stock of the Corporation.

Section 8.04 GENDER. All personal pronouns used in these Bylaws shall include the other genders, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

Section 8.05 AMENDMENTS. These Bylaws, or any of them, may be rescinded, altered, amended or repealed, and new Bylaws may be made (i) by the Board, by vote of a majority of the number of directors then in office as directors, acting at any meeting of the Board or (ii) by the stockholders, by the vote of two-thirds of the outstanding shares of voting stock of the Corporation, at an annual meeting of stockholders, without previous notice, or at any special meeting of stockholders, provided that notice of such proposed amendment, modification, repeal or adoption is given in the notice of special meeting; provided, however, that Section 2.02 of these Bylaws can only be amended if that Section as amended would not conflict with the Corporation's Certificate of Incorporation. Any Bylaw made or altered by the stockholders may be altered or repealed by the Board or may be altered or repealed by the stockholders.

CERTIFICATE OF SECRETARY

The undersigned certifies that:

(1) He is duly elected and acting Secretary of C Construction, Inc, a Delaware corporation; and

(2) The foregoing Amended and Restated Bylaws constitute the Bylaws of the Corporation as duly adopted by Unanimous Written Consent of the Board of Directors dated as of _____.

IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____.

_____

[_____], Secretary

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7. TWF Construction, Inc.

AMENDED AND RESTATED BYLAWS

OF

TWF CONSTRUCTION, INC.

Amended and Restated Bylaws

of

TWF Construction, Inc.,
a Delaware corporation

ARTICLE I

OFFICES

Section 1.01 REGISTERED OFFICE. The registered office of TWF Construction, Inc. (hereinafter called the "Corporation") shall be at such place in the State of Delaware as shall be designated by the Board of Directors (hereinafter called the "Board").

Section 1.02 PRINCIPAL OFFICE. The principal office for the transaction of the business of the Corporation shall be at such location, within or without the State of Delaware, as shall be designated by the Board.

Section 1.03 OTHER OFFICES. The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board may from time to time determine or as the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.01 ANNUAL MEETINGS. Annual meetings of the stockholders of the Corporation for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings may be held at such time, date and place as the Board shall determine by resolution.

Section 2.02 SPECIAL MEETINGS. Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Board, or by a committee of the Board which has been duly designated by the Board and whose powers and authority, as provided in a resolution of the Board or in the Bylaws, include the power to call such meetings, or by one or more stockholders holding shares in the aggregate entitled to cast not less than a majority of the votes at that meeting, but such special meetings may not be called by any other person or persons; provided, however, that if and to the extent that any special meeting of stockholders may be called by any other person or persons specified in any provisions of the Certificate of Incorporation or any amendment thereto or any certificate filed under Section 151(g) of

the General Corporation Law of the State of Delaware (or its successor statute as in effect from time to time hereafter), then such special meeting may also be called by the person or persons, in the manner, at the time and for the purposes so specified.

Section 2.03 PLACE OF MEETINGS. All meetings of the stockholders shall be held at such places, within or without the State of Delaware, as may from time to time be designated by the person or persons calling the respective meetings and specified in the respective notices or waivers of notice thereof.

Section 2.04 NOTICE OF MEETINGS. Except as otherwise required by law, notice of each meeting of the stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting by delivering a typewritten or printed notice thereof to him personally, or by depositing such notice in the United States mail, in a postage prepaid envelope, directed to him at his address furnished by him to the Secretary of the Corporation for such purpose or, if he shall not have furnished to the Secretary his address for such purpose, then at his address last known to the Secretary, or by transmitting a notice thereof to him at such address by telegraph, cable or wireless. Except as otherwise expressly required by law, no publication of any notice of a meeting of the stockholders shall be required. Every notice of a meeting of the stockholders shall state the place, date and hour of the meeting, and, in the case of a special meeting shall also state the purpose or purposes for which the meeting is called. Except as otherwise expressly required by law, notice of any adjourned meeting of the stockholders need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken.

Whenever notice is required to be given to any stockholder to whom (i) notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve month period, have been mailed addressed to such person at his address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall have been taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the Corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated.

No notice need be given to any person with whom communication is unlawful, nor shall there be any duty to apply for any permission or license to give notice to any such person.

Section 2.05 QUORUM. Except as provided by law, the holders of record of a majority in voting interest of the shares of stock of the Corporation entitled to be voted, present in person or by proxy, shall constitute a quorum for the transaction of

business at any meeting of the stockholders of the Corporation or any adjournment thereof. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. In the absence of a quorum at any meeting or any adjournment thereof, a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat or, in the absence therefrom of all the stockholders, any officer entitled to preside at or to act as secretary of such meeting may adjourn such meeting from time to time. At any such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally called.

Section 2.06 VOTING.

(a) At each meeting of the stockholders, each stockholder shall be entitled to vote in person or by proxy each share or fractional share of the stock of the Corporation which has voting rights on the matter in question and which shall have been held by him and registered in his name on the books of the Corporation:

(i) on the date fixed pursuant to Section 2.10 of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting, or

(ii) if no such record date shall have been so fixed, then (A) at the close of business on the day next preceding the day on which notice of the meeting shall be given or (B) if notice of the meeting shall be waived, at the close of business on the day next preceding the day on which the meeting shall be held.

(b) Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors in such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Persons holding stock of the Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy, may represent such stock and vote thereon. Stock having voting power standing of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or with respect to which two or more persons have the same fiduciary relationship, shall be voted in accordance with the provisions of the General Corporation Law of Delaware.

(c) Any such voting rights may be exercised by the stockholder entitled thereto in person or by his proxy appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized and delivered to the secretary of the meeting; provided, however, that no proxy shall be voted or acted upon after three years from its date unless said proxy shall provide for a longer period.

The attendance at any meeting of a stockholder who may theretofore have given a proxy shall not have the effect of revoking the same unless he shall in writing so notify the secretary of the meeting prior to the voting of the proxy. At any meeting of the stockholders, all matters, except as otherwise provided in the Certificate of Incorporation, in these Bylaws or by law, shall be decided by the vote of a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat and thereon. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. The vote at any meeting of the stockholders on any question need not be by ballot, unless so directed by the chairman of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy if there be such proxy, and it shall state the number of shares voted.

Section 2.07 LIST OF STOCKHOLDERS. The Secretary of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the entire duration thereof, and may be inspected by any stockholder who is present.

Section 2.08 INSPECTOR OF ELECTION. If at any meeting of the stockholders a vote by written ballot shall be taken on any question, the chairman of such meeting may appoint an inspector or inspectors of election to act with respect to such vote. Each inspector so appointed shall first subscribe an oath faithfully to execute the duties of an inspector at such meeting with strict impartiality and according to the best of his ability. Such inspectors shall decide upon the qualification of the voters and shall report the number of shares represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and, when the voting is completed, shall ascertain and report the number of shares voted respectively for and against the question. Reports of the inspectors shall be in writing and subscribed and delivered by them to the Secretary of the Corporation. Inspectors need not be stockholders of the Corporation, and any officer of the Corporation may be an inspector on any question other than a vote for or against a proposal in which he shall have a material interest.

Section 2.09 STOCKHOLDER ACTION WITHOUT MEETINGS. Any action required by the General Corporation Law of the State of Delaware to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a

meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 2.10 RECORD DATE. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date: (i) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting; (ii) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days from the date upon which the resolution fixing the record date is adopted by the Board; and (iii) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (ii) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, or, if prior action by the Board is required by law, shall be at the close of business on the day on which the Board adopts the resolution taking such prior action; and (iii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

ARTICLE III

BOARD OF DIRECTORS

Section 3.01 GENERAL POWERS. The property, business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all of the powers of the Corporation, except such as are by the Certificate of Incorporation, by these Bylaws or by law conferred upon or reserved to the stockholders.

Section 3.02 NUMBER AND TERM. The authorized number of directors of the Corporation shall be established from time to time by the Board. Directors need not be stockholders of the Corporation. Each director shall hold office until a successor is elected and qualified or until the director resigns or is removed.

Section 3.03 ELECTION OF DIRECTORS. The directors shall be elected by the stockholders of the Corporation, and at each election the persons receiving the greatest number of votes, up to the number of directors then to be elected, shall be the persons then elected. The election of directors is subject to any provisions contained in the Certificate of Incorporation relating thereto, including any provisions for a classified board.

Section 3.04 RESIGNATION AND REMOVAL. Any director of the Corporation may resign at any time upon notice given in writing or by electronic transmission to the Board or to the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time is not specified, it shall take effect immediately upon its receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Except as otherwise provided by the Certificate of Incorporation or by law, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of shares then entitled to vote at an election of directors.

Section 3.05 VACANCIES. Except as otherwise provided in the Certificate of Incorporation, any vacancy in the Board, whether because of death, resignation, disqualification, an increase in the number of directors, or any other cause, may be filled by vote of the majority of the remaining directors, although less than a quorum, or by a sole remaining director. Each director so chosen to fill a vacancy shall hold office until his successor shall have been elected and shall qualify or until he shall resign or shall have been removed. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of his term of office.

Upon the resignation of one or more directors from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided hereinabove in the filling of other vacancies.

Section 3.06 PLACE OF MEETING; TELEPHONE CONFERENCE MEETING. The Board may hold any of its meetings at such place or places within or without the State of Delaware as the Board may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board by means of conference telephone or similar communications equipment pursuant to which all persons participating in the meeting of the Board can

hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.07 FIRST MEETING. The Board shall meet as soon as practicable after each annual election of directors and notice of such first meeting shall not be required.

Section 3.08 REGULAR MEETINGS. Regular meetings of the Board may be held at such times as the Board shall from time to time by resolution determine. If any day fixed for a meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting shall be held at the same hour and place on the next succeeding business day which is not a legal holiday. Except as provided by law, notice of regular meetings need not be given.

Section 3.09 SPECIAL MEETINGS. Special meetings of the Board may be called at any time by the Chairman of the Board or the President or by any two (2) directors, to be held at the principal office of the Corporation, or at such other place or places, within or without the State of Delaware, as the person or persons calling the meeting may designate.

Notice of the time and place of special meetings shall be given to each director either (i) by mailing or otherwise sending to him a written notice of such meeting, charges prepaid, addressed to him at his address as it is shown upon the records of the Corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held, at least seventy-two (72) hours prior to the time of the holding of such meeting; or (ii) by oral or electronic notice of such meeting at least forty-eight (48) hours prior to the time of the holding of such meeting. Either of the notices as above provided shall be due, legal and personal notice to such director.

Section 3.10 QUORUM AND ACTION. Except as otherwise provided in these Bylaws or by law, the presence of a majority of the authorized number of directors shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a majority of the directors present. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given. The directors shall act only as a Board, and the individual directors shall have no power as such.

Section 3.11 ACTION BY CONSENT. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing or by electronic transmission(s), and such written consent or electronic transmission(s) are filed with the minutes of proceedings of the Board or such

committee. Such action by written consent or electronic transmission shall have the same force and effect as the unanimous vote of such directors.

Section 3.12 COMPENSATION. No stated salary need be paid to directors, as such, for their services but, as fixed from time to time by resolution of the Board, the directors may receive directors' fees, compensation and reimbursement for expenses for attendance at directors' meetings, for serving on committees and for discharging their duties; provided that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.13 COMMITTEES. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board conducts its business pursuant to these Bylaws. Any such committee shall keep written minutes of its meetings and report the same to the Board when required.

Section 3.14 OFFICERS OF THE BOARD. A Chairman of the Board or a Vice Chairman may be appointed from time to time by the Board and shall have such powers and duties as shall be designated by the Board.

ARTICLE IV

OFFICERS

Section 4.01 OFFICERS. The officers of the Corporation shall be a President, a Secretary and a Treasurer. The Corporation may also have, at the discretion of the Board, a Chairman of the Board, a Chief Executive Officer, one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers and such other officers as may be appointed in accordance with the provisions of Section 4.03 of these Bylaws. Any number of offices may be held

by the same person. The salaries of all officers of the Corporation shall be fixed from time to time by the Board.

Section 4.02 ELECTION AND TERM. The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 4.03 or Section 4.05 of these Bylaws, shall be chosen annually by the Board, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or until his successor shall be elected and qualified.

Section 4.03 SUBORDINATE OFFICERS. The Board may appoint, or may authorize the President or Chief Executive Officer, if any, to appoint, such other officers as the business of the Corporation may require, each of whom shall have such authority and perform such duties as are provided in these Bylaws or as the Board, the President or the Chief Executive Officer, if any, from time to time may specify, and shall hold office until he shall resign or shall be removed or otherwise disqualified to serve.

Section 4.04 REMOVAL AND RESIGNATION. Any officer may be removed, with or without cause, by a majority of the directors at the time in office, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board, by the President or Chief Executive Officer, if any, upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Board, the Chairman of the Board, the President, the Chief Executive Officer or the Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.05 VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for the regular appointments to such office.

Section 4.06 CHAIRMAN OF THE BOARD. The Chairman of the Board, if such an officer be elected, shall, if present, preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the Bylaws. If there is no Chief Executive Officer or President, the Chairman of the Board shall in addition be the Chief Executive Officer of the Corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.07 CHIEF EXECUTIVE OFFICER. The Chief Executive Officer, if such an officer be elected, shall, subject to the control of the Board, have general supervision, direction and control of the business and affairs of the Corporation. In the absence or disability of the Chairman of the Board, or if no such officer is elected, the Chief Executive Officer shall preside at all meetings of shareholders and the Board of Directors. He shall have the general powers and duties of management usually vested in

the chief executive officer of a corporation, and shall have such other powers and duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to him by the Board of Directors or as prescribed by the Bylaws.

Section 4.08 PRESIDENT. Subject to such supervisory powers as may be given by the Board of Directors to the Chairman of the Board or the Chief Executive Officer, if there be such officers, the President shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may from time to time be prescribed by the Board of Directors or Chief Executive Officer, if any, or as prescribed by the Bylaws. If there is no Chief Executive Officer, the President shall be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.09 VICE PRESIDENT. The Vice President(s), if any, shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Corporation as from time to time may be assigned to each of them by the President, by the Chief Executive Officer, if any, by the Chairman of the Board, if any, by the Board or as is prescribed by the Bylaws. In the absence or disability of the President and Chief Executive Officer, if any, the Vice Presidents, in order of their rank as fixed by the Board, or if not ranked, the Vice President designated by the Board, shall perform all of the duties of the President and when so acting shall have all of the powers of and be subject to all the restrictions upon the President.

Section 4.10 SECRETARY. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office for the transaction of the business of the Corporation, or such other place as the Board may order, of all meetings of directors and stockholders, with the time and place of holding, whether regular or special, and if special, how authorized and the notice thereof given, the names of those present at directors' meetings, the number of shares present or represented at stockholders' meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office for the transaction of the business of the Corporation or at the office of the Corporation's transfer agent, a share register, or a duplicate share register, showing the names of the stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all the meetings of the stockholders and of the Board required by these Bylaws or by law to be given, and he shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws. If for any reason the Secretary shall fail to give notice of any special meeting of the Board called by one or more of the persons identified in Section 3.09 of these Bylaws, or if he

shall fail to give notice of any special meeting of the stockholders called by one or more of the persons identified in Section 2.02 of these Bylaws, then any such person or persons may give notice of any such special meeting.

Section 4.11 TREASURER. The Treasurer shall keep and maintain or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and shares. Any surplus, including earned surplus, paid-in surplus and surplus arising from a reduction of capital, shall be classified according to source and shown in a separate account. The books of account at all reasonable times shall be open to inspection by any director.

The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. He shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the President, to the Chief Executive Officer, if any, and to the directors, whenever they request it, an account of all of his transactions as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

Section 4.12 COMPENSATION. The compensation of the officers of the Corporation, if any, shall be fixed from time to time by the Board.

ARTICLE V

CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

Section 5.01 EXECUTION OF CONTRACTS. The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board or by these Bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount. Notwithstanding the foregoing, the President or Chief Executive Officer, or such other person as the President or Chief Executive Officer may designate, shall have authority to enter into contracts which are usual and customary in the ordinary course of the Corporation's business on behalf of the Corporation.

Section 5.02 CHECKS, DRAFTS, ETC. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. Each such person shall give such bond, if any, as the Board may require.

Section 5.03 DEPOSIT. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select, or as may be selected by any officer or officers, assistant or assistants, agent or agents, attorney or attorneys, of the Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the President, the Chief Executive Officer, any Vice President or the Treasurer (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation who shall be determined by the Board from time to time) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

Section 5.04 GENERAL AND SPECIAL BANK ACCOUNTS. The Board from time to time may authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may select or as may be selected by an officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

ARTICLE VI

SHARES AND THEIR TRANSFER

Section 6.01 CERTIFICATES FOR STOCK. Every owner of stock of the Corporation shall be entitled to have a certificate or certificates, in such form as the Board shall prescribe, certifying the number and class of shares of the stock of the Corporation owned by him. The certificates representing shares of such stock shall be numbered in the order in which they shall be issued and shall be signed in the name of the Corporation by the Chairman of the Board, the President or a Vice President and by the Secretary or an Assistant Secretary or by the Treasurer or an Assistant Treasurer. Any or all of the signatures on the certificates may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon any such certificate shall thereafter have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by the Corporation with the same effect as though the person who signed such certificate, or whose facsimile signature shall have been placed thereupon, were such officer, transfer agent or registrar at the date of issue. A record shall be kept of the respective names of the persons, firms or corporations owning the stock represented by such certificates, the number and class of shares represented by such certificates, respectively, and the respective dates thereof, and in case of cancellation, the respective dates of cancellation. Every certificate surrendered to the Corporation for exchange or transfer shall be cancelled, and no new certificate or certificates shall be issued in exchange for any

existing certificate until such existing certificate shall have been so cancelled, except in cases provided for in Section 6.04 of these Bylaws.

Section 6.02 TRANSFER OF STOCK. Transfer of shares of stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, or with a transfer clerk or a transfer agent appointed as provided in Section 6.03 of these Bylaws, and upon surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation. Whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact shall be stated expressly in the entry of transfer if, when the certificate or certificates shall be presented to the Corporation for transfer, both the transferor and the transferee request the Corporation to do so.

Section 6.03 REGULATIONS. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. The Board may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

Section 6.04 LOST, STOLEN, DESTROYED AND MUTILATED CERTIFICATES. In any case of loss, theft, destruction, or mutilation of any certificate of stock, another may be issued in its place upon proof of such loss, theft, destruction, or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sums as the Board may direct; provided, however, that a new certificate may be issued without requiring any bond when, in the judgment of the Board, it is proper to do so.

Section 6.05 REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The President or Chief Executive Officer, or any other officer from time to time authorized by the Board, are authorized to vote, represent and exercise on behalf of this Corporation all rights incident to all shares of any other corporation or corporations standing in the name of this Corporation. The authority herein granted to said officers to vote or represent on behalf of this Corporation any and all shares held by this Corporation in any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by said officers.

ARTICLE VII

INDEMNIFICATION

Section 7.01 ACTIONS OTHER THAN BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

Section 7.02 ACTIONS BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or as a member of any committee or similar body, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 7.03 DETERMINATION OF RIGHT OF INDEMNIFICATION. Any indemnification under Section 7.01 or 7.02 of these Bylaws (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in

the circumstances because he has met the applicable standard of conduct set forth in Sections 7.01 and 7.02 of these Bylaws. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders voting in accordance with Section 2.06.

Section 7.04 INDEMNIFICATION AGAINST EXPENSES OF SUCCESSFUL PARTY. Notwithstanding the other provisions of this Article VII, to the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 7.01 or 7.02 of these Bylaws, or in defense of any claim, issue or matter therein, he may be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 7.05 ADVANCE OF EXPENSES. Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board upon receipt of an undertaking by or on behalf of the director or officer, to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VII. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

Section 7.06 OTHER RIGHTS AND REMEDIES. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VII shall not be deemed exclusive and are declared expressly to be nonexclusive of any other rights to which those seeking indemnification or advancements of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Section 7.07 INSURANCE. Upon resolution passed by the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article VII.

Section 7.08 CONSTITUENT CORPORATIONS. For the purposes of this Article VII, references to "the Corporation" include in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued,

would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body shall stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

Section 7.09 EMPLOYEE BENEFIT PLANS. For the purposes of this Article VII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VII.

Section 7.10 TERM. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7.11 SEVERABILITY. If any part of this Article VII shall be found, in any action, suit or proceeding or appeal therefrom or in any other circumstances or as to any particular officer, director, employee or agent to be unenforceable, ineffective or invalid for any reason, the enforceability, effect and validity of the remaining parts or of such parts in other circumstances shall not be affected, except as otherwise required by applicable law.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 SEAL. The Board shall provide a corporate seal, which shall be in the form of a circle and shall bear the name of the Corporation and words and figures showing that the Corporation was incorporated in the State of Delaware and showing the year of incorporation.

Section 8.02 WAIVER OF NOTICES. Whenever notice is required to be given under any provision of these Bylaws, the Certificate of Incorporation or by law, a

written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when a person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless required by the Certificate of Incorporation.

Section 8.03 LOANS AND GUARANTIES. The Corporation may lend money to, or guarantee any obligation of, and otherwise assist any officer or other employee of the Corporation or of its subsidiaries, including any officer who is a director, whenever, in the judgment of the Board, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty, or other assistance may be with or without interest, and may be unsecured or secured in such manner as the Board shall approve, including, without limitation, a pledge of shares of stock of the Corporation.

Section 8.04 GENDER. All personal pronouns used in these Bylaws shall include the other genders, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

Section 8.05 AMENDMENTS. These Bylaws, or any of them, may be rescinded, altered, amended or repealed, and new Bylaws may be made (i) by the Board, by vote of a majority of the number of directors then in office as directors, acting at any meeting of the Board or (ii) by the stockholders, by the vote of two-thirds of the outstanding shares of voting stock of the Corporation, at an annual meeting of stockholders, without previous notice, or at any special meeting of stockholders, provided that notice of such proposed amendment, modification, repeal or adoption is given in the notice of special meeting; provided, however, that Section 2.02 of these Bylaws can only be amended if that Section as amended would not conflict with the Corporation's Certificate of Incorporation. Any Bylaw made or altered by the stockholders may be altered or repealed by the Board or may be altered or repealed by the stockholders.

CERTIFICATE OF SECRETARY

The undersigned certifies that:

(1) He is duly elected and acting Secretary of TWF Construction, Inc., a Delaware corporation; and

(2) The foregoing Amended and Restated Bylaws constitute the Bylaws of the Corporation as duly adopted by Unanimous Written Consent of the Board of Directors dated as of _____.

IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____.

_____

[_____], Secretary

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8. H.N.R. Framing Systems, Inc.

AMENDED AND RESTATED
BYLAWS FOR THE REGULATION
OF
H.N.R. FRAMING SYSTEMS INC.,
a California corporation

ARTICLE I

Principal Executive Office

The principal executive office of the corporation shall be at such location, within or without the State of California, as shall be designated by the Board of Directors (hereinafter called the "Board").

ARTICLE II

Meeting of Shareholders

Section 2.01 Annual Meetings. Annual meetings of the shareholders of the Corporation for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings may be held at such time, date and place as the Board shall determine by resolution.

Section 2.02 Special Meetings. Special meetings of shareholders may be called by the board of directors, the chairman of the board (if there be such an officer), the president, or the holders of shares entitled to cast not less than ten percent (10%) of the votes at such meeting. Each special meeting shall be held at such date and time as is requested by the person or persons calling the meeting within the limits fixed by law.

Section 2.03 Place of Meetings. Each annual or special meeting of shareholders shall be held at such location as may be determined by the board of directors, or if no such determination is made, at such place as may be determined by the chief executive officer, or by any other officer authorized by the board of directors or the chief

executive officer to make such determination. If no location is so determined, any annual or special meeting shall be held at the principal executive office of the corporation.

Section 2.04 Notice of Meetings. Notice of each annual or special meeting of shareholders shall contain such information, and shall be given to such persons at such time, and in such manner, as the board of directors shall determine, or if no such determination is made, as the chief executive officer, or any other officer so authorized by the board of directors or the chief executive officer, shall determine, subject to the requirements of applicable law.

Section 2.05 Conduct of Meetings. Subject to the requirements of applicable law, all annual and special meetings of shareholders shall be conducted in accordance with such rules and procedures as the board of directors may determine and, as to matters not governed by such rules and procedures, as the chairman of such meeting shall determine. The chairman of any annual or special meeting of shareholders shall be designated by the board of directors and, in the absence of any such designation, shall be the chief executive officer of the corporation.

Section 2.06 Action Without Meeting. Any action required to be taken at any annual or special meeting of shareholders of the Corporation, or any action which may be taken at any annual or special meeting of such shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those shareholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a

sufficient number of holders or members to take the action were delivered to the Corporation in accordance with applicable law.

ARTICLE III

Directors

Section 3.01 Number. The authorized number of directors of the Corporation shall be established from time to time by the Board.

Section 3.02 Meetings of the Board. Each regular and special meeting of the board shall be held at a location determined as follows: The board of directors may designate any place, within or without the State of California, for the holding of any meeting. If no such designation is made, (i) any meeting called by a majority of the directors shall be held at such location, within the county of the corporation's principal executive office, as the directors calling the meeting shall designate; and (ii) any other meeting shall be held at such location, within the county of the corporation's principal executive office, as the chief executive officer may designate, or in the absence of such designation, at the corporation's principal executive office. Subject to the requirements of applicable law, all regular and special meetings of the board of directors shall be conducted in accordance with such rules and procedures as the board of directors may approve and, as to matters not governed by such rules and procedures, as the chairman of such meeting shall determine. The chairman of any regular or special meeting shall be designated by the directors and, in the absence of any such designation, shall be the chief executive officer of the corporation.

Members of the board of directors (or any committee appointed by the board) may participate in a meeting by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in such meeting in such manner shall constitute presence in person at such meeting.

Section 3.12 Action by Consent. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if a written consent thereto is signed by all members of the Board or of such committee, as the case may be, and such written consent is filed with the minutes of proceedings of the Board or committee.

ARTICLE IV

Indemnification of Directors, Officers, and Other Corporate Agents

Section 4.01 Indemnification. This corporation shall indemnify and hold harmless any person who is or was a director or officer of this corporation, or is or was serving at the request of the Board of Directors of this Corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise (an "Agent"), from and against any expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any "proceeding" (as defined in Section 317(a) of the California General Corporation Law) to the fullest extent permitted by applicable law. The corporation shall advance to its agents expenses incurred in defending any proceeding prior to the final disposition thereof to the fullest extent and in the manner permitted by applicable law.

Section 4.02 Right to Indemnification. This section shall create a right of indemnification for each person referred to in Section 4.01, whether or not the proceeding to which the indemnification relates arose in whole or in part prior to adoption of such section and in the event of death such right shall extend to such person's legal representatives. The right of indemnification hereby given shall not be exclusive of any other rights such person may have whether by law or under any agreement, insurance policy, vote of directors or shareholders, or otherwise.

Section 4.03 Insurance. The corporation shall have power to purchase and maintain insurance on behalf of any agent of the corporation against any liability asserted

against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not the corporation would have the power to indemnify the agent against such liability.

ARTICLE V

Officers

Section 5.01 Officers. The corporation shall have a president, a chief financial officer, a secretary, and such other officers, including a chairman of the board, as may be designated by the board. Unless the board of directors shall otherwise determine, the president shall be the chief executive officer of the corporation. Officers shall have such powers and duties as may be specified by, or in accordance with, resolutions of the board of directors. In the absence of any contrary determination by the board of directors, the chief executive officer shall, subject to the power and authority of the board of directors, have general supervision, direction, and control of the officers, employees, business, and affairs of the corporation.

Section 5.02 Limited Authority of Officers. No officer of the corporation shall have any power or authority outside the normal day-to-day business of the corporation to bind the corporation by any contract or engagement or to pledge its credit or to render it liable in connection with any transaction unless so authorized by the board of directors.

ARTICLE VI

Waiver of Annual Reports

So long as the corporation has less than 100 holders of record of its shares (determined as provided in Section 605 of the California General Corporation Law), no annual report to shareholders shall be required, and the requirement to the contrary of Section 1501 of the California General Corporation Law is hereby expressly waived.

ARTICLE VII

Amendments

New bylaws may be adopted or these bylaws may be amended or repealed by the shareholders or, except for Section 3.01, by the directors.

CERTIFICATE OF ASSISTANT SECRETARY

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting secretary of H.N.R. Framing Systems Inc., a California corporation; and

2. That the foregoing bylaws constitute the bylaws of said corporation as duly adopted by action of the directors of the corporation duly taken on _____.

IN WITNESS WHEREOF, I have hereunto subscribed my name this _____.

_____
, Secretary

9. SelectBuild Southern California, Inc.

AMENDED AND RESTATED BYLAWS

OF

SELECTBUILD SOUTHERN CALIFORNIA, INC.

Amended and Restated Bylaws

of

SelectBuild Southern California, Inc.,
a Delaware corporation

ARTICLE I

OFFICES

Section 1.01 REGISTERED OFFICE. The registered office of SelectBuild Southern California, Inc. (hereinafter called the "Corporation") shall be at such place in the State of Delaware as shall be designated by the Board of Directors (hereinafter called the "Board").

Section 1.02 PRINCIPAL OFFICE. The principal office for the transaction of the business of the Corporation shall be at such location, within or without the State of Delaware, as shall be designated by the Board.

Section 1.03 OTHER OFFICES. The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board may from time to time determine or as the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.01 ANNUAL MEETINGS. Annual meetings of the stockholders of the Corporation for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings may be held at such time, date and place as the Board shall determine by resolution.

Section 2.02 SPECIAL MEETINGS. Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Board, or by a committee of the Board which has been duly designated by the Board and whose powers and authority, as provided in a resolution of the Board or in the Bylaws, include the power to call such meetings, or by one or more stockholders holding shares in the aggregate entitled to cast not less than a majority of the votes at that meeting, but such special meetings may not be called by any other person or persons; provided, however, that if and to the extent that any special meeting of stockholders may be called by any other person or persons specified in any provisions of the Certificate of Incorporation or any amendment thereto or any certificate filed under Section 151(g) of

the General Corporation Law of the State of Delaware (or its successor statute as in effect from time to time hereafter), then such special meeting may also be called by the person or persons, in the manner, at the time and for the purposes so specified.

Section 2.03 PLACE OF MEETINGS. All meetings of the stockholders shall be held at such places, within or without the State of Delaware, as may from time to time be designated by the person or persons calling the respective meetings and specified in the respective notices or waivers of notice thereof.

Section 2.04 NOTICE OF MEETINGS. Except as otherwise required by law, notice of each meeting of the stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting by delivering a typewritten or printed notice thereof to him personally, or by depositing such notice in the United States mail, in a postage prepaid envelope, directed to him at his address furnished by him to the Secretary of the Corporation for such purpose or, if he shall not have furnished to the Secretary his address for such purpose, then at his address last known to the Secretary, or by transmitting a notice thereof to him at such address by telegraph, cable or wireless. Except as otherwise expressly required by law, no publication of any notice of a meeting of the stockholders shall be required. Every notice of a meeting of the stockholders shall state the place, date and hour of the meeting, and, in the case of a special meeting shall also state the purpose or purposes for which the meeting is called. Except as otherwise expressly required by law, notice of any adjourned meeting of the stockholders need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken.

Whenever notice is required to be given to any stockholder to whom (i) notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve month period, have been mailed addressed to such person at his address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall have been taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the Corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated.

No notice need be given to any person with whom communication is unlawful, nor shall there be any duty to apply for any permission or license to give notice to any such person.

Section 2.05 QUORUM. Except as provided by law, the holders of record of a majority in voting interest of the shares of stock of the Corporation entitled to be voted, present in person or by proxy, shall constitute a quorum for the transaction of

business at any meeting of the stockholders of the Corporation or any adjournment thereof. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. In the absence of a quorum at any meeting or any adjournment thereof, a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat or, in the absence therefrom of all the stockholders, any officer entitled to preside at or to act as secretary of such meeting may adjourn such meeting from time to time. At any such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally called.

Section 2.06 VOTING.

(a) At each meeting of the stockholders, each stockholder shall be entitled to vote in person or by proxy each share or fractional share of the stock of the Corporation which has voting rights on the matter in question and which shall have been held by him and registered in his name on the books of the Corporation:

(i) on the date fixed pursuant to Section 2.10 of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting, or

(ii) if no such record date shall have been so fixed, then (A) at the close of business on the day next preceding the day on which notice of the meeting shall be given or (B) if notice of the meeting shall be waived, at the close of business on the day next preceding the day on which the meeting shall be held.

(b) Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors in such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Persons holding stock of the Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy, may represent such stock and vote thereon. Stock having voting power standing of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or with respect to which two or more persons have the same fiduciary relationship, shall be voted in accordance with the provisions of the General Corporation Law of Delaware.

(c) Any such voting rights may be exercised by the stockholder entitled thereto in person or by his proxy appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized and delivered to the secretary of the meeting; provided, however, that no proxy shall be voted or acted upon after three years from its date unless said proxy shall provide for a longer period.

The attendance at any meeting of a stockholder who may theretofore have given a proxy shall not have the effect of revoking the same unless he shall in writing so notify the secretary of the meeting prior to the voting of the proxy. At any meeting of the stockholders, all matters, except as otherwise provided in the Certificate of Incorporation, in these Bylaws or by law, shall be decided by the vote of a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat and thereon. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. The vote at any meeting of the stockholders on any question need not be by ballot, unless so directed by the chairman of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy if there be such proxy, and it shall state the number of shares voted.

Section 2.07 LIST OF STOCKHOLDERS. The Secretary of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the entire duration thereof, and may be inspected by any stockholder who is present.

Section 2.08 INSPECTOR OF ELECTION. If at any meeting of the stockholders a vote by written ballot shall be taken on any question, the chairman of such meeting may appoint an inspector or inspectors of election to act with respect to such vote. Each inspector so appointed shall first subscribe an oath faithfully to execute the duties of an inspector at such meeting with strict impartiality and according to the best of his ability. Such inspectors shall decide upon the qualification of the voters and shall report the number of shares represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and, when the voting is completed, shall ascertain and report the number of shares voted respectively for and against the question. Reports of the inspectors shall be in writing and subscribed and delivered by them to the Secretary of the Corporation. Inspectors need not be stockholders of the Corporation, and any officer of the Corporation may be an inspector on any question other than a vote for or against a proposal in which he shall have a material interest.

Section 2.09 STOCKHOLDER ACTION WITHOUT MEETINGS. Any action required by the General Corporation Law of the State of Delaware to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a

meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 2.10 RECORD DATE. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date: (i) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting; (ii) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days from the date upon which the resolution fixing the record date is adopted by the Board; and (iii) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (ii) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, or, if prior action by the Board is required by law, shall be at the close of business on the day on which the Board adopts the resolution taking such prior action; and (iii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

ARTICLE III

BOARD OF DIRECTORS

Section 3.01 GENERAL POWERS. The property, business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all of the powers of the Corporation, except such as are by the Certificate of Incorporation, by these Bylaws or by law conferred upon or reserved to the stockholders.

Section 3.02 NUMBER AND TERM. The authorized number of directors of the Corporation shall be established from time to time by the Board. Directors need not be stockholders of the Corporation. Each director shall hold office until a successor is elected and qualified or until the director resigns or is removed.

Section 3.03 ELECTION OF DIRECTORS. The directors shall be elected by the stockholders of the Corporation, and at each election the persons receiving the greatest number of votes, up to the number of directors then to be elected, shall be the persons then elected. The election of directors is subject to any provisions contained in the Certificate of Incorporation relating thereto, including any provisions for a classified board.

Section 3.04 RESIGNATION AND REMOVAL. Any director of the Corporation may resign at any time upon notice given in writing or by electronic transmission to the Board or to the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time is not specified, it shall take effect immediately upon its receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Except as otherwise provided by the Certificate of Incorporation or by law, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of shares then entitled to vote at an election of directors.

Section 3.05 VACANCIES. Except as otherwise provided in the Certificate of Incorporation, any vacancy in the Board, whether because of death, resignation, disqualification, an increase in the number of directors, or any other cause, may be filled by vote of the majority of the remaining directors, although less than a quorum, or by a sole remaining director. Each director so chosen to fill a vacancy shall hold office until his successor shall have been elected and shall qualify or until he shall resign or shall have been removed. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of his term of office.

Upon the resignation of one or more directors from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided hereinabove in the filling of other vacancies.

Section 3.06 PLACE OF MEETING; TELEPHONE CONFERENCE MEETING. The Board may hold any of its meetings at such place or places within or without the State of Delaware as the Board may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board by means of conference telephone or similar communications equipment pursuant to which all persons participating in the meeting of the Board can

hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.07 FIRST MEETING. The Board shall meet as soon as practicable after each annual election of directors and notice of such first meeting shall not be required.

Section 3.08 REGULAR MEETINGS. Regular meetings of the Board may be held at such times as the Board shall from time to time by resolution determine. If any day fixed for a meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting shall be held at the same hour and place on the next succeeding business day which is not a legal holiday. Except as provided by law, notice of regular meetings need not be given.

Section 3.09 SPECIAL MEETINGS. Special meetings of the Board may be called at any time by the Chairman of the Board or the President or by any two (2) directors, to be held at the principal office of the Corporation, or at such other place or places, within or without the State of Delaware, as the person or persons calling the meeting may designate.

Notice of the time and place of special meetings shall be given to each director either (i) by mailing or otherwise sending to him a written notice of such meeting, charges prepaid, addressed to him at his address as it is shown upon the records of the Corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held, at least seventy-two (72) hours prior to the time of the holding of such meeting; or (ii) by oral or electronic notice of such meeting at least forty-eight (48) hours prior to the time of the holding of such meeting. Either of the notices as above provided shall be due, legal and personal notice to such director.

Section 3.10 QUORUM AND ACTION. Except as otherwise provided in these Bylaws or by law, the presence of a majority of the authorized number of directors shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a majority of the directors present. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given. The directors shall act only as a Board, and the individual directors shall have no power as such.

Section 3.11 ACTION BY CONSENT. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing or by electronic transmission(s), and such written consent or electronic transmission(s) are filed with the minutes of proceedings of the Board or such

committee. Such action by written consent or electronic transmission shall have the same force and effect as the unanimous vote of such directors.

Section 3.12 COMPENSATION. No stated salary need be paid to directors, as such, for their services but, as fixed from time to time by resolution of the Board, the directors may receive directors' fees, compensation and reimbursement for expenses for attendance at directors' meetings, for serving on committees and for discharging their duties; provided that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.13 COMMITTEES. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board conducts its business pursuant to these Bylaws. Any such committee shall keep written minutes of its meetings and report the same to the Board when required.

Section 3.14 OFFICERS OF THE BOARD. A Chairman of the Board or a Vice Chairman may be appointed from time to time by the Board and shall have such powers and duties as shall be designated by the Board.

ARTICLE IV

OFFICERS

Section 4.01 OFFICERS. The officers of the Corporation shall be a President, a Secretary and a Treasurer. The Corporation may also have, at the discretion of the Board, a Chairman of the Board, a Chief Executive Officer, one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers and such other officers as may be appointed in accordance with the provisions of Section 4.03 of these Bylaws. Any number of offices may be held

by the same person. The salaries of all officers of the Corporation shall be fixed from time to time by the Board.

Section 4.02 ELECTION AND TERM. The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 4.03 or Section 4.05 of these Bylaws, shall be chosen annually by the Board, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or until his successor shall be elected and qualified.

Section 4.03 SUBORDINATE OFFICERS. The Board may appoint, or may authorize the President or Chief Executive Officer, if any, to appoint, such other officers as the business of the Corporation may require, each of whom shall have such authority and perform such duties as are provided in these Bylaws or as the Board, the President or the Chief Executive Officer, if any, from time to time may specify, and shall hold office until he shall resign or shall be removed or otherwise disqualified to serve.

Section 4.04 REMOVAL AND RESIGNATION. Any officer may be removed, with or without cause, by a majority of the directors at the time in office, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board, by the President or Chief Executive Officer, if any, upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Board, the Chairman of the Board, the President, the Chief Executive Officer or the Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.05 VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for the regular appointments to such office.

Section 4.06 CHAIRMAN OF THE BOARD. The Chairman of the Board, if such an officer be elected, shall, if present, preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the Bylaws. If there is no Chief Executive Officer or President, the Chairman of the Board shall in addition be the Chief Executive Officer of the Corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.07 CHIEF EXECUTIVE OFFICER. The Chief Executive Officer, if such an officer be elected, shall, subject to the control of the Board, have general supervision, direction and control of the business and affairs of the Corporation. In the absence or disability of the Chairman of the Board, or if no such officer is elected, the Chief Executive Officer shall preside at all meetings of shareholders and the Board of Directors. He shall have the general powers and duties of management usually vested in

the chief executive officer of a corporation, and shall have such other powers and duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to him by the Board of Directors or as prescribed by the Bylaws.

Section 4.08 PRESIDENT. Subject to such supervisory powers as may be given by the Board of Directors to the Chairman of the Board or the Chief Executive Officer, if there be such officers, the President shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may from time to time be prescribed by the Board of Directors or Chief Executive Officer, if any, or as prescribed by the Bylaws. If there is no Chief Executive Officer, the President shall be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.09 VICE PRESIDENT. The Vice President(s), if any, shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Corporation as from time to time may be assigned to each of them by the President, by the Chief Executive Officer, if any, by the Chairman of the Board, if any, by the Board or as is prescribed by the Bylaws. In the absence or disability of the President and Chief Executive Officer, if any, the Vice Presidents, in order of their rank as fixed by the Board, or if not ranked, the Vice President designated by the Board, shall perform all of the duties of the President and when so acting shall have all of the powers of and be subject to all the restrictions upon the President.

Section 4.10 SECRETARY. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office for the transaction of the business of the Corporation, or such other place as the Board may order, of all meetings of directors and stockholders, with the time and place of holding, whether regular or special, and if special, how authorized and the notice thereof given, the names of those present at directors' meetings, the number of shares present or represented at stockholders' meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office for the transaction of the business of the Corporation or at the office of the Corporation's transfer agent, a share register, or a duplicate share register, showing the names of the stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all the meetings of the stockholders and of the Board required by these Bylaws or by law to be given, and he shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws. If for any reason the Secretary shall fail to give notice of any special meeting of the Board called by one or more of the persons identified in Section 3.09 of these Bylaws, or if he

shall fail to give notice of any special meeting of the stockholders called by one or more of the persons identified in Section 2.02 of these Bylaws, then any such person or persons may give notice of any such special meeting.

Section 4.11 TREASURER. The Treasurer shall keep and maintain or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and shares. Any surplus, including earned surplus, paid-in surplus and surplus arising from a reduction of capital, shall be classified according to source and shown in a separate account. The books of account at all reasonable times shall be open to inspection by any director.

The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. He shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the President, to the Chief Executive Officer, if any, and to the directors, whenever they request it, an account of all of his transactions as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

Section 4.12 COMPENSATION. The compensation of the officers of the Corporation, if any, shall be fixed from time to time by the Board.

ARTICLE V

CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

Section 5.01 EXECUTION OF CONTRACTS. The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board or by these Bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount. Notwithstanding the foregoing, the President or Chief Executive Officer, or such other person as the President or Chief Executive Officer may designate, shall have authority to enter into contracts which are usual and customary in the ordinary course of the Corporation's business on behalf of the Corporation.

Section 5.02 CHECKS, DRAFTS, ETC. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. Each such person shall give such bond, if any, as the Board may require.

Section 5.03 DEPOSIT. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select, or as may be selected by any officer or officers, assistant or assistants, agent or agents, attorney or attorneys, of the Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the President, the Chief Executive Officer, any Vice President or the Treasurer (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation who shall be determined by the Board from time to time) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

Section 5.04 GENERAL AND SPECIAL BANK ACCOUNTS. The Board from time to time may authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may select or as may be selected by an officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

ARTICLE VI

SHARES AND THEIR TRANSFER

Section 6.01 CERTIFICATES FOR STOCK. Every owner of stock of the Corporation shall be entitled to have a certificate or certificates, in such form as the Board shall prescribe, certifying the number and class of shares of the stock of the Corporation owned by him. The certificates representing shares of such stock shall be numbered in the order in which they shall be issued and shall be signed in the name of the Corporation by the Chairman of the Board, the President or a Vice President and by the Secretary or an Assistant Secretary or by the Treasurer or an Assistant Treasurer. Any or all of the signatures on the certificates may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon any such certificate shall thereafter have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by the Corporation with the same effect as though the person who signed such certificate, or whose facsimile signature shall have been placed thereupon, were such officer, transfer agent or registrar at the date of issue. A record shall be kept of the respective names of the persons, firms or corporations owning the stock represented by such certificates, the number and class of shares represented by such certificates, respectively, and the respective dates thereof, and in case of cancellation, the respective dates of cancellation. Every certificate surrendered to the Corporation for exchange or transfer shall be cancelled, and no new certificate or certificates shall be issued in exchange for any

existing certificate until such existing certificate shall have been so cancelled, except in cases provided for in Section 6.04 of these Bylaws.

Section 6.02 TRANSFER OF STOCK. Transfer of shares of stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, or with a transfer clerk or a transfer agent appointed as provided in Section 6.03 of these Bylaws, and upon surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation. Whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact shall be stated expressly in the entry of transfer if, when the certificate or certificates shall be presented to the Corporation for transfer, both the transferor and the transferee request the Corporation to do so.

Section 6.03 REGULATIONS. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. The Board may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

Section 6.04 LOST, STOLEN, DESTROYED AND MUTILATED CERTIFICATES. In any case of loss, theft, destruction, or mutilation of any certificate of stock, another may be issued in its place upon proof of such loss, theft, destruction, or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sums as the Board may direct; provided, however, that a new certificate may be issued without requiring any bond when, in the judgment of the Board, it is proper to do so.

Section 6.05 REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The President or Chief Executive Officer, or any other officer from time to time authorized by the Board, are authorized to vote, represent and exercise on behalf of this Corporation all rights incident to all shares of any other corporation or corporations standing in the name of this Corporation. The authority herein granted to said officers to vote or represent on behalf of this Corporation any and all shares held by this Corporation in any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by said officers.

ARTICLE VII

INDEMNIFICATION

Section 7.01 ACTIONS OTHER THAN BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

Section 7.02 ACTIONS BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or as a member of any committee or similar body, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 7.03 DETERMINATION OF RIGHT OF INDEMNIFICATION. Any indemnification under Section 7.01 or 7.02 of these Bylaws (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in

the circumstances because he has met the applicable standard of conduct set forth in Sections 7.01 and 7.02 of these Bylaws. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders voting in accordance with Section 2.06.

Section 7.04 INDEMNIFICATION AGAINST EXPENSES OF SUCCESSFUL PARTY. Notwithstanding the other provisions of this Article VII, to the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 7.01 or 7.02 of these Bylaws, or in defense of any claim, issue or matter therein, he may be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 7.05 ADVANCE OF EXPENSES. Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board upon receipt of an undertaking by or on behalf of the director or officer, to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VII. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

Section 7.06 OTHER RIGHTS AND REMEDIES. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VII shall not be deemed exclusive and are declared expressly to be nonexclusive of any other rights to which those seeking indemnification or advancements of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Section 7.07 INSURANCE. Upon resolution passed by the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article VII.

Section 7.08 CONSTITUENT CORPORATIONS. For the purposes of this Article VII, references to "the Corporation" include in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued,

would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body shall stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

Section 7.09 EMPLOYEE BENEFIT PLANS. For the purposes of this Article VII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VII.

Section 7.10 TERM. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7.11 SEVERABILITY. If any part of this Article VII shall be found, in any action, suit or proceeding or appeal therefrom or in any other circumstances or as to any particular officer, director, employee or agent to be unenforceable, ineffective or invalid for any reason, the enforceability, effect and validity of the remaining parts or of such parts in other circumstances shall not be affected, except as otherwise required by applicable law.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 SEAL. The Board shall provide a corporate seal, which shall be in the form of a circle and shall bear the name of the Corporation and words and figures showing that the Corporation was incorporated in the State of Delaware and showing the year of incorporation.

Section 8.02 WAIVER OF NOTICES. Whenever notice is required to be given under any provision of these Bylaws, the Certificate of Incorporation or by law, a

written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when a person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless required by the Certificate of Incorporation.

Section 8.03 LOANS AND GUARANTIES. The Corporation may lend money to, or guarantee any obligation of, and otherwise assist any officer or other employee of the Corporation or of its subsidiaries, including any officer who is a director, whenever, in the judgment of the Board, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty, or other assistance may be with or without interest, and may be unsecured or secured in such manner as the Board shall approve, including, without limitation, a pledge of shares of stock of the Corporation.

Section 8.04 GENDER. All personal pronouns used in these Bylaws shall include the other genders, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

Section 8.05 AMENDMENTS. These Bylaws, or any of them, may be rescinded, altered, amended or repealed, and new Bylaws may be made (i) by the Board, by vote of a majority of the number of directors then in office as directors, acting at any meeting of the Board or (ii) by the stockholders, by the vote of two-thirds of the outstanding shares of voting stock of the Corporation, at an annual meeting of stockholders, without previous notice, or at any special meeting of stockholders, provided that notice of such proposed amendment, modification, repeal or adoption is given in the notice of special meeting; provided, however, that Section 2.02 of these Bylaws can only be amended if that Section as amended would not conflict with the Corporation's Certificate of Incorporation. Any Bylaw made or altered by the stockholders may be altered or repealed by the Board or may be altered or repealed by the stockholders.

CERTIFICATE OF SECRETARY

The undersigned certifies that:

(1) He is duly elected and acting Secretary of SelectBuild Southern California, Inc., a Delaware corporation; and

(2) The foregoing Amended and Restated Bylaws constitute the Bylaws of the Corporation as duly adopted by Unanimous Written Consent of the Board of Directors dated as of _____.

IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____.

_____

[_____], Secretary

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10. SelectBuild Nevada, Inc.

AMENDED AND RESTATED BYLAWS

OF

SELECTBUILD NEVADA, INC.

Amended and Restated Bylaws

of

SelectBuild Nevada, Inc.,
a Delaware corporation

ARTICLE I

OFFICES

Section 1.01 REGISTERED OFFICE. The registered office of SelectBuild Nevada, Inc. (hereinafter called the "Corporation") shall be at such place in the State of Delaware as shall be designated by the Board of Directors (hereinafter called the "Board").

Section 1.02 PRINCIPAL OFFICE. The principal office for the transaction of the business of the Corporation shall be at such location, within or without the State of Delaware, as shall be designated by the Board.

Section 1.03 OTHER OFFICES. The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board may from time to time determine or as the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.01 ANNUAL MEETINGS. Annual meetings of the stockholders of the Corporation for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings may be held at such time, date and place as the Board shall determine by resolution.

Section 2.02 SPECIAL MEETINGS. Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Board, or by a committee of the Board which has been duly designated by the Board and whose powers and authority, as provided in a resolution of the Board or in the Bylaws, include the power to call such meetings, or by one or more stockholders holding shares in the aggregate entitled to cast not less than a majority of the votes at that meeting, but such special meetings may not be called by any other person or persons; provided, however, that if and to the extent that any special meeting of stockholders may be called by any other person or persons specified in any provisions of the Certificate of Incorporation or any amendment thereto or any certificate filed under Section 151(g) of

the General Corporation Law of the State of Delaware (or its successor statute as in effect from time to time hereafter), then such special meeting may also be called by the person or persons, in the manner, at the time and for the purposes so specified.

Section 2.03 PLACE OF MEETINGS. All meetings of the stockholders shall be held at such places, within or without the State of Delaware, as may from time to time be designated by the person or persons calling the respective meetings and specified in the respective notices or waivers of notice thereof.

Section 2.04 NOTICE OF MEETINGS. Except as otherwise required by law, notice of each meeting of the stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting by delivering a typewritten or printed notice thereof to him personally, or by depositing such notice in the United States mail, in a postage prepaid envelope, directed to him at his address furnished by him to the Secretary of the Corporation for such purpose or, if he shall not have furnished to the Secretary his address for such purpose, then at his address last known to the Secretary, or by transmitting a notice thereof to him at such address by telegraph, cable or wireless. Except as otherwise expressly required by law, no publication of any notice of a meeting of the stockholders shall be required. Every notice of a meeting of the stockholders shall state the place, date and hour of the meeting, and, in the case of a special meeting shall also state the purpose or purposes for which the meeting is called. Except as otherwise expressly required by law, notice of any adjourned meeting of the stockholders need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken.

Whenever notice is required to be given to any stockholder to whom (i) notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve month period, have been mailed addressed to such person at his address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall have been taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the Corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated.

No notice need be given to any person with whom communication is unlawful, nor shall there be any duty to apply for any permission or license to give notice to any such person.

Section 2.05 QUORUM. Except as provided by law, the holders of record of a majority in voting interest of the shares of stock of the Corporation entitled to be voted, present in person or by proxy, shall constitute a quorum for the transaction of

business at any meeting of the stockholders of the Corporation or any adjournment thereof. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. In the absence of a quorum at any meeting or any adjournment thereof, a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat or, in the absence therefrom of all the stockholders, any officer entitled to preside at or to act as secretary of such meeting may adjourn such meeting from time to time. At any such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally called.

Section 2.06 VOTING.

(a) At each meeting of the stockholders, each stockholder shall be entitled to vote in person or by proxy each share or fractional share of the stock of the Corporation which has voting rights on the matter in question and which shall have been held by him and registered in his name on the books of the Corporation:

(i) on the date fixed pursuant to Section 2.10 of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting, or

(ii) if no such record date shall have been so fixed, then (A) at the close of business on the day next preceding the day on which notice of the meeting shall be given or (B) if notice of the meeting shall be waived, at the close of business on the day next preceding the day on which the meeting shall be held.

(b) Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors in such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Persons holding stock of the Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy, may represent such stock and vote thereon. Stock having voting power standing of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or with respect to which two or more persons have the same fiduciary relationship, shall be voted in accordance with the provisions of the General Corporation Law of Delaware.

(c) Any such voting rights may be exercised by the stockholder entitled thereto in person or by his proxy appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized and delivered to the secretary of the meeting; provided, however, that no proxy shall be voted or acted upon after three years from its date unless said proxy shall provide for a longer period.

The attendance at any meeting of a stockholder who may theretofore have given a proxy shall not have the effect of revoking the same unless he shall in writing so notify the secretary of the meeting prior to the voting of the proxy. At any meeting of the stockholders, all matters, except as otherwise provided in the Certificate of Incorporation, in these Bylaws or by law, shall be decided by the vote of a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat and thereon. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. The vote at any meeting of the stockholders on any question need not be by ballot, unless so directed by the chairman of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy if there be such proxy, and it shall state the number of shares voted.

Section 2.07 LIST OF STOCKHOLDERS. The Secretary of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the entire duration thereof, and may be inspected by any stockholder who is present.

Section 2.08 INSPECTOR OF ELECTION. If at any meeting of the stockholders a vote by written ballot shall be taken on any question, the chairman of such meeting may appoint an inspector or inspectors of election to act with respect to such vote. Each inspector so appointed shall first subscribe an oath faithfully to execute the duties of an inspector at such meeting with strict impartiality and according to the best of his ability. Such inspectors shall decide upon the qualification of the voters and shall report the number of shares represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and, when the voting is completed, shall ascertain and report the number of shares voted respectively for and against the question. Reports of the inspectors shall be in writing and subscribed and delivered by them to the Secretary of the Corporation. Inspectors need not be stockholders of the Corporation, and any officer of the Corporation may be an inspector on any question other than a vote for or against a proposal in which he shall have a material interest.

Section 2.09 STOCKHOLDER ACTION WITHOUT MEETINGS. Any action required by the General Corporation Law of the State of Delaware to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a

meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 2.10 RECORD DATE. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date: (i) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting; (ii) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days from the date upon which the resolution fixing the record date is adopted by the Board; and (iii) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (ii) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, or, if prior action by the Board is required by law, shall be at the close of business on the day on which the Board adopts the resolution taking such prior action; and (iii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

ARTICLE III

BOARD OF DIRECTORS

Section 3.01 GENERAL POWERS. The property, business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all of the powers of the Corporation, except such as are by the Certificate of Incorporation, by these Bylaws or by law conferred upon or reserved to the stockholders.

Section 3.02 NUMBER AND TERM. The authorized number of directors of the Corporation shall be established from time to time by the Board. Directors need not be stockholders of the Corporation. Each director shall hold office until a successor is elected and qualified or until the director resigns or is removed.

Section 3.03 ELECTION OF DIRECTORS. The directors shall be elected by the stockholders of the Corporation, and at each election the persons receiving the greatest number of votes, up to the number of directors then to be elected, shall be the persons then elected. The election of directors is subject to any provisions contained in the Certificate of Incorporation relating thereto, including any provisions for a classified board.

Section 3.04 RESIGNATION AND REMOVAL. Any director of the Corporation may resign at any time upon notice given in writing or by electronic transmission to the Board or to the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time is not specified, it shall take effect immediately upon its receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Except as otherwise provided by the Certificate of Incorporation or by law, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of shares then entitled to vote at an election of directors.

Section 3.05 VACANCIES. Except as otherwise provided in the Certificate of Incorporation, any vacancy in the Board, whether because of death, resignation, disqualification, an increase in the number of directors, or any other cause, may be filled by vote of the majority of the remaining directors, although less than a quorum, or by a sole remaining director. Each director so chosen to fill a vacancy shall hold office until his successor shall have been elected and shall qualify or until he shall resign or shall have been removed. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of his term of office.

Upon the resignation of one or more directors from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided hereinabove in the filling of other vacancies.

Section 3.06 PLACE OF MEETING; TELEPHONE CONFERENCE MEETING. The Board may hold any of its meetings at such place or places within or without the State of Delaware as the Board may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board by means of conference telephone or similar communications equipment pursuant to which all persons participating in the meeting of the Board can

hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.07 FIRST MEETING. The Board shall meet as soon as practicable after each annual election of directors and notice of such first meeting shall not be required.

Section 3.08 REGULAR MEETINGS. Regular meetings of the Board may be held at such times as the Board shall from time to time by resolution determine. If any day fixed for a meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting shall be held at the same hour and place on the next succeeding business day which is not a legal holiday. Except as provided by law, notice of regular meetings need not be given.

Section 3.09 SPECIAL MEETINGS. Special meetings of the Board may be called at any time by the Chairman of the Board or the President or by any two (2) directors, to be held at the principal office of the Corporation, or at such other place or places, within or without the State of Delaware, as the person or persons calling the meeting may designate.

Notice of the time and place of special meetings shall be given to each director either (i) by mailing or otherwise sending to him a written notice of such meeting, charges prepaid, addressed to him at his address as it is shown upon the records of the Corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held, at least seventy-two (72) hours prior to the time of the holding of such meeting; or (ii) by oral or electronic notice of such meeting at least forty-eight (48) hours prior to the time of the holding of such meeting. Either of the notices as above provided shall be due, legal and personal notice to such director.

Section 3.10 QUORUM AND ACTION. Except as otherwise provided in these Bylaws or by law, the presence of a majority of the authorized number of directors shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a majority of the directors present. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given. The directors shall act only as a Board, and the individual directors shall have no power as such.

Section 3.11 ACTION BY CONSENT. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing or by electronic transmission(s), and such written consent or electronic transmission(s) are filed with the minutes of proceedings of the Board or such

committee. Such action by written consent or electronic transmission shall have the same force and effect as the unanimous vote of such directors.

Section 3.12 COMPENSATION. No stated salary need be paid to directors, as such, for their services but, as fixed from time to time by resolution of the Board, the directors may receive directors' fees, compensation and reimbursement for expenses for attendance at directors' meetings, for serving on committees and for discharging their duties; provided that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.13 COMMITTEES. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board conducts its business pursuant to these Bylaws. Any such committee shall keep written minutes of its meetings and report the same to the Board when required.

Section 3.14 OFFICERS OF THE BOARD. A Chairman of the Board or a Vice Chairman may be appointed from time to time by the Board and shall have such powers and duties as shall be designated by the Board.

ARTICLE IV

OFFICERS

Section 4.01 OFFICERS. The officers of the Corporation shall be a President, a Secretary and a Treasurer. The Corporation may also have, at the discretion of the Board, a Chairman of the Board, a Chief Executive Officer, one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers and such other officers as may be appointed in accordance with the provisions of Section 4.03 of these Bylaws. Any number of offices may be held

by the same person. The salaries of all officers of the Corporation shall be fixed from time to time by the Board.

Section 4.02 ELECTION AND TERM. The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 4.03 or Section 4.05 of these Bylaws, shall be chosen annually by the Board, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or until his successor shall be elected and qualified.

Section 4.03 SUBORDINATE OFFICERS. The Board may appoint, or may authorize the President or Chief Executive Officer, if any, to appoint, such other officers as the business of the Corporation may require, each of whom shall have such authority and perform such duties as are provided in these Bylaws or as the Board, the President or the Chief Executive Officer, if any, from time to time may specify, and shall hold office until he shall resign or shall be removed or otherwise disqualified to serve.

Section 4.04 REMOVAL AND RESIGNATION. Any officer may be removed, with or without cause, by a majority of the directors at the time in office, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board, by the President or Chief Executive Officer, if any, upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Board, the Chairman of the Board, the President, the Chief Executive Officer or the Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.05 VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for the regular appointments to such office.

Section 4.06 CHAIRMAN OF THE BOARD. The Chairman of the Board, if such an officer be elected, shall, if present, preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the Bylaws. If there is no Chief Executive Officer or President, the Chairman of the Board shall in addition be the Chief Executive Officer of the Corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.07 CHIEF EXECUTIVE OFFICER. The Chief Executive Officer, if such an officer be elected, shall, subject to the control of the Board, have general supervision, direction and control of the business and affairs of the Corporation. In the absence or disability of the Chairman of the Board, or if no such officer is elected, the Chief Executive Officer shall preside at all meetings of shareholders and the Board of Directors. He shall have the general powers and duties of management usually vested in

the chief executive officer of a corporation, and shall have such other powers and duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to him by the Board of Directors or as prescribed by the Bylaws.

Section 4.08 PRESIDENT. Subject to such supervisory powers as may be given by the Board of Directors to the Chairman of the Board or the Chief Executive Officer, if there be such officers, the President shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may from time to time be prescribed by the Board of Directors or Chief Executive Officer, if any, or as prescribed by the Bylaws. If there is no Chief Executive Officer, the President shall be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 4.07 of this Article IV.

Section 4.09 VICE PRESIDENT. The Vice President(s), if any, shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Corporation as from time to time may be assigned to each of them by the President, by the Chief Executive Officer, if any, by the Chairman of the Board, if any, by the Board or as is prescribed by the Bylaws. In the absence or disability of the President and Chief Executive Officer, if any, the Vice Presidents, in order of their rank as fixed by the Board, or if not ranked, the Vice President designated by the Board, shall perform all of the duties of the President and when so acting shall have all of the powers of and be subject to all the restrictions upon the President.

Section 4.10 SECRETARY. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office for the transaction of the business of the Corporation, or such other place as the Board may order, of all meetings of directors and stockholders, with the time and place of holding, whether regular or special, and if special, how authorized and the notice thereof given, the names of those present at directors' meetings, the number of shares present or represented at stockholders' meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office for the transaction of the business of the Corporation or at the office of the Corporation's transfer agent, a share register, or a duplicate share register, showing the names of the stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all the meetings of the stockholders and of the Board required by these Bylaws or by law to be given, and he shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws. If for any reason the Secretary shall fail to give notice of any special meeting of the Board called by one or more of the persons identified in Section 3.09 of these Bylaws, or if he

shall fail to give notice of any special meeting of the stockholders called by one or more of the persons identified in Section 2.02 of these Bylaws, then any such person or persons may give notice of any such special meeting.

Section 4.11 TREASURER. The Treasurer shall keep and maintain or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and shares. Any surplus, including earned surplus, paid-in surplus and surplus arising from a reduction of capital, shall be classified according to source and shown in a separate account. The books of account at all reasonable times shall be open to inspection by any director.

The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. He shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the President, to the Chief Executive Officer, if any, and to the directors, whenever they request it, an account of all of his transactions as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

Section 4.12 COMPENSATION. The compensation of the officers of the Corporation, if any, shall be fixed from time to time by the Board.

ARTICLE V

CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

Section 5.01 EXECUTION OF CONTRACTS. The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board or by these Bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount. Notwithstanding the foregoing, the President or Chief Executive Officer, or such other person as the President or Chief Executive Officer may designate, shall have authority to enter into contracts which are usual and customary in the ordinary course of the Corporation's business on behalf of the Corporation.

Section 5.02 CHECKS, DRAFTS, ETC. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. Each such person shall give such bond, if any, as the Board may require.

Section 5.03 DEPOSIT. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select, or as may be selected by any officer or officers, assistant or assistants, agent or agents, attorney or attorneys, of the Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the President, the Chief Executive Officer, any Vice President or the Treasurer (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation who shall be determined by the Board from time to time) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

Section 5.04 GENERAL AND SPECIAL BANK ACCOUNTS. The Board from time to time may authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may select or as may be selected by an officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

ARTICLE VI

SHARES AND THEIR TRANSFER

Section 6.01 CERTIFICATES FOR STOCK. Every owner of stock of the Corporation shall be entitled to have a certificate or certificates, in such form as the Board shall prescribe, certifying the number and class of shares of the stock of the Corporation owned by him. The certificates representing shares of such stock shall be numbered in the order in which they shall be issued and shall be signed in the name of the Corporation by the Chairman of the Board, the President or a Vice President and by the Secretary or an Assistant Secretary or by the Treasurer or an Assistant Treasurer. Any or all of the signatures on the certificates may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon any such certificate shall thereafter have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by the Corporation with the same effect as though the person who signed such certificate, or whose facsimile signature shall have been placed thereupon, were such officer, transfer agent or registrar at the date of issue. A record shall be kept of the respective names of the persons, firms or corporations owning the stock represented by such certificates, the number and class of shares represented by such certificates, respectively, and the respective dates thereof, and in case of cancellation, the respective dates of cancellation. Every certificate surrendered to the Corporation for exchange or transfer shall be cancelled, and no new certificate or certificates shall be issued in exchange for any

existing certificate until such existing certificate shall have been so cancelled, except in cases provided for in Section 6.04 of these Bylaws.

Section 6.02 TRANSFER OF STOCK. Transfer of shares of stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, or with a transfer clerk or a transfer agent appointed as provided in Section 6.03 of these Bylaws, and upon surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation. Whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact shall be stated expressly in the entry of transfer if, when the certificate or certificates shall be presented to the Corporation for transfer, both the transferor and the transferee request the Corporation to do so.

Section 6.03 REGULATIONS. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. The Board may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

Section 6.04 LOST, STOLEN, DESTROYED AND MUTILATED CERTIFICATES. In any case of loss, theft, destruction, or mutilation of any certificate of stock, another may be issued in its place upon proof of such loss, theft, destruction, or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sums as the Board may direct; provided, however, that a new certificate may be issued without requiring any bond when, in the judgment of the Board, it is proper to do so.

Section 6.05 REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The President or Chief Executive Officer, or any other officer from time to time authorized by the Board, are authorized to vote, represent and exercise on behalf of this Corporation all rights incident to all shares of any other corporation or corporations standing in the name of this Corporation. The authority herein granted to said officers to vote or represent on behalf of this Corporation any and all shares held by this Corporation in any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by said officers.

ARTICLE VII

INDEMNIFICATION

Section 7.01 ACTIONS OTHER THAN BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

Section 7.02 ACTIONS BY OR IN THE RIGHT OF THE CORPORATION. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or as a member of any committee or similar body, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 7.03 DETERMINATION OF RIGHT OF INDEMNIFICATION. Any indemnification under Section 7.01 or 7.02 of these Bylaws (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in

the circumstances because he has met the applicable standard of conduct set forth in Sections 7.01 and 7.02 of these Bylaws. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders voting in accordance with Section 2.06.

Section 7.04 INDEMNIFICATION AGAINST EXPENSES OF SUCCESSFUL PARTY. Notwithstanding the other provisions of this Article VII, to the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 7.01 or 7.02 of these Bylaws, or in defense of any claim, issue or matter therein, he may be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 7.05 ADVANCE OF EXPENSES. Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board upon receipt of an undertaking by or on behalf of the director or officer, to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VII. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

Section 7.06 OTHER RIGHTS AND REMEDIES. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VII shall not be deemed exclusive and are declared expressly to be nonexclusive of any other rights to which those seeking indemnification or advancements of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Section 7.07 INSURANCE. Upon resolution passed by the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article VII.

Section 7.08 CONSTITUENT CORPORATIONS. For the purposes of this Article VII, references to "the Corporation" include in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued,

would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body shall stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

Section 7.09 EMPLOYEE BENEFIT PLANS. For the purposes of this Article VII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VII.

Section 7.10 TERM. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7.11 SEVERABILITY. If any part of this Article VII shall be found, in any action, suit or proceeding or appeal therefrom or in any other circumstances or as to any particular officer, director, employee or agent to be unenforceable, ineffective or invalid for any reason, the enforceability, effect and validity of the remaining parts or of such parts in other circumstances shall not be affected, except as otherwise required by applicable law.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 SEAL. The Board shall provide a corporate seal, which shall be in the form of a circle and shall bear the name of the Corporation and words and figures showing that the Corporation was incorporated in the State of Delaware and showing the year of incorporation.

Section 8.02 WAIVER OF NOTICES. Whenever notice is required to be given under any provision of these Bylaws, the Certificate of Incorporation or by law, a

written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when a person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless required by the Certificate of Incorporation.

Section 8.03 LOANS AND GUARANTIES. The Corporation may lend money to, or guarantee any obligation of, and otherwise assist any officer or other employee of the Corporation or of its subsidiaries, including any officer who is a director, whenever, in the judgment of the Board, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty, or other assistance may be with or without interest, and may be unsecured or secured in such manner as the Board shall approve, including, without limitation, a pledge of shares of stock of the Corporation.

Section 8.04 GENDER. All personal pronouns used in these Bylaws shall include the other genders, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

Section 8.05 AMENDMENTS. These Bylaws, or any of them, may be rescinded, altered, amended or repealed, and new Bylaws may be made (i) by the Board, by vote of a majority of the number of directors then in office as directors, acting at any meeting of the Board or (ii) by the stockholders, by the vote of two-thirds of the outstanding shares of voting stock of the Corporation, at an annual meeting of stockholders, without previous notice, or at any special meeting of stockholders, provided that notice of such proposed amendment, modification, repeal or adoption is given in the notice of special meeting; provided, however, that Section 2.02 of these Bylaws can only be amended if that Section as amended would not conflict with the Corporation's Certificate of Incorporation. Any Bylaw made or altered by the stockholders may be altered or repealed by the Board or may be altered or repealed by the stockholders.

CERTIFICATE OF SECRETARY

The undersigned certifies that:

(1) He is duly elected and acting Secretary of SelectBuild Nevada, Inc., a Delaware corporation; and

(2) The foregoing Amended and Restated Bylaws constitute the Bylaws of the Corporation as duly adopted by Unanimous Written Consent of the Board of Directors dated as of _____.

IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____.

_____
[_____], Secretary

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EXHIBIT I

[Amended and Restated Limited Liability Company Operating Agreements]

1. SelectBuild Arizona, LLC

LIMITED LIABILITY COMPANY AGREEMENT

OF

SELECTBUILD ARIZONA, LLC

This Limited Liability Company Agreement (this "Agreement") of SelectBuild Arizona, LLC is entered into by SelectBuild Construction, Inc., a Delaware corporation, as its sole member (the "Member") as of December , 2009.

The Member hereby adopt and approve the Amended and Restated Certificate of Formation of Limited Liability Company dated December , 2009 as previously filed on behalf of the Company with the Secretary of State of the State of Delaware, and hereby agree as follows:

1. Name. The name of the limited liability company formed hereby is SelectBuild Arizona, LLC (the "Company").

2. Purpose. The purpose of the Company shall be, directly or indirectly through subsidiaries or affiliates, to engage in any lawful act or activity for which limited liability companies may be formed under the Act and engage in any and all activities necessary or incidental to the foregoing.

3. Principal Office. The principal office of the Company shall initially be located at 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

4. Member. The name and the mailing address of the Member is as follows: SelectBuild Construction, Inc., 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

5. Powers. The business and affairs of the Company shall be managed by the Member. The Member shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members of a limited liability company under the laws of the State of Delaware. The Member is hereby designated as an authorized person, within the meaning of the Act, to execute, deliver and file any amendments and/or restatements to the certificate of formation of the Company and any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business. The Member, acting singly, is hereby authorized, empowered and directed in the name and on behalf of the Company to approve, execute and deliver any and all agreements, certificates or any other documents on behalf of the Company.

6. Dissolution. The Company shall dissolve, and its affairs shall be wound up upon the first to occur of the following (a) the written consent of the Member, (b) the death, retirement, expulsion, insolvency, bankruptcy or dissolution of the Member or the occurrence of any other event which terminates the continued membership of the Member in the Company, or (c) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

7. Non-Voting Interests. Notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), the Company will not issue non-voting equity securities; provided, however that the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

8. Capital Contributions. The Member will make capital contributions to the Company from time to time at the times and in the amounts determined by the Member.

9. Allocation of Profits and Losses. All of the Company's profits and losses shall be allocated to the Member.

10. Distributions. Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member.

11. Assignments. The Member may assign in whole or in part his limited liability company interest.

12. New Members. New Members may be admitted to the Company on such terms as may be agreed to by the existing Member.

13. Liability of Member. The Member shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the Act.

14. Amendments. This Agreement may be amended with the written approval of the Member.

15. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Delaware, all rights and remedies being governed by said law.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement of SelectBuild Arizona, LLC as of the date first set forth above.

SOLE MEMBER:
SelectBuild Construction, Inc.

_____

By:
Its:

2. SelectBuild Illinois, LLC

LIMITED LIABILITY COMPANY AGREEMENT

OF

SELECTBUILD ILLINOIS, LLC

This Limited Liability Company Agreement (this "Agreement") of SelectBuild Illinois, LLC is entered into by SelectBuild Construction, Inc., a Delaware corporation, as its sole member (the "Member") as of December , 2009.

The Member hereby adopt and approve the Amended and Restated Certificate of Formation of Limited Liability Company dated December , 2009 as previously filed on behalf of the Company with the Secretary of State of the State of Delaware, and hereby agree as follows:

1. Name. The name of the limited liability company formed hereby is SelectBuild Illinois, LLC (the "Company").

2. Purpose. The purpose of the Company shall be, directly or indirectly through subsidiaries or affiliates, to engage in any lawful act or activity for which limited liability companies may be formed under the Act and engage in any and all activities necessary or incidental to the foregoing.

3. Principal Office. The principal office of the Company shall initially be located at 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

4. Member. The name and the mailing address of the Member is as follows: SelectBuild Construction, Inc., 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

5. Powers. The business and affairs of the Company shall be managed by the Member. The Member shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members of a limited liability company under the laws of the State of Delaware. The Member is hereby designated as an authorized person, within the meaning of the Act, to execute, deliver and file any amendments and/or restatements to the certificate of formation of the Company and any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business. The Member, acting singly, is hereby authorized, empowered and directed in the name and on behalf of the Company to approve, execute and deliver any and all agreements, certificates or any other documents on behalf of the Company.

6. Dissolution. The Company shall dissolve, and its affairs shall be wound up upon the first to occur of the following (a) the written consent of the Member, (b) the death, retirement, expulsion, insolvency, bankruptcy or dissolution of the Member or the occurrence of any other event which terminates the continued membership of the Member in the Company, or (c) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

7. Non-Voting Interests. Notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), the Company will not issue non-voting equity securities; provided, however that the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

8. Capital Contributions. The Member will make capital contributions to the Company from time to time at the times and in the amounts determined by the Member.

9. Allocation of Profits and Losses. All of the Company's profits and losses shall be allocated to the Member.

10. Distributions. Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member.

11. Assignments. The Member may assign in whole or in part his limited liability company interest.

12. New Members. New Members may be admitted to the Company on such terms as may be agreed to by the existing Member.

13. Liability of Member. The Member shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the Act.

14. Amendments. This Agreement may be amended with the written approval of the Member.

15. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Delaware, all rights and remedies being governed by said law.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement of SelectBuild Illinois, LLC as of the date first set forth above.

SOLE MEMBER:
SelectBuild Construction, Inc.

_____

By:
Its:

EXHIBIT J
[Shareholder Agreement]

STOCKHOLDERS AGREEMENT

by and among

BUILDING MATERIALS HOLDING CORPORATION

- and -

THE STOCKHOLDERS IDENTIFIED HEREIN

dated as of

[_____], 2009

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STOCKHOLDERS AGREEMENT

THIS STOCKHOLDERS AGREEMENT (this "Agreement") is entered into as of _____, 2009 by and among BUILDING MATERIALS HOLDING CORPORATION, a Delaware corporation (the "Company"), each of the Stockholders that is deemed to have entered into this Agreement pursuant to the Plan as described in Section 4.16 hereof and each Person that hereafter becomes a Stockholder and is required by this Agreement to become a party hereto.

WITNESSETH:

WHEREAS, the Company and certain of its subsidiaries have filed a joint plan of reorganization (the "Plan") under chapter 11 of title 11 of the United States Code, 11 U.S.C. Sections 101-1330 (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware to effect a financial restructuring of the Company;

WHEREAS, on or about _____, 2009, the "Effective Date" as provided in the Plan (the "Effective Date") occurred, and (ii) shares of Common Stock were issued or deemed issued to the Stockholders pursuant to the Plan;

WHEREAS, pursuant to the Plan, the Stockholders have entered into this Agreement to provide for certain rights and obligations among them; and

WHEREAS, the Company and the Stockholders are also entering into a separate agreement to provide for certain rights and obligations relating to the registration of the Company's capital stock, as provided therein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter set forth, the parties hereto hereby agree, severally and not jointly, as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. As used in this Agreement (including in the preamble and recitals above), the following terms shall have the following respective meanings:

"Affiliate" shall mean, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agreement" shall have the meaning set forth in the preamble of this Agreement.

"Appraisal" shall have the meaning set forth in Section 3.08(c)(i) herein.

"Appraiser" shall have the meaning set forth in Section 3.08(c)(i) herein.

"Board" shall have the meaning set forth in Section 2.01(b) herein.

"Change in Control" shall mean:

(i) The consummation of a merger or consolidation of the Company with or into another entity or any other corporate reorganization, if more than 50% of the combined voting power of the continuing or surviving entity's securities outstanding immediately after such merger, consolidation or other reorganization is owned by Persons who were not stockholders of the Company holding more than 50% of the combined voting power of the Company immediately prior to such merger, consolidation or other reorganization;

(ii) The sale, transfer or other disposition of 50% or more of the Company's consolidated assets in a single transaction or series of related transactions; or

(iii) Any Person or two or more Persons acting together after the Effective Date as a "group" as such term is used in Section 13(d) of the Securities Exchange Act of 1934 and the rules promulgated thereunder, together with their respective Affiliates, become the beneficial owner, directly or indirectly, of more than 50% of the combined voting power of the Company's capital stock.

The foregoing notwithstanding, a transaction shall not constitute a Change in Control if its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the Persons who held the Company's securities immediately prior to such transaction. In addition, a sale by the Company of Equity Securities in any transaction, the primary purpose of which is to raise capital for the Company's operations and activities, including without limitation an initial public offering of a class of the Company's Equity Securities under Section 12 of the Securities Act, shall not constitute a Change in Control.

"Common Stock" shall mean shares of the Company's common stock, par value $0.001 per share.

"Company" shall have the meaning set forth in the preamble of this Agreement.

"Company Transfer Notice" shall have the meaning set forth in Section 3.03 herein.

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Control Sale Notice" shall have the meaning set forth in Section 3.04(a) herein.

"Equity Securities" shall mean any securities having voting rights in the election of the Board of Directors of the Company not contingent upon default, or any securities evidencing an ownership interest in the Company, or any securities convertible into or

exercisable for any shares of the foregoing, or any agreement or commitment to issue any of the foregoing.

"Fair Market Value" shall have the meaning set forth in Section 3.08(a) herein.

"Initiating Holders" shall have the meaning set forth in Section 3.05(b) herein.

"Majority Stockholder" shall have the meaning set forth in Section 3.08(a) herein.

"Market Stand-Off" shall have the meaning set forth in Section 3.07(c) herein.

"Non-Selling Stockholders" shall have the meaning set forth in Section 3.03 herein.

"Offered Shares" shall have the meaning set forth in Section 3.03 herein.

"Participants" shall have the meaning set forth in Section 3.04(b) herein.

"Permitted Transfer" shall have the meaning set forth in Section 3.07(b) herein.

"Person" shall mean an individual, corporation, limited liability company, partnership, joint venture, trust or an incorporated organization or association or other form of business enterprise or a governmental entity.

"Prepetition Credit Agreement" shall mean that certain Second Amended and Restated Credit Agreement dated as of November 10, 2006, by and among the Company, as borrower, the lenders party thereto, and Wells Fargo Bank, National Association, as administrative agent, as amended by that certain First Amendment to Second Amended and Restated Credit Agreement dated as of February 29, 2008 and that certain Second Amendment to Second Amended and Restated Credit Agreement dated as of September 30, 2008.

"Prohibited Transfer" shall have the meaning set forth in Section 3.04(e) herein.

"Proposed Sale" shall have the meaning set forth in Section 3.05(c) herein.

"Put Notice" shall have the meaning set forth in Section 3.08(a) herein.

"Qualified Public Offering" shall mean the first underwritten public offering of Common Stock registered under the Securities Act that results in gross proceeds of not less than $75,000,000 and the Common Stock being listed on a national securities exchange or quoted on Nasdaq.

"Sale of the Company" shall have the meaning set forth in Section 3.05(a) herein.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Selling Investors" shall have the meaning set forth in Section 3.03 herein.

"Selling Stockholder" shall have the meaning set forth in Section 3.03 herein.

"Stockholders" shall mean the Persons deemed to have entered into this Agreement pursuant to the Plan as described in Section 4.16 hereof, including without limitation each party named on Schedule A hereto, and any other Person who is a transferee of Common Stock or other Equity Securities of the Company, whether from another Stockholder or from the Company, who is required by this Agreement to agree to be bound by the terms and conditions of this Agreement. The term "Stockholder" means any one of the Stockholders and, in the case of a Stockholder who is a natural person, the term "Stockholder" also includes such Stockholder's legal representatives, executors or administrators when the context so requires.

"Stock Sale" shall have the meaning set forth in Section 3.05(a) herein.

"Term Loan Agreement" shall mean the Term Loan Credit Agreement dated as of _____, 2009, by and among the Company, the guarantors party from time to time thereto, the lenders party from time to time thereto and Wells Fargo Bank, National Association, as administrative agent, as amended, supplemented or otherwise modified from time to time.

"Transfer" shall have the meaning set forth in Section 3.01(a) herein.

"Transfer Notice" shall have the meaning set forth in Section 3.03 herein.

ARTICLE II

VOTING

SECTION 2.01. VOTING PROVISIONS REGARDING BOARD OF DIRECTORS.

(a) Shares. For purposes of this Agreement, the term "Shares" shall mean and include any securities of the Company the holders of which are entitled to vote for members of the Board, including without limitation, all shares of Common Stock, by whatever name called, now owned or subsequently acquired by a Stockholder, however acquired, whether through stock splits, stock dividends, reclassifications, recapitalizations, similar events or otherwise, voting on an as converted to Common Stock basis as applicable.

(b) Initial Board Composition. Each Stockholder agrees to vote, or cause to be voted, all Shares owned by such Stockholder, or over which such Stockholder has voting control, in whatever manner as shall be necessary to ensure that the initial members of the board of directors of the Company (the "Board") following the Effective Date shall consist of the following individuals: Jay B. Hunt, Carl Vertuca, Peter Alexander, Michael Maidy, Paul Street, Dennis Downer and Marc Chasman. Each director shall hold office until a successor is elected and qualified or until the director resigns or is removed.

(c) Removal of Board Members. Any director may be removed, with or without cause, by the affirmative vote of the holders of a majority of the then outstanding Shares.

(d) Stockholder Nominations. Any Stockholder may nominate a person to stand for election to the Board in the manner prescribed in the Bylaws of the Company.

SECTION 2.02. WRITTEN CONSENTS; SPECIAL MEETINGS. All Stockholders agree to execute any written consents required to perform the obligations of this Agreement.

SECTION 2.03. MAJORITY VOTE. Except where the vote or written consent of the holders of a greater number of shares of the Company is required by law or by the Certificate of Incorporation, and in addition to any other vote required by law or the Certificate of Incorporation, without the consent or affirmative vote of the holders of a majority of the then outstanding shares of Common Stock given in writing or by vote at a meeting, the Company shall not, either directly or by amendment, merger, consolidation or otherwise:

(a) liquidate, dissolve or wind-up the business and affairs of the Company, effect any Change in Control, or consent to any of the foregoing;

(b) amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Company;

(c) create any additional class or series of shares of stock, or increase the authorized number of shares of Common Stock or increase the authorized number of shares of any additional class or series of shares of stock, or create or authorize any obligation or security convertible into shares of any class or series of stock;

(d) purchase or redeem or pay or declare any dividend or make any distribution on, any shares of stock other than the Common Stock as expressly authorized in the Certificate of Incorporation, or permit any subsidiary of the Company to take any such action, except for dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and other than securities repurchased from former employees, officers, directors, consultants or other persons who performed services for the Company or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof or otherwise pursuant to any stock incentive plan approved by the Board;

(e) effect an initial public offering of a class of the Company's Equity Securities under Section 12 of the Securities Act.

ARTICLE III

TRANSFER RESTRICTIONS

SECTION 3.01. Restrictions on Transfer of Equity Securities.

(a) Except in accordance with the terms contained in this Agreement, no Stockholder shall directly or indirectly sell, assign, transfer, pledge, gift, hypothecate or otherwise encumber or dispose of in any way irrespective of whether any of the foregoing are effected with or without consideration, voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise, inter vivos or upon death (each a "Transfer"), all or any part of any interest in the Equity Securities now or hereafter owned or held by such Stockholder.

(b) The Company shall record on its books the Transfer of any Equity Securities that have been sold or transferred in accordance with this Agreement promptly following receipt of evidence of such Transfer. The Company shall not (i) record on its books the Transfer of any Equity Securities that have been sold or transferred in contravention of this Agreement, or (ii) treat as the owner of Equity Securities, or otherwise accord voting, dividend or liquidation rights to, any transferee to whom Equity Securities have been transferred in contravention of this Agreement. Any Transfer of Equity Securities not made in conformance with this Agreement shall be null and void and shall not be recognized by the Company.

SECTION 3.02. Number of Record Holders; Transfers to Competitors.

(a) No Person or group of Persons acting together pursuant to a common plan or arrangement shall make any Transfer, in each case, whether voluntary or involuntary, of record, by operation of law or otherwise, of Equity Securities to any Person if the Company reasonably determines that such Transfer would, if effected, result in the Company having 275 or more holders of record (as such concept is understood for purposes of Section 12(g) of the Exchange Act and any relevant rules promulgated thereunder), unless (i) prior to such Transfer the Company is already subject to the reporting obligations under Sections 13 or 15(d) of the Exchange Act and any relevant rules promulgated thereunder or (ii) the Company provides its prior written consent to such Transfer.

(b) No Person or group of Persons acting together pursuant to a common plan or arrangement shall make any Transfer, in each case, whether voluntary or involuntary, of record, by operation of law or otherwise, of Equity Securities to any Person if the Company reasonably determines that the transferee (or any of its Affiliates) in respect of such Transfer is a Competitor of the Company, unless the Company provides its prior written consent to such Transfer. As used herein, a "Competitor" of the Company means any Person in the same or substantially similar lines of business as the Company.

SECTION 3.03. Transfer Notice. If at any time one or more Stockholders propose to Transfer any Equity Securities to one or more third parties, then each such Stockholder (each, a "Selling Stockholder") shall first give the Company written notice of such Selling Stockholder's intention to make the Transfer (the "Transfer Notice"), which Transfer Notice shall include (i) a description of the Equity Securities to be transferred (the "Offered Shares"), (ii) the identity of the prospective transferee(s), (iii) except in the case of a Permitted Transfer, a certification as to the number of Equity Securities currently owned, directly or indirectly, by such proposed transferee and its Affiliates, and (iv) except in the case of a Permitted Transfer, the consideration and the material terms and conditions upon which the proposed Transfer is to be made, including the price per share being offered to purchase the Offered Shares. Except in the case of a Permitted Transfer, the Transfer Notice shall also certify that such Selling Stockholder has received a firm offer from the prospective transferee(s) and in good faith believes a binding agreement for the Transfer is obtainable on the terms set forth in the Transfer Notice. The Transfer Notice shall also include a copy of any written proposal, term sheet or letter of intent or other agreement relating to the proposed Transfer and proof satisfactory to the Company that that the proposed Transfer will not violate any applicable federal or state securities laws.

SECTION 3.04. Right of Co-Sale.

(a) Control Sale Notice. Following the Company's receipt of a Transfer Notice, if the Company has determined that the proposed Transfer (either alone or together with any prior or contemporaneous Transfers) of the Offered Shares to the transferee(s) identified in the Transfer Notice would result in such transferee(s) or its Affiliate(s), either individually or in the aggregate, owning more than 50% of the combined voting power of the Company, the Company shall promptly give each Stockholder written notice of the proposed Transfer or series of Transfers (a "Control Sale Notice") which notice shall include the information and certifications required in a Transfer Notice and shall additionally notify the Stockholders that the proposed Transfer or series of Transfers would constitute a Change in Control.

(b) Stockholder's Option. Each Stockholder, other than the Selling Stockholder(s), shall have the right, exercisable upon written notice to the Selling Stockholder(s) and the Company within 15 days after receipt of such Control Sale Notice (the "Notice Deadline") to participate in such sale of Equity Securities on the same terms and conditions as specified in the Control Sale Notice. To the extent that one or more Stockholders provide such written notice to the Selling Stockholder(s) and the Company (the "Participants") and exercise such right of participation in accordance with the terms and conditions set forth below, the number of shares of Equity Securities that the Selling Stockholder(s) may sell in the Transfer or series of Transfers shall be correspondingly reduced. Each Participant may sell all or any part of that number of shares of Equity Securities equal to the product obtained by multiplying (i) the aggregate number of shares of Equity Securities covered by the Control Sale Notice by (ii) a fraction, the numerator of which is the number of shares of Equity Securities owned by such Participant on the date of the relevant Transfer and the denominator of which is the aggregate number of shares of Equity Securities owned by the Selling Stockholder(s) and all Participants on the date of the relevant Transfer (the "Participation Formula"). Within 10 days after the Notice Deadline, the Company shall provide written notice to each Participant and the Selling Stockholder(s) setting forth the number of shares of Equity Securities that each Participant may sell to the transferee(s), calculated in accordance with the Participation Formula.

(c) Procedure. Each Participant shall effect its participation in a Transfer by promptly delivering to the Selling Stockholder(s) for transfer to the purchaser(s) one or more certificates, properly endorsed for transfer, which represent the shares of Equity Securities which such Participant elects to sell. Such stock certificate or certificates shall be transferred to the purchaser(s) in consummation of the sale of the Equity Securities pursuant to the terms and conditions specified in the Control Sale Notice, and the Selling Stockholder(s) shall concurrently therewith remit to such Participant that portion of the sale proceeds to which such Participant is entitled by reason of its participation in such sale. To the extent that any purchaser or purchasers prohibits such assignment or otherwise refuses to purchase shares or other securities from a Participant exercising its rights of co-sale hereunder, the Selling Stockholder(s) shall not sell to such purchaser or purchasers any Equity Securities unless and until, prior to or concurrently with such sale, the Selling Stockholder(s) shall purchase such shares or other securities from such Participant for the same consideration and on the same terms and conditions as the transfer(s) described in the Control Sale Notice.

(d) Non-Exercise of Rights. If any Stockholder elects not to fully participate in the sale of the Equity Securities subject to the Control Sale Notice, the Selling Stockholder(s) may, not later than 60 days following delivery to the Stockholders of the Control Sale Notice, enter into an agreement providing for the closing of the transfer of any remaining Equity Securities covered by the Control Sale Notice within 30 days of such agreement on terms and conditions not more favorable to the Selling Stockholder(s) than those described in the Control Sale Notice. Any proposed transfer on terms and conditions more favorable than those described in the Control Sale Notice, as well as any subsequent proposed transfer of any of the Equity Securities by the Selling Stockholder(s), shall again be subject to the co-sale rights of the Stockholders and shall require compliance by the Selling Stockholder(s) with the procedures described in this Section 3.04.

(e) Prohibited Transfers.

(i) In the event the Selling Stockholder should sell any Equity Securities in contravention of the co-sale rights of the Stockholders under this Section 3.04 (a "Prohibited Transfer"), each Stockholder, in addition to such other remedies as may be available at law, in equity or hereunder, shall have the put option provided below, and the Selling Stockholder shall be bound by the applicable provisions of such option.

(ii) In the event of a Prohibited Transfer, each Stockholder shall have the right to sell to the Selling Stockholder the type and number of shares of Equity Securities equal to the number of shares each Stockholder would have been entitled to transfer to the third-party transferee(s) under Sections 3.04(b) and (c) hereof had the Prohibited Transfer been effected pursuant to and in compliance with the terms hereof. Such sale shall be made on the following terms and conditions:

(A) The price per share at which the shares are to be sold to the Selling Stockholder shall be equal to the price per share paid by the third-party transferee(s) to the Selling Stockholder in the Prohibited Transfer. The Selling Stockholder shall also reimburse each Stockholder for any and all fees and expenses, including legal fees and expenses, incurred pursuant to the exercise or the attempted exercise of the Stockholder's rights under this Section 3.04.

(B) Within 90 days after the later of the dates on which the Stockholder (I) received notice of the Prohibited Transfer, or (II) otherwise becomes aware of the Prohibited Transfer, each Stockholder shall, if exercising the option created hereby, deliver to the Selling Stockholder the certificate or certificates representing shares to be sold, each certificate to be properly endorsed for transfer.

(C) The Selling Stockholder shall, upon receipt of the certificate or certificates for the shares to be sold by a Stockholder pursuant to this Section 3.04(e), pay the aggregate purchase price therefor and the amount of reimbursable fees and expenses, as specified in Section 3.04(e)(ii)(A), in cash or by other means acceptable to the Stockholder.

(f) Term. This Section 3.04 shall terminate upon the earlier of (i) a Qualified Public Offering, and (ii) upon a Change in Control; provided, however, that Section 3.04(e) shall survive any such termination with respect to any Prohibited Transfer effected prior to a Qualified Public Offering or prior to or concurrently with a Change in Control.

SECTION 3.05. Drag-Along Right.

(a) Definitions. A "Sale of the Company" shall mean either: (a) a transaction or series of related transactions in which a Person, or a group of related Persons, acquires from Stockholders of the Company shares representing more than 50% of the outstanding voting power of the Company (a "Stock Sale"); or (b) a transaction or series of related transactions that otherwise results in a Change in Control.

(b) Actions to be Taken. In the event that (i) the Board and (ii) the holders of a majority of the then outstanding shares of Common Stock approve a Sale of the Company in writing (such holders, the "Initiating Holders"), specifying that this Section 3.05 shall apply to such transaction, then each Stockholder hereby agrees:

(i) if such transaction requires stockholder approval, with respect to all Shares that such Stockholder owns or over which such Stockholder otherwise exercises voting power, to vote (in person, by proxy or by action by written consent, as applicable) all Shares in favor of, and adopt, such Sale of the Company (together with any related amendment to the Certificate of Incorporation required in order to implement such Sale of the Company);

(ii) if such transaction is a Stock Sale, to sell the same proportion of Shares of the Company beneficially held by such Stockholder as is being sold by the Initiating Holders to the Person to whom the Initiating Holders propose to sell their Shares, and, except as permitted in Section 3.05(c) below, on the same terms and conditions as the Initiating Holders;

(iii) to execute and deliver all related documentation and take such other action in support of the Sale of the Company as shall reasonably be requested by the Company or the Initiating Holders in order to carry out the terms and provision of this Section 3.05, including without limitation executing and delivering instruments of conveyance and transfer, and any purchase agreement, merger agreement, indemnity agreement, escrow agreement, consent, waiver, governmental filing, share certificates duly endorsed for transfer (free and clear of impermissible liens, claims and encumbrances) and any similar or related documents;

(iv) not to deposit, and to cause their Affiliates not to deposit, except as provided in this Agreement, any Shares of the Company owned by such party or Affiliate in a voting trust or subject any Shares to any arrangement or agreement with respect to the voting of such Shares, unless specifically requested to do so by the acquiror in connection with the Sale of the Company;

(v) to refrain from exercising any dissenters' rights or rights of appraisal under applicable law at any time with respect to such Sale of the Company; and

(vi) if the consideration to be paid in exchange for the Shares pursuant to this Section 3.05 includes any securities and due receipt thereof by any Stockholder would require under applicable law (x) the registration or qualification of such securities or of any person as a broker or dealer or agent with respect to such securities or (y) the provision to any Stockholder of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors" as defined in Regulation D promulgated under the Securities Act of 1933, as amended, the Company may cause to be paid to any such Stockholder in lieu thereof, against surrender of the Shares which would have otherwise been sold by such Stockholder, an amount in cash equal to the fair value (as determined in good faith by the Company) of the securities which such Stockholder would otherwise receive as of the date of the issuance of such securities in exchange for the Shares.

(c) Exceptions. Notwithstanding the foregoing, a Stockholder will not be required to comply with Section 3.05(b) above in connection with any proposed Sale of the Company (the "Proposed Sale") unless:

(i) any representations and warranties to be made by such Stockholder in connection with the Proposed Sale are limited to representations and warranties related to authority, ownership and the ability to convey title to such Shares, including but not limited to representations and warranties that (i) the Stockholder holds all right, title and interest in and to the Shares such Stockholder purports to hold, free and clear of all liens and encumbrances, (ii) the obligations of the Stockholder in connection with the transaction have been duly authorized, if applicable, (iii) the documents to be entered into by the Stockholder have been duly executed by the Stockholder and delivered to the acquirer and are enforceable against the Stockholder in accordance with their respective terms and (iv) neither the execution and delivery of documents to be entered into in connection with the transaction, nor the performance of the Stockholder's obligations thereunder, will cause a breach or violation of the terms of any agreement that is binding on such Stockholder, applicable law or judgment, order or decree of any court or governmental agency that is binding on such Stockholder;

(ii) the Stockholder shall not be liable for the inaccuracy of any representation or warranty made by any other Person in connection with the Proposed Sale (except to the extent that funds may be paid out of an escrow established to cover breach of representations, warranties and covenants of the Company as well as breach by any stockholder of any identical representations, warranties and covenants provided by all stockholders);

(iii) the liability for indemnification, if any, of such Stockholder in the Proposed Sale and for the inaccuracy of any representations and warranties made by the Company in connection with such Proposed Sale, is several and not joint with any other Person (except to the extent that funds may be paid out of an escrow established to cover breach of representations, warranties and covenants of the Company as well as breach by any stockholder of any identical representations, warranties and covenants provided by all stockholders), and is in the same proportion that the amount of consideration paid to such Stockholder in connection with such Proposed Sale (in accordance with the

provisions of the Certificate of Incorporation) bears to the amount of consideration paid to all stockholders in connection with such Proposed Sale;

(iv) liability shall be limited to such Stockholder's applicable share (determined based on the respective proceeds payable to each Stockholder in connection with such Proposed Sale in accordance with the provisions of the Certificate of Incorporation) of a negotiated aggregate indemnification amount that applies equally to all Stockholders but that in no event exceeds the amount of consideration otherwise payable to such Stockholder in connection with such Proposed Sale, except with respect to claims related to fraud by such Stockholder, the liability for which need not be limited as to such Stockholder;

(v) upon the consummation of the Proposed Sale, each holder of each class or series of the Company's stock will receive the same form of consideration for their shares of such class or series as is received by other holders in respect of their shares of such same class or series of stock; and

(vi) subject to clause (v) above, requiring the same form of consideration to be available to the holders of any single class or series of capital stock, if any holders of any capital stock of the Company are given an option as to the form and amount of consideration to be received as a result of the Proposed Sale, all holders of such capital stock will be given the same option.

SECTION 3.06. Preemptive Rights. The Company hereby grants to each Stockholder who owns any Shares a preemptive right to purchase a pro rata share of New Securities (as defined in this Section 3.06) which the Company may, from time to time, propose to sell and issue. A Stockholder's pro rata share, for purposes of this preemptive right, is the ratio of the number of shares of Common Stock owned by such Stockholder immediately prior to the issuance of New Securities to the total number of shares of Common Stock outstanding immediately prior to the issuance of New Securities, assuming full conversion and exercise of all outstanding shares, rights, options and warrants to acquire Common Stock of the Company. Each Stockholder shall have a right of over-allotment such that if any Stockholder fails to exercise its right hereunder to purchase its pro rata share of New Securities, the other Stockholders may purchase the non-purchasing Stockholder's portion on a pro rata basis within ten (10) days from the date such non-purchasing Stockholder fails to exercise its right hereunder to purchase its pro rata share of New Securities. This preemptive right shall be subject to the following provisions:

(a) "New Securities" shall mean any capital stock (including Common Stock and/or Preferred Stock) of the Company whether now authorized or not, and rights, options or warrants to purchase such capital stock, and securities of any type whatsoever that are, or may become, convertible into capital stock; provided that the term "New Securities" does not include (i) securities issued pursuant to the acquisition of another business entity or business segment of any such entity by the Company by merger, purchase of substantially all the assets or other reorganization whereby the Company will own not less than fifty-one percent (51%) of the voting power of such business entity or business segment of any such entity; (ii) any borrowings, direct or indirect, from financial institutions or other persons by the Company, whether or not

presently authorized, including any type of loan or payment evidenced by any type of debt instrument, provided such borrowings do not have any equity features including warrants, options or other rights to purchase capital stock and are not convertible into capital stock of the Company; (iii) securities issued to employees, consultants, officers or directors of the Company pursuant to any stock option, stock purchase or stock bonus plan, agreement or arrangement approved by the Board; (iv) securities issued to vendors or customers or to other persons in similar commercial situations with the Company if such issuance is approved by the Board; (v) securities issued in connection with obtaining lease financing, whether issued to a lessor, guarantor or other person; (vi) securities issued in a Qualified Public Offering; (vii) securities issued in connection with any stock split, stock dividend or recapitalization of the Company; (viii) securities issued under Section 4.3.2 of the Plan to any holder of an Allowed L/C Lender Claim (as defined in the Plan); and (ix) any right, option or warrant to acquire any security convertible into the securities excluded from the definition of New Securities pursuant to subsections (i) through (vii) above.

(b) In the event the Company proposes to undertake an issuance of New Securities, it shall give each Stockholder written notice of its intention, describing the type of New Securities, and their price and the general terms upon which the Company proposes to issue the same. Each Stockholder shall have twenty (20) days after any such notice is effective to agree to purchase such Stockholder's pro rata share of such New Securities for the price and upon the terms specified in the notice by giving written notice to the Company and stating therein the quantity of New Securities to be purchased.

(c) In the event the Stockholders fail to exercise fully the preemptive rights within said twenty (20)-day period and after the expiration of the 10-day period for the exercise of the over-allotment provisions of this Section 3.06, the Company shall have one hundred twenty (120) days thereafter to sell or enter into an agreement (pursuant to which the sale of New Securities covered thereby shall be closed, if at all, within one hundred twenty (120) days from the date of said agreement) to sell the New Securities respecting which the Stockholder's preemptive rights set forth in this Section 3.06 was not exercised, at a price and upon terms no more favorable to the purchasers thereof than specified in the Company's notice to Stockholders pursuant to Section 3.06(b). In the event the Company has not sold within said 120-day period or entered into an agreement to sell the New Securities within said 120-day period (or sold and issued New Securities in accordance with the foregoing within one hundred twenty (120) days from the date of said agreement), the Company shall not thereafter issue or sell any New Securities, without first again offering such securities to the Holders in the manner provided in Section 3.06(b) above.

(d) The preemptive rights granted under this Agreement shall expire upon, and shall not be applicable to, the first sale of Common Stock of the Company to the public effected pursuant to a registration statement filed with, and declared effective by, the Securities and Exchange Commission under the Securities Act, in respect of a Qualified Public Offering.

(e) The preemptive rights set forth in this Section 3.06 may not be assigned or transferred, except that (i) such right is assignable by each Stockholder to any wholly owned subsidiary or parent of, or to any corporation or entity that is, within the meaning of the

Securities Act, controlling, controlled by or under common control with, any such Stockholder, and (ii) such right is assignable between and among any of the Stockholders.

SECTION 3.07. Other Transfer Provisions.

(a) Except with respect to a transfer pursuant to Section 3.05, each Stockholder agrees not to make any Transfer of Equity Securities unless and until:

(i) there is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(ii) (A) the transferee has agreed in writing to be bound by the terms of this Agreement, (B) such Stockholder shall have notified the Company of the proposed Transfer and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed Transfer, and (C) if reasonably requested by the Company, such Stockholder shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of such shares under the Securities Act.

(b) Notwithstanding the provisions of subsections (a)(i) and (ii) above, no such registration statement or opinion of counsel shall be necessary for a Transfer by a Stockholder that is (i) a partnership transferring to its partners or former partners in accordance with partnership interests, (ii) a corporation transferring to a wholly-owned subsidiary or a parent corporation that owns all of the capital stock of the Stockholder, (iii) a limited liability company transferring to its members or former members in accordance with their interest in the limited liability company, (iv) an individual transferring (A) by beneficiary designation, will or interstate succession, or (B) to such Stockholder's spouse, children or grandchildren or to a trust established by such Stockholder for the benefit of the Stockholder or such Stockholder's spouse, children or grandchildren, or (v) a Swap Provider (as defined in the Prepetition Credit Agreement) transferring to any Person that participated in any Specified Swap Contract (as defined in the Prepetition Credit Agreement) that was provided by such Swap Provider, provided in each case that the transferee agrees in writing on a form prescribed by the Company to be bound by all provisions of this Agreement (each such transfer, a "Permitted Transfer").

(c) Market Stand-Off. In connection with any underwritten public offering by the Company of its Equity Securities, each Stockholder shall not directly or indirectly sell, make any short sale of, loan, hypothecate, pledge, offer, grant or sell any option or other contract for the purchase of, purchase any option or other contract for the sale of, or otherwise dispose of or transfer, or agree to engage in any of the foregoing transactions with respect to, any Equity Securities without the prior written consent of the Company or its underwriters. Such restriction (the "Market Stand-Off") shall be in effect for such period of time following the date of the final prospectus for the offering as may be requested by the Company or such underwriters. In no event, however, shall such period exceed 180 days, or such longer period, not to exceed 18 days after the expiration of the 180-day period, as the Company or such underwriters shall request in order to facilitate compliance with NASD Rule 2711. In the event of the declaration of a stock dividend, a spin-off, a stock split, an adjustment in conversion ratio, a recapitalization or a

similar transaction affecting the Company's outstanding securities without receipt of consideration, any new, substituted or additional securities which are by reason of such transaction distributed with respect to any Equity Securities subject to the Market Stand-Off, or into which such Equity Securities thereby become convertible, shall immediately be subject to the Market Stand-Off. In order to enforce the Market Stand-Off, the Company may impose stop-transfer instructions with respect to the Equity Securities until the end of the applicable stand-off period. The Company's underwriters shall be beneficiaries of the agreement set forth in this Section 3.07(c) and shall have the right, power and authority to enforce this provision as though they were a party hereto. This Section 3.07(c) shall not apply to Equity Securities registered in the public offering.

(d) Additional Shares or Substituted Securities. In the event of the declaration of a stock dividend, the declaration of an extraordinary dividend payable in a form other than stock, a spin-off, a stock split, an adjustment in conversion ratio, a recapitalization or a similar transaction affecting the Company's outstanding securities without receipt of consideration, any new, substituted or additional securities or other property (including money paid other than as an ordinary cash dividend) which are by reason of such transaction distributed with respect to any Equity Securities subject to this Article III or into which such Equity Securities thereby become convertible shall immediately be subject to this Article III. Appropriate adjustments to reflect the distribution of such securities or property shall be made to the number and/or class of Equity Securities subject to this Article III.

(e) Termination of Rights as Stockholder. If the Company or a third-party transferee makes available, at the time and place and in the amount and form provided in this Agreement, the consideration for the Equity Securities to be purchased in accordance with this Article III, then after such time the Person from whom such Equity Securities are to be purchased shall no longer have any rights as a holder of such Equity Securities (other than the right to receive payment of such consideration in accordance with this Agreement). Such Equity Securities shall be deemed to have been purchased in accordance with the applicable provisions hereof, whether or not the certificate(s) therefor have been delivered as required by this Agreement.

SECTION 3.08. Minority Put Rights.

(a) At any time that any Stockholder, or two or more Stockholders acting together after the Effective Date as a "group" as such term is used in Section 13(d) of the Securities Exchange Act of 1934 and the rules promulgated thereunder, together with their respective Affiliates, either individually or in the aggregate, beneficially own more than 50% of the combined voting power of the Company (collectively, the "Majority Stockholder"), and provided that the Company has not then completed a Qualified Public Offering, each of the other Stockholders shall have the right to require the Majority Stockholder, upon written notice (the "Put Notice"), to purchase the shares of Common Stock held by the Stockholder, in whole but not in part, at the fair market value (as determined in accordance with this Section 3.08, the "Fair Market Value") of the Common Stock then held by such Stockholder, by delivering the Put Notice to the Majority Stockholder and the Company (such Stockholder(s) exercising rights under this Section 3.08, each a "Selling Investor" and, collectively, the "Selling Investors").

Within five days after receipt of a Put Notice, the Company shall deliver a copy of the Put Notice to all Stockholders.

(b) The Majority Stockholder and the Selling Investors shall negotiate in good faith to determine the Fair Market Value of the Common Stock. If such parties are not able to determine the Fair Market Value of the Common Stock within 15 days after delivery of the Put Notice, then, provided that the Selling Investors hold in the aggregate not less than 5% of the shares of Common Stock then outstanding, such parties shall submit the determination of Fair Market Value to an independent appraiser in the manner set forth in subsection (c) below. If the Selling Investors hold in the aggregate less than 5% of the shares of Common Stock then outstanding, then the Majority Stockholder and the Selling Investors shall continue to negotiate in good faith to determine the Fair Market Value of the Common Stock.

(c) If the Majority Stockholder and the Selling Investors are unable to determine the Fair Market Value pursuant to subsection (b) above, and the Selling Investors hold in the aggregate not less than 5% of the shares of Common Stock then outstanding, the determination of the Fair Market Value of the Common Stock shall be based upon the following:

(i) The Fair Market Value of the Common Stock shall be determined by an appraiser mutually acceptable to the Majority Stockholder and the Selling Investors, which determination (including a copy of the appraiser's written appraisal) shall be provided to the Majority Stockholder and the Selling Investors within 30 days after the engagement of the appraiser. The appraisal shall be binding on the Majority Stockholder and the Selling Investors as the Fair Market Value if such appraisal is ratified by either the Majority Stockholder or the Selling Investors.

(ii) If the Majority Stockholder and the Selling Investors fail to agree on such appraiser or fail to ratify the appraisal pursuant to paragraph (i) above, then each of the Majority Stockholder, on the one hand, and the Selling Investors, on the other, shall promptly engage a nationally or internationally recognized investment banking firm, certified public accountant or business appraisal firm not providing services to the Company, the Majority Stockholder or the Selling Investors at the time of the engagement to determine such Fair Market Value within a 30-day period. If the higher appraisal is no more than 10% greater than the lower appraisal, the average of the appraisals will be calculated, and such average shall be binding on the Majority Stockholder and the Selling Investors as the Fair Market Value if such average is ratified by either the Majority Stockholder or the Selling Investors. If the higher appraisal is more than 10% greater than the lower appraisal, the Majority Stockholder and the Selling Investors agree to negotiate in good faith for an additional 15 days to determine such Fair Market Value. If at the end of such 15-day period, the parties are unable to reach agreement with respect to a mutually acceptable Fair Market Value, then the two appraisers shall promptly thereafter select a third appraiser not providing services to the Company, the Majority Stockholder or the Selling Investors at the time of the engagement to complete an appraisal within 30 days. The average of the two closest appraisals shall be binding on the Majority Stockholder and the Selling Investors as the Fair Market Value if such average is ratified by either the Majority Stockholder or the Selling Investors.

(iii) Should neither the Majority Stockholder nor the Selling Investors ratify the appraisal or the average of the appraisals pursuant to paragraph (i) or paragraph (ii) above, then the procedure in paragraph (ii) shall be continued until an average of appraisals is ratified by either the Majority Stockholder or the Selling Investors which ratified appraisal shall be binding on the Majority Stockholder and the Selling Investors as the Fair Market Value.

(iv) In determining Fair Market Value, the parties agree that the appraisers shall be instructed to consider, among standard assumptions, that the Fair Market Value of the Common Stock shall be determined without any reduction in value for lack of control or the inherent lack of liquidity of non-public minority interests. In all cases, the Company shall promptly provide to the appraisers such information concerning the Company, including without limitation, the Company's operations, assets and properties, financial condition, earnings, and capitalization, as such appraisers may request or the parties may deem relevant, provided each such appraiser agrees to enter into a confidentiality agreement with the Company on terms satisfactory to the Company.

(v) The fees and expenses of each appraiser will be paid by the Majority Stockholder.

(d) At any time prior to the date that is 15 days following the date that Fair Market Value is finally determined in accordance with this Section 3.08, any of the Selling Investors that has exercised the rights granted in this Section 3.08 may rescind such exercise upon written notice to the Majority Stockholder and the Company. Any such rescission shall not affect the right of any Stockholder to exercise the rights granted in this Section 3.08 at any time thereafter.

(e) Within 30 days after the final determination of the Fair Market Value of the Common Stock pursuant to this Section 3.08 (or such other period as shall be mutually acceptable to the Majority Stockholder and the Selling Investors), the Majority Stockholder will purchase, and the Selling Investors will sell, the Common Stock at a mutually agreeable time and place (the "Put Closing"). At the Put Closing, the Selling Investors shall deliver to the Majority Stockholder the Common Stock to be purchased by the Majority Stockholder, and the Majority Stockholder shall deliver to the Selling Investors the Fair Market Value of such Common Stock by cashier's or certified check payable to the Selling Investors or by wire transfer of immediately available funds.

(f) At any time that the Majority Stockholder is comprised of more than one Person, the obligations under this Section 3.08 of all Persons comprising the Majority Stockholder shall be joint and several.

SECTION 3.09. Legends.

(a) It is understood that the certificates evidencing any Equity Securities may, among other things, bear the following legends (in addition to any legend required under applicable state securities laws):

(i) THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR QUALIFIED OR REGISTERED UNDER STATE SECURITIES OR BLUE SKY LAWS. THESE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION, AND NEITHER THESE SECURITIES NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED OR DISPOSED OF EXCEPT IN COMPLIANCE WITH THE SECURITIES ACT OF 1933, AS AMENDED, APPLICABLE STATE SECURITIES OR BLUE SKY LAWS AND THE APPLICABLE RULES AND REGULATIONS THEREUNDER. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE SECURITIES LAWS.

(ii) THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF A WRITTEN AGREEMENT BETWEEN THE STOCKHOLDER AND THE COMPANY, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY, WHICH AGREEMENT CONTAINS RIGHTS OF CO-SALE AND REQUIREMENTS OF SALE AND MAY ALSO REQUIRE THE HOLDER OR HOLDERS OF A MAJORITY OF THE OUTSTANDING VOTING SECURITIES OF THE COMPANY TO PURCHASE THE SHARES OF THE OTHER STOCKHOLDERS OF THE COMPANY.

(iii) THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A VOTING AGREEMENT WHICH PLACES CERTAIN RESTRICTIONS ON THE VOTING OF THE SHARES REPRESENTED HEREBY. ANY PERSON ACCEPTING ANY INTEREST IN SUCH SHARES SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SUCH AGREEMENT. A COPY OF SUCH VOTING AGREEMENT WILL BE FURNISHED TO THE RECORD HOLDER OF THIS CERTIFICATE WITHOUT CHARGE UPON WRITTEN REQUEST TO THE COMPANY AT ITS PRINCIPAL PLACE OF BUSINESS.

(b) The Company shall be obligated to reissue promptly certificates without the legend in subsection (a)(i) above at the request of any Stockholder thereof if the Stockholder shall have obtained an opinion of counsel (which counsel may be counsel to the Company) reasonably acceptable to the Company to the effect that the securities proposed to be disposed of may lawfully be so disposed of without registration, qualification or legend.

(c) Any legend endorsed on an instrument pursuant to applicable state securities laws and the stop-transfer instructions with respect to such securities shall be removed upon receipt by the Company of an order of the appropriate blue sky authority authorizing such removal.

ARTICLE IV

MISCELLANEOUS

SECTION 4.01. Successors and Assigns. Except as otherwise expressly provided to the contrary, the provisions of this Agreement and the rights and obligations of the parties hereunder shall inure to the benefit of, and be binding upon, the Company and its successors and assigns and be binding upon each Stockholder and each Stockholder's legal representatives, heirs, legatees, distributees, assigns and transferees by operation of law, whether or not any such person has become a party to this Agreement or has agreed in writing to join herein and to be bound by the terms, conditions and restrictions hereof and except with respect to the Company's underwriters pursuant to Section 3.07(c) shall not otherwise be for the benefit of any third party. Any permitted transferee of a Stockholder who is required to become a party hereto will be considered a "Stockholder" for all purposes of this Agreement and shall execute a joinder to this Agreement in substantially the same form as Exhibit A hereto. In the event that after the date of this Agreement the Company enters into an agreement with any Person to issue shares of capital stock of the Company to such Person, then the Company shall cause such Person, as a condition precedent to the issuance of such shares of capital stock, to become a party to this Agreement by executing a joinder to this Agreement in substantially the same form as Exhibit A hereto and thereafter such Person will be considered a "Stockholder" for all purposes of this Agreement. For the avoidance of doubt, any employee, consultant, officer or director of the Company issued securities of the Company pursuant to a stock option, stock purchase or stock bonus plan, or other agreement or arrangement shall, upon exercising any options or the receipt of restricted stock pursuant to such a plan, agreement or arrangement, execute a joinder to this Agreement in substantially the same form as Exhibit A hereto.

SECTION 4.02. Entire Agreement. This Agreement and the other documents delivered pursuant hereto, including any exhibits and schedules, constitute the full and entire agreement and understanding among the parties with regard to the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the parties with respect to such subject matter. No party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein and therein.

SECTION 4.03. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

SECTION 4.04. Amendment and Waiver. This Agreement may be amended or modified only upon the written consent of Stockholders who together own more than 66-2/3% of the voting power of the Company; provided, however, that no amendment or modification shall

decrease the rights or increase the obligations or duties of the Company under this Agreement without the written consent of the Company. Any provision hereof may be waived by the waiving party on such party's own behalf without the consent of any other party. The addition of an additional counterpart signature page or joinder to this Agreement shall not, by itself, constitute an amendment or modification of this Agreement.

SECTION 4.05. Delays or Omissions. It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on any party's part of any breach, default or noncompliance under this Agreement or any waiver on such party's part of any provisions or conditions of the Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

SECTION 4.06. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient, and if not, then on the next business day; (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent (i) in the case of the Company, to its principal executive office, (ii) in the case of a Stockholder, to its address as set forth on the signature page hereof or at such other address as a Stockholder may designate by ten (10) days notice to the other parties hereto or to the Company, and (iii) in the case of any permitted transferee of a party to this Agreement or its transferee, to such transferee at its address as designated in writing by such transferee to the Company. Notwithstanding the foregoing, each Stockholder hereby consents to receipt of any notice required or permitted hereunder by electronic mail or other electronic delivery, including via posting on IntraLinks or another similar electronic system. Each party hereto irrevocably consents to service of process in the manner provided for notices in this Section (excluding by electronic delivery). Nothing in this agreement shall affect the right of any party hereto to serve process in any other manner permitted by applicable law.

SECTION 4.07. Titles and Subtitles. The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

SECTION 4.08. Counterparts. This Agreement may be executed in any number of counterparts, and by different parties on separate counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

SECTION 4.09. Pronouns. All pronouns contained herein, and any variations thereof, shall be deemed to refer to the masculine, feminine or neutral, singular or plural, as the identity of the parties hereto may require.

SECTION 4.10. Governing Law; Jurisdiction.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED FOR ALL PURPOSES UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT GIVING EFFECT THEREOF TO THE PRINCIPLES OF CONFLICT OF LAWS.

(b) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF DELAWARE AND OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH DELAWARE STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

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

SECTION 4.11. Term. This Agreement shall terminate upon a Qualified Public Offering or upon the written consent of Stockholders holding not less than 66-2/3% of the Common Stock then outstanding.

SECTION 4.12. Remedies. The parties hereto, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of their rights under this Agreement. Each of the parties agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement and hereby agrees to waive the defense in any action for specific performance that a remedy at law would be adequate. In addition, the rights of the

parties set forth in this Agreement shall be in addition to, and not in lieu of, any other rights that the parties may have in any capacity, including, without limitation, pursuant to the Certificate of Incorporation or otherwise.

SECTION 4.13. Stock Splits, Stock Dividends, etc. In the event of any issuance of Shares of the Company's voting securities hereafter to any of the Stockholders (including, without limitation, in connection with any stock split, stock dividend, recapitalization, reorganization, or the like), such Shares shall become subject to this Agreement and shall be endorsed with the legend set forth in Section 3.09.

SECTION 4.14. Manner of Voting. The voting of Shares pursuant to this Agreement may be effected in person, by proxy, by written consent or in any other manner permitted by applicable law.

SECTION 4.15. Further Assurances. At any time or from time to time after the date hereof, the parties agree to cooperate with each other, and at the request of any other party, to execute and deliver any further instruments or documents and to take all such further action as the other party may reasonably request in order to evidence or effectuate the consummation of the transactions contemplated hereby and to otherwise carry out the intent of the parties hereunder.

SECTION 4.16. Deemed Execution. On the Effective Date, the Company, each holder or deemed holder of Common Stock on the Effective Date and each holder of an Allowed L/C Lender Claim (as defined in the Plan) shall be deemed to have entered into this Agreement.

SECTION 4.17. Covenants of the Company. The Company agrees to use its best efforts, within the requirements of applicable law, to ensure that the rights granted under this Agreement are effective and that the parties enjoy the benefits of this Agreement. Such actions include, without limitation, the use of the Company's best efforts to cause the nomination and election of the directors as provided in this Agreement.

SECTION 4.18. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

[SIGNATURES ON FOLLOWING PAGES]

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

BUILDING MATERIALS HOLDING CORPORATION

By: _____
Name:
Title:
Address:

STOCKHOLDERS:

[INSERT SIGNATURE BLOCKS]

SCHEDULE A

STOCKHOLDERS

NAME	ADDRESS

EXHIBIT A

FORM OF JOINDER

By execution of this Stockholders Agreement Joinder (this "Joinder"), the undersigned hereby agrees that _____ shall become a party to that certain Stockholders Agreement, dated as of [_____] by and among BUILDING MATERIALS HOLDING CORPORATION, a Delaware corporation (the "Company"), and certain stockholders named therein (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Stockholders Agreement"). Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Stockholders Agreement.

_____ hereby agrees to execute the signature page substantially in the form attached hereto as Exhibit A.1, (the "Signature Page"). The Signature Page shall be incorporated into the Stockholders Agreement such that the Signature Page and Stockholders Agreement, when taken together shall be deemed to constitute one and the same instrument. _____ hereby agrees to observe all of the obligations applicable to a Stockholder under the Stockholders Agreement.

This Joinder may be executed by the parties hereto on any number of separate counterparts.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF the parties have caused this Joinder to be executed on _____, _____.

BUILDING MATERIALS HOLDING CORPORATION

By: _____
Name:
Title:

[STOCKHOLDER]

By: _____
Name:
Title:

EXHIBIT A.1

SIGNATURE PAGE FOR
STOCKHOLDERS AGREEMENT

[STOCKHOLDER]

By: _____
Name:
Title:

EXHIBIT K
[Registration Rights Agreement]

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "Agreement") is entered into as of December [___], 2009 by and among (i) **BUILDING MATERIALS HOLDING CORPORATION**, a Delaware corporation (the "Company"), and (ii) the Persons listed on Exhibit A hereto (such Persons, together with any other Persons who shall be valid transferees of Registrable Securities (as hereinafter defined) and who execute a counterpart hereto pursuant to the provisions of, and subject to the restrictions and rights set forth in, this Agreement, are referred to herein collectively as the "Holders" and, individually, as a "Holder").

WHEREAS, on or prior to the date hereof, certain of the Holders (the "Investors") have (i) acquired an aggregate of [_____] shares of common stock, par value $0.001 per share, of the Company (the "Common Stock"), from the Company, and (ii) may hereafter acquire additional shares of Common Stock in the event of any draws under prepetition letters of credit issued under the Prepetition Credit Agreement (as hereinafter defined), in each case, pursuant to a plan of reorganization implemented following the initiation of the Company's reorganization proceedings under Chapter 11 of the U.S. Bankruptcy Code in Delaware;

WHEREAS, the Company and the Investors desire to enter into this Agreement in order to provide the Holders with certain rights with respect to the registration of their shares of Common Stock; and

WHEREAS, capitalized terms used in this Agreement shall have the meanings ascribed to them in **Section 2** hereof.

NOW, THEREFORE, for and in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. PIGGYBACK REGISTRATION RIGHTS

1.1 Request. If at any time or times the Company proposes to file a registration statement covering any of its equity securities under the Securities Act (whether to be sold by it or by one or more selling stockholders), other than an offering registered on Form S-8 or Form S-4, or successor forms relating to employee stock plans and business combinations, the Company shall, not less than ten (10) Business Days prior to the printing of the preliminary prospectus included in the registration form, give written notice of the proposed registration to all Holders specifying in reasonable detail the proposed transaction to be covered by the registration statement and, at the written request of any Holder delivered to the Company within twenty (20) days after the giving of such notice, but subject to the terms of **Section 1.2** below, the Company shall include in such registration and offering, and in any underwriting of such offering, all Registrable Securities as any such Holder shall request the Company to include in such registration and offering. The Company shall have no obligation to include shares owned by any Holder in a registration statement pursuant to this **Section 1.1** unless and until such Holder, if such registration is an underwritten offering, agrees to enter into an underwriting agreement, a custody agreement and power of attorney and any other customary documents required in an underwritten offering all in customary form and containing customary provisions. If such registration is an underwritten offering the Company shall have the right to select the managing underwriter(s) to administer the underwritten offering in its sole discretion.

1.2 Reduction. If a registration in which any Holder has the right or is otherwise permitted to participate pursuant to this **Section 1** is an underwritten registration and the managing underwriters advise the Company in writing that in their opinion due to marketing factors the number of shares of Common

Stock requested to be included in such registration exceeds the number which can reasonably be expected to be sold in such offering, the Company shall include in such registration: (i) first, the shares proposed to be sold by the Company, (ii) second, the shares proposed to be sold by any Holders exercising rights under **Section 1.1** and, if all such shares cannot be included in such registration due to marketing factors, the amount of shares to be included in such registration by all such Holders shall be allocated *pro rata* among such Holders in proportion to the number of Registrable Securities owned by them, and (iii) third, the shares proposed to be sold by any Other Stockholders proposing to sell shares of Common Stock pursuant to such registration and, if all such shares cannot be included in such registration due to marketing factors, the amount of shares to be included in such registration by all such Other Stockholders shall be allocated *pro rata* among such Other Stockholders in proportion to the number of shares of Common Stock (calculated on an as-converted into Common Stock basis) owned by them.

1.3 Registration Procedures. Whenever any Holder has requested that any shares be registered pursuant to **Section 1.1** hereof, the Company shall, as expeditiously as reasonably possible:

1.3.1 prepare and file with the SEC a registration statement, or prepare and file an appropriate post-effective amendment or supplement to an existing registration statement, with respect to such shares and use its best efforts to cause such registration statement, post-effective amendment or supplement to become effective as soon as reasonably practicable thereafter (*provided that* before filing a registration statement or prospectus or any amendments or supplements thereto, the Company shall, to the extent practicable, furnish such Holder with copies of all such documents proposed to be filed);

1.3.2 prepare and file with the SEC such amendments and supplements to such registration statement and prospectus used in connection therewith as may be necessary to keep such registration statement effective for a period of not less than one (1) year, or until such earlier time as such Holder has completed the distribution described in such registration statement, whichever occurs first;

1.3.3 furnish to such Holder such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus), and such other documents as such Holder may reasonably request;

1.3.4 use its reasonable best efforts to register or qualify such shares under such other securities or blue sky laws of such jurisdictions as such Holder reasonably requests (and to maintain such registrations and qualifications effective for the applicable period of time set forth in **Section 1.3.2** hereof), and to do any and all other acts and things which may be necessary or advisable to enable such Holder to consummate the disposition in such jurisdictions of such shares (*provided that* the Company will not be required to (i) qualify generally to do business in any jurisdiction where it would not be required but for this **Section 1.3**, (ii) subject itself to taxation in any such jurisdiction, or (iii) file any general consent to service of process in any such jurisdiction);

1.3.5 notify such Holder, at any time when a prospectus relating thereto is required to be delivered under the Act within the period that the Company is required to keep the registration statement effective, of the happening of any event as a result of which the prospectus included in any such registration statement contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading in light of the circumstances then existing, and the Company shall use its reasonable best efforts to prepare, file and furnish to such Holder a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such shares, such prospectus will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein not misleading in light of the circumstances then existing;

1.3.6 cause all such shares to be listed on securities exchanges (or national quotation systems), if any, on which similar securities issued by the Company are then listed (or if not then listed, on such exchanges (or national quotation systems) as are requested by the Holders of a majority of the Registrable Securities being included in such registration);

1.3.7 provide a transfer agent and registrar and a CUSIP number for all such shares not later than the effective date of such registration statement;

1.3.8 enter into such customary agreements and, subject to the terms hereof, take all such other customary actions as such Holder reasonably requests (and subject to its reasonable approval) in order to expedite or facilitate the disposition of such shares; and

1.3.9 subject to the execution of a customary confidentiality agreement, make available for inspection by such Holder, by any underwriter participating in any distribution pursuant to such registration statement, and by any attorney, accountant or other agent retained by such Holder or by any such underwriter, all financial and other records, pertinent corporate documents, and properties (other than confidential intellectual property) of the Company.

1.4 Holdback Agreements

1.4.1 Notwithstanding anything in this Agreement to the contrary, if, after any registration statement to which the rights hereunder apply becomes effective (and prior to completion of any sales thereunder), the Company's Board of Directors determines in good faith that the failure of the Company to (i) suspend sales of stock under the registration statement or (ii) amend or supplement the registration statement, would be seriously detrimental to the Company (and the Chairman of the Board of Directors of the Company provides a signed certificate to that effect to the Holders including shares in such registration) because it would (a) necessitate the untimely disclosure of a proposed business combination or other currently proposed transaction or (b) require premature disclosure of material information that the Company has a *bona fide* business purpose for preserving as confidential, the Company shall so notify each Holder participating in such registration and each Holder shall suspend any further sales under such registration statement until the Company advises such Holders that the registration statement has been amended or that conditions no longer exist which would require such suspension, *provided that* (x) the Company may impose any such suspension for no more than ninety (90) days and no more than twice during any twelve (12) month period and (y) the Company shall use its best efforts to amend the registration statement or otherwise take action to permit sales thereunder as soon as practicable.

1.5 Registration Expenses

1.5.1 Holder Expenses. If, pursuant to **Section 1.1** hereof, Registrable Securities are included in a registration statement, then the Holder thereof shall pay all transfer taxes, if any, relating to the sale of its shares, and any underwriting discounts or commissions or the equivalent thereof applicable to the sale of its shares (collectively, "Seller Expenses").

1.5.2 Company Expenses. Except for Seller Expenses, the Company shall pay all expenses ("Registration Expenses") incident to the registration of shares by the Company and any Holders pursuant to **Section 1.1** and to the Company's performance of or compliance with this Agreement in connection therewith, including, without limitation, all registration and filing fees, fees and expenses of compliance with state securities or blue sky laws, printing expenses, messenger and delivery expenses, and reasonable fees and expenses of counsel for the Company and a single counsel for all Holders selling

shares and all independent certified public accountants and other persons retained by the Company in connection therewith.

1.5.3 Indemnity and Contribution.

(a) In the event that any shares owned by a Holder are proposed to be offered by means of a registration statement pursuant to **Section 1.1** hereof, to the extent permitted by law, the Company agrees to indemnify and hold harmless such Holder, each officer, partner, manager and director of such Holder, each other Person, if any, who Controls or may Control such Holder and each representative of any Holder serving on the Board of Directors of the Company (such Holder, its officers, partners, managers and directors and such other Persons being hereinafter referred to individually as an "Investor Indemnified Person" and collectively as "Investor Indemnified Persons") from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs, and expenses, including, without limitation, interest, penalties, and reasonable attorneys' fees and disbursements, asserted against, resulting to, imposed upon or incurred by such Investor Indemnified Person, directly or indirectly (hereinafter referred to in this **Section 1.5.3** in the singular as a "claim" and in the plural as "claims"), based upon, arising out of or resulting from any untrue statement (or alleged untrue statement) of a material fact contained in a registration statement, prospectus, offering circular, free writing prospectus or other document to which such registration relates or any omission (or alleged omission) to state therein a material fact necessary to make the statements made therein not misleading in light of the circumstances in which such statements are made, except insofar as such claim is based upon, arises out of or results from information furnished to the Company in writing by such Investor Indemnified Person specifically for use in the registration statement, prospectus, offering circular, free writing prospectus or other document to which such registration relates.

(b) Each Holder shall, if securities held by him, her or it are included among the securities as to which such registration, qualification or compliance is being effected, indemnify the Company, each of its directors and officers, and each Person who Controls the Company (the Company, its directors, officers and each Person who Controls the Company being hereinafter referred to individually as a "Company Indemnified Person" and collectively as "Company Indemnified Persons"), and any other Holders who have included Registrable Securities in such registration and each officer, partner, manager and director of such Holder and each other Person, if any, who Controls or may Control such Holder against all claims based on, arising out of, or resulting from any untrue statement (or alleged untrue statement) of a material fact contained in a registration statement, prospectus, offering circular, free writing prospectus or other document to which such registration relates or any omission (or alleged omission) to state therein a material fact necessary to make the statements made therein not misleading in light of the circumstances in which such statements are made, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular, free writing prospectus or other document in reliance upon and in conformity with written information furnished to the Company by such Holder specifically for use therein; *provided, however,* that the obligations of such Holder hereunder shall be limited to an amount equal to the net proceeds to such Holder of securities sold in such offering as contemplated herein.

(c) Promptly after receipt by an indemnified party of notice of the commencement of any action or proceeding involving a claim referred to in Section 1.5.3(a) or 1.5.3(b) above, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the latter of the commencement of such action, *provided that* the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under Section 1.5.3(a) or 1.5.3(b) above, as the case may be, except to the extent that the indemnifying party is actually prejudiced by such failure to give notice. In case any such action is

brought against an indemnified party, unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist in respect of such claim, the indemnifying party shall be entitled to participate in and to assume the defense thereof, jointly with any other indemnifying party similarly notified to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the consent of the indemnified party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

(d) The indemnification provisions set forth herein shall be in addition to any liability that the Company or any Holder may otherwise have to the Investor Indemnified Persons, the Company Indemnified Persons or the other Persons entitled to indemnification hereunder.

(e) If the indemnification provided for in this **Section 1.5.3** is held by a court of competent jurisdiction to be unavailable to an indemnified person, then the indemnifying person, in lieu of indemnifying such indemnified person hereunder, shall contribute to the amount paid or payable by such indemnified person as a result of any claims in such proportion as is appropriate to reflect the relative fault of the indemnified person on the one hand and the indemnifying person on the other in connection with the statements or omissions (or alleged statements or omissions) that resulted in such claims as well as any other relevant equitable considerations. The relative fault of the indemnified person and the indemnifying person shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying person or by the indemnified person and the parties' relative intent, knowledge and access to information and opportunity to correct or prevent such statement or omission (or alleged statement or omission). In no event will the liability of any Holder for contribution exceed the net proceeds received by such Holder in any sale of securities to which such liability relates except in the case of fraud or willful misconduct by such Holder.

(f) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with any underwritten public offering contemplated by this Agreement are in conflict with the foregoing provisions, the provisions in such underwriting agreement shall be controlling.

1.6 Grant and Transfer of Registration Rights. Except for registration rights granted by the Company after the date hereof which are subordinate to the rights of the Holders hereunder, the Company shall not grant any registration rights to any other Person without the prior written consent of the Holders holding at least a majority of all Registrable Securities held by all Holders as of the date of determination, measured on a fully-diluted, as-converted into Common Stock basis. Holders shall have the right to transfer or assign the rights contained in this Agreement (i) to any limited partner or Affiliate of a Holder in connection with the transfer of any Registrable Securities permitted by the terms of any stockholder agreement then in effect or (ii) to any third party transferee acquiring Registrable Securities held by such Holder *provided that* such transfer is permitted by the terms of any stockholder agreement then in effect; *provided*, in each case, that: (a) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned; (b) such transferee or assignee agrees in writing to be bound by and subject to the terms and conditions of this Agreement; and (c) such assignment shall be effective only if immediately following such transfer the further disposition of such securities by the transferee or assignee is restricted under the Act.

1.7 Information from Holder; Underwriting Agreement. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this **Section 1** with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be reasonably requested by the Company to effect the registration of such Holder's Registrable Securities. It shall also be a condition precedent to the participation of any Holder in any underwritten public offering of Registrable Securities held by it that such Holder enter into an underwriting agreement in form and substance satisfactory to the applicable underwriter(s) participating in such offering.

1.8 Rule 144 Requirements. After the date of the IPO, the Company shall use its reasonable best efforts to make publicly available, and available to the Holders, such information as is necessary to enable the Holders to make sales of Registrable Securities pursuant to Rule 144 of the Act. The Company shall furnish to any Holder, upon request, a written statement executed by the Company as to the steps it has taken to comply with the current public information requirements of Rule 144.

1.9 Changes in Common Stock. If, and as often as, there is any change in the Common Stock by way of a stock split, stock dividend, combination or reclassification, or through a merger, consolidation, reorganization or recapitalization, or by any other means, appropriate adjustment shall be made in the provisions hereof so that the rights and privileges granted hereby shall continue with respect to the Common Stock as so changed.

2. DEFINITIONS

The capitalized terms contained in this Agreement shall have the following meanings unless otherwise specifically defined:

"**Act**" shall mean the Securities Act of 1933, as amended.

"**Affiliate**" with respect to any specified Person, means a Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with, such specified Person.

"**Business Day**" shall mean Monday through Friday and shall exclude any federal or bank holidays observed in New York City.

"Control" (and its derivatives) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, as trustee or executor, by contract or otherwise).

"IPO" shall mean the first public offering of the Common Stock registered under the Act after the date hereof.

"Other Stockholders" means persons other than Holders who, by virtue of agreements with the Company, are entitled to include their securities in a registration effected pursuant to this Agreement.

"Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, government or department or agency of a government.

"Prepetition Credit Agreement" means that certain Second Amended and Restated Credit Agreement dated as of November 10, 2006, by and among the Company, as borrower, the lenders party thereto, and Wells Fargo Bank, National Association, as administrative agent, as amended by that certain First Amendment to Second Amended and Restated Credit Agreement dated as of February 29, 2008 and that certain Second Amendment to Second Amended and Restated Credit Agreement dated as of September 30, 2008.

"Registrable Securities" shall mean (i) any shares of Common Stock held by any Holder as of the date hereof, (ii) any additional shares of Common Stock acquired by any Holder after the date hereof (other than shares acquired upon exercise of employee stock options or similar employee awards) and (iii) any equity securities of the Company issued as a distribution with respect to or in exchange for or in replacement of any of the securities referred to in clause (i) or (ii) above; *provided, however*, that Registrable Securities shall not include any securities that have been previously sold pursuant to a registration statement filed under the Act or under Rule 144 promulgated under the Act, or which have otherwise been transferred in a transaction in which the transferor's rights under this Agreement are not assigned, or, shares that are eligible for sale by a Holder without any limitations whatsoever pursuant to Rule 144(b) under the Act.

"**SEC**" shall mean the United States Securities and Exchange Commission.

3. MISCELLANEOUS

3.1 Entire Agreement; Amendment. This Agreement constitutes the entire agreement among the parties hereto with respect to the matters provided for herein, and it supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein between or among such parties. Subject to the provisions of **Section 1.6** hereof, this Agreement may be amended or modified in any respect, or any term hereof may be waived, with the written consent of the Holders who own at least a majority of the outstanding Registrable Securities on a fully-diluted, as-converted into Common Stock basis then held by all Holders; *provided that* no provision hereof may be amended if it would have the effect of materially adding to the obligations of the Company without the written consent of the Company. The addition of an additional counterpart signature page to this Agreement in accordance with **Section 1.6** hereof shall not, by itself, constitute an amendment to this Agreement.

3.2 Waiver. No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement or under any other instruments given in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any such right, power or privilege. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege.

3.3 Termination. This Agreement shall forthwith become wholly void and of no effect as to any Holder (including any permitted assignee of such Holder), at such time as such person no longer owns any securities constituting Registrable Securities.

3.4 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, heirs, executors, administrators, legal representatives and permitted assigns, including any successor corporation upon a reincorporation of the Company into another jurisdiction.

3.5 Governing Law; Jurisdiction.

3.5.1 THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED FOR ALL PURPOSES UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT GIVING EFFECT THEREOF TO THE PRINCIPLES OF CONFLICT OF LAWS.

3.5.2 EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF DELAWARE AND OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH DELAWARE STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

3.5.3 EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY COURT REFERRED TO IN SECTION 3.5.2. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

3.6 Notices.

3.6.1 All notices, demands, requests, or other communications which may be or are required to be given, served, or sent by any party to any other party pursuant to this Agreement shall be in writing and shall be hand delivered, faxed, sent by overnight courier or mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

(a) If to the Company:

Building Materials Holding Corporation
720 Park Boulevard, Suite 200
Boise, Idaho 83712
Facsimile No.: [_____]
Attention: [_____]

with a copy (which shall not constitute notice) to:

[_____]
[_____]
[_____]
Facsimile No: [_____]

Attention: [_____]

(b) If to any Holder, at such Holder's address as appearing on Exhibit A hereto.

3.6.2 Each party may designate by notice in writing (given in accordance with the terms hereof) a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request, or communication which shall be hand delivered, sent or mailed, in the manner described above, shall be deemed sufficiently given, served, sent, received or delivered for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt or a facsimile confirmation being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

3.6.3 Notwithstanding the foregoing, each Holder hereby consents to receipt of any notice required or permitted hereunder by electronic mail or other electronic delivery, including via posting on IntraLinks or another similar electronic system.

3.6.4 Each party hereto irrevocably consents to service of process in the manner provided for notices in this Section 3.6 (excluding by electronic delivery). Nothing in this Agreement shall affect the right of any party hereto to serve process in any other manner permitted by applicable law.

3.7 Execution in Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signatures of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than one of the counterparts of this Agreement containing the respective signatures of or on behalf of, all of the parties hereto.

3.8 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

[Signatures Appear on Following Pages]

IN WITNESS WHEREOF, each Holder the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

COMPANY:

BUILDING MATERIALS HOLDING CORPORATION

By: _____

Name: _____

Title: _____

HOLDERS:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT A

HOLDERS

NAME	ADDRESS

EXHIBIT L
[Causes of Action]

CAUSES OF ACTION

In addition to Claims and Causes of Actions described in their Schedules and Statements of Financial Affairs, which descriptions are incorporated herein by reference, the Debtors may have the Causes of Action described on the attached sheets. Pursuant to section 7.16 of the Plan, no Person may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or Reorganized Debtors, as applicable, will not pursue any and all available against them. The Debtors or Reorganized Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan. Unless any Causes of Action against any Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or Bankruptcy Court order, the Reorganized Debtors expressly reserve all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or consummation.

1. BMC West Corporation

Caption of Suit	Case Number	Nature of Proceeding	Court or Agency and Location
BMC West v. Pacific Lifestyle Homes, Inc, Debtor	08-45328-PBS	Continuation and Maintenance of BMC West's lien rights	USBC, Western Dist. Of WA Tacoma
BMC West Corporation v LC Construction and Remodeling, LLC, et al	NA	Construction Lien foreclosure/breach of account agreement	Circuit Court of Multnomah County, OR Portland, OR
BMC West Corporation v Daniel R Slimick and Mary A. Slimick.	C09-1171CV	Construction Lien Foreclosure	Circuit Court of Washington County, OR Hillsboro, OR
BMC West Corporation v Valda L Summers, dba Sovereign Homes, et al.	0904-06071	Construction Lien Foreclosure	Circuit Court of Multnomah County, OR Portland, OR
BMC West Corporation v Pine St. Development, LLC and Roddy Kartchner.	902-02034	Breach of Account Agreement	Circuit Court of Multnomah County, OR Portland, OR

BMC West Corporation v. Affordable Painting and Construction NACM Oregon Service Co	C082812SC	Small Claims collection suit	Washington County Court, Hillsboro, OR
BMC West Corporation v. Gary Construction, LLC NACM Oregon Service Co.	C081764SC	Small Claims collection suit	Washington County Court, Hillsboro, OR
BMC West v Cedar Mill Townhomes II, James and Patricia Standring and Sterling Savings Bank.	C086632CV	Construction Lien Foreclosure and Breach of Contract	Washington County Court, Hillsboro, OR
BMC West v Renaissance Custom Homes, LLC, Randal Sebastian, Milwaukie Lumber & Stark Street Lumber Company, LLC dba Milwaukie Lumber Company, Trinity Carpet Brokers, Inc., Fettig Construction, Inc., JB Insulation, Columbia River Bank, and Developers Surety & Indemnity Company Bond No. 545039C.	08-2-06159-4	Construction Lien Foreclosure and Breach of Contract	Clark County Superior Court, Vancouver, WA
BMC West v Renaissance Custom Homes, LLC, Randal Sebastian, Milwaukie Lumber & Stark Street Lumber Company, LLC dba Milwaukie Lumber Company, Trinity Carpet Brokers, Inc., Dolan NW dba Seattle Lighting, Gary's Vacuflo, Inc, Sterling Savings Bank and Developers Surety & Indemnity Company, Bond No. 545039C.	08-2-06187-0	Construction Lien Foreclosure and Breach of Contract	Clark County Superior Court, Vancovuer, WA
BMC West v Renaissance Custom Homes, LLC.	CV08050213	Construction Lien Foreclosure	Clackamas County, Oregon City, OR
BMC West v Renaissance Custom Homes, LLC.	08C17678	Construction Lien Foreclosure	Marion County, Salem, OR
BMC West v Renaissance Custom Homes, LLC.	C083520CV	Construction Lien Foreclosure	Washington County, Hillsboro, OR
BMC West v Renaissance Custom Homes, LLC.	C083721CV	Construction Lien Foreclosure	Washington County, Hillsboro, OR
BMC West v Renaissance Custom Homes, LLC.	C083877CV	Construction Lien Foreclosure	Washington County, Hillsboro, OR
BMC West v Renaissance Custom Homes, LLC.	C084015CV	Construction Lien Foreclosure	Washington County, Hillsboro, OR

BMC West v Renaissance Custom Homes, LLC.	C084016CV	Construction Lien Foreclosure	Washington County, Hillsboro, OR
BMC West v Renaissance Custom Homes, LLC.	08-2-06187-0	Construction Lien Foreclosure	Clark County, Vancouver, WA
BMC West v Renaissance Custom Homes, LLC.	w/ 17308	Construction Lien Foreclosure	Clark County, Vancouver, WA
BMC West v Renaissance Custom Homes, LLC.	08-2-06159-4	Construction Lien Foreclosure	Clark County, Vancouver, WA
BMC West v Renaissance Custom Homes, LLC and Randal S. Sebastian.	CV08070471	Sebastian Guarantee Case	Clackamas County, Oregon City, OR
BMC West Corporation v Jason H. Roley and Elizabeth L. Roley, husband and wife and their marital community dba AJR Exteriors.	318549-3	Complaint on written instrument	Clark County District Court, Vancouver, WA
BMC West Corporation v Allphase Contracting, Inc, a Washington corporation, and David B. Sale and Jeannette L. Sale, husband and wife and Curtis A. Roderick and Jane Doe Roderick, husband and wife, and their respective marital communities, and Great American Insurance Company of New York, Bond No. 790286575061.	08-2-43787-6 SEA	Complaint for money due and to enforce claim against contractor's bond.	King County Superior Court, Seattle, WA
BMC West Corporation v Columtia Rim Construction, Inc, a Washington corporation, and Developers Surety and Indemnity Company, Bond No. 173652C	08-2-43791-4 SEA	Complaint for money due and to enforce claim against contractor's bond	King County Superior Court, Seattle, WA

BMC West Corporation v Dynamic Remodeling, Inc, a Washington corporation, Michael Kharitonenko aka Mikhail Kharitonenko and Julia Kharitonenko, husband and wife and their marital community, and Old Republic Insurance Company, Bond No. YLI264489.	08-2-40600-8 SEA	Complaint for money due and to enforce claim against contractor's bond	King County Superior Court, Seattle, WA
BMC West Corporation v Harbour Bay Homes, LLC, a Washington limited liability company, and Ren Grendahl and Gail Grendahl, husband and wife, and Richard Grams and Deborah Grams, husband and wife, and their marital communities and Contractors Bonding and Insurance Company, Bond No. SG0164 . Case #	08-2-29378-5 SEA	Complaint for money due and to enforce claim against contractor's bond	King County Superior Court, Seattle, WA
BMC West Corporation v Travis Mortensen and Jane Doe Mortensen, husband and wife and Allan Mortensen and Jane Doe Mortensen, husband and wife, and their marital community dba North Fork Construction Company and American Contractors Indemnity Company, Bond No. 100039709. Case #	08-2-43593-8 SEA	Complaint for money due and to enforce claim against contractor's bond	King County

BMC West Corporation v PCR Contracting, Inc., a Washington Corporation and Curtis Miller and Meleea Miller, husband and wife and their marital community, and Developers Surety and Indemnity Company, Bond. No 747410C.	08-2-05297-4 SEA	Complaint for money due and to enforce claim against contractor's bond	King County Superior Court, Seattle, WA
BMC West Corporation v. Montebello Homes	2009-9499451	Collection	
BMC West Corporation v. Gret Matthew Rollison	09-27801		
BMC West Corporation v. Scott Trent Cowley and Brianna D. Cowley	09-41179		
BMC West Corporation vs. Chateau Home Builders, Ltd, Cannon Capital, L.L.C. and Robert Max Cannon, individually			
BMC West Corporation vs. Excelstar Corporation	SCV25713		
BMC West Corporation vs. Crosby Homes	PCL20091195		
BMC West Corporation vs. Davey Clark			
BMC West Corporation vs. Scott Cowley			
BMC West Corporation vs. Tammy Howe			
BMC West Corporation vs. Odyssey Enterprises			
BMC West Corporation vs. Ronnel Stacey			
BMC West Corporation vs. Thilabus Development			
BMC West Corporation vs. Timberline Trim			
BMC West Corporation vs. Warm Walls Construction			
BMC West Corporation vs. PLS Homes			
BMC West Corporation vs. Estes Investments			
BMC West Corporation vs. Bill Butler Builders, Inc.			

BMC West Corporation vs. J & R Homes

BMC West Corporation vs. Russell Allen Custom Homes

BMC West Corporation vs. Lincoln Land Development

BMC West Corporation vs. Mathias Homes, Inc

2. SelectBuild Northern California, Inc.

Caption of Suit	Case Number	Nature of Proceeding	Court or Agency and Location
SelectBuild Northern California, Inc., dba SelectBuild v. Borm Construction	30-2009 00124156		Orange County Superior Court
SelectBuild Northern California, Inc., dba SelectBuild v. Framemax Construction, Inc			Santa Clara County Superior Court

3. TWF Construction, Inc.

Caption of Suit	Case Number	Nature of Proceeding	Court or Agency and Location
TWF Construction, Inc., dba SelectBuild v. Madio Equity Partners, LLC	87894		Riverside Superior Court

4. SelectBuild Southern California, Inc.

Caption of Suit	Case Number	Nature of Proceeding	Court or Agency and Location
WBC v. Prime Homes at Portofino Cove, LTD and Prime Homebuilders, Inc.		Construction Lien	
WBC v. Prime Homes at Portofino Cove, LTD and Prime Homebuilders, Inc.		Construction Lien	
WBC v. Neal Communities of Southwest Florida, Inc.		Construction Lien	

5. SelectBuild Nevada, Inc.

Caption of Suit	Case Number	Nature of Proceeding	Court or Agency and Location
SelectBuild Nevada, Inc. v. Daniel Lee			
SelectBuild . v. Lucchesi Construction and Development, Inc.			
SelectBuild vs DRS Construction, Sandpointe			
SelectBuild vs. Phillips Homes			
SelectBuild vs. VCSP (Village at Centennial Springs)			
SelectBuild vs. McCormick Luxury Homes			
SelectBuild vs. Robert Davis Construction			