IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

NOTICE OF FILING OF FURTHER AMENDED AND RESTATED PLAN SUPPLEMENT PURSUANT TO THE JOINT PLAN OF REORGANIZATION FOR THE DEBTORS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE AMENDED DECEMBER 14, 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 14, 2009 (With Technical Modifications) [D.I. 1134] (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 filed amended and restated Plan Supplement Documents on December 7, 2009.

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

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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.

A. Biographical Information Regarding Proposed Officers and Directors

1. Jay B. Hunt, Chairman
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.
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10. SelectBuild Nevada, Inc.

11. SelectBuild Arizona, LLC

12. SelectBuild Illinois, LLC

H. New Bylaws

1. Building Materials Holding Corporation

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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.

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M. Financing Commitment Letters

1. DK Acquisition Partners, L.P.

2. Wells Fargo Foothill, LLC

N. Fee Letters

1. DK Acquisition Partners, L.P.

2. Wells Fargo Foothill, LLC

PLEASE TAKE FURTHER NOTICE that the amended and restated Plan Supplement documents are available for viewing, downloading and/or printing by accessing the Debtors' 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 14, 2009

YOUNG CONAWAY STARGATT &
TAYLOR, LLP

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ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

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Dated: Wilmington, Delaware
December 14, 2009

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ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

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 January __, 2010

among

BUILDING MATERIALS HOLDING CORPORATION,
as Borrower,

CERTAIN SUBSIDIARIES OF BORROWER,
as Guarantors,

WELLS FARGO FOOTHILL, LLC,
as Agent and Issuing Lender,

and

THE LENDERS PARTY HERETO,
as Lenders

SENIOR SECURED CREDIT AGREEMENT

This SENIOR SECURED CREDIT AGREEMENT (this "Agreement"), dated as of January __, 2010, 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 FOOTHILL, LLC ("WFF"), as agent for the Lenders (in such capacity, the "Agent"), and (iv) the various lenders 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 Bank, National Association ("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 $90,000,000 plus paid-in-kind interest as provided herein.

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 (a) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (b) the acquisition of in excess of 50% of the capital stock, partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary, or (c) 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 Questionnaire" means an Administrative Questionnaire in a form supplied by the 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.

"Agent" has the meaning specified in the preamble, and any successor Agent arising under Section 10.09.

"Agent's Account" means the deposit account of the Agent identified on Schedule A-1.

"Agent Related Persons" means WFF and any successor Agent arising under Section 10.09 and any Issuing Lender hereunder, together with their respective Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

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

"Aggregate Commitment" means $90,000,000.

"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 $40,000,000 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.

"Applicable Fee Amount" means, for any day, (a) with respect to the Commitment Fees, 1.00% per annum, and (b) with respect to the Letter of Credit fees, 5.00% per annum.

"Applicable Margin" means, for any day, (a) with respect to Revolving Loans, 5.00%, and (b) with respect to Term Loans, (i) cash pay interest equal to 6.00% per annum plus (ii) payment-in-kind interest equal to 5.00% per annum; provided that on August 1, 2010 and on the first day of each month thereafter, the percentage applicable to the payment-in-kind interest under this clause (b)(ii) shall increase by 1.00% per annum.

"Application Event" means the occurrence of (a) a failure by Holdings to repay all of the Obligations in respect of the Term Loans on the Term Loan Maturity Date, (b) a failure by Holdings to repay all of the Obligations on the Revolving Loan Maturity Date, (c) the acceleration of all of the Obligations pursuant to Section 9.02, or (d) an Event of Default has occurred and is continuing and the Majority Lenders have elected to require that payments and proceeds of Collateral be applied pursuant to Section 0 of the Agreement.

"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 Agent (subject only to Permitted Liens), such Dollar value to be as determined from time to time by an appraisal company selected by the Agent.

"Assignee" has the meaning specified in Section 11.06.

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit C.

"Availability" means, as of any date of determination, the amount that Holdings is entitled to borrow as Revolving Loans under Section 2.01 of this Agreement (after giving effect to all then outstanding Obligations (other than Bank Product Obligations) and all sublimits and reserves then applicable hereunder).

"Availability Reserve" means, as of any date of determination, $10,000,000.

"Available Commitment" has the meaning specified in Section 2.10(c).

"Bank Product" means any one or more of the following financial products or accommodations extended to Holdings or its Subsidiaries by a Bank Product Provider: (a) credit

cards, (b) credit card processing services, (c) debit cards, (d) stored value cards, (e) purchase cards (including so-called "procurement cards" or "P-cards"), (f) Cash Management Services, or (g) transactions under Hedge Agreements.

"Bank Product Agreements" means those agreements (other than Hedge 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 (other than Bank Products described in clause (g) of the definition thereof).

"Bank Product Obligations" means (a) 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 or a Hedge 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, (b) all Permitted Hedge Obligations, and (c) all amounts that Agent or any Lender is obligated to pay to a Bank Product Provider as a result of Agent or such Lender purchasing participations from, or executing guarantees or indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Bank Products provided by such Bank Product Provider to Holdings or its Subsidiaries.

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

"Bank Product Reserve Amount" means, as of any date of determination, the Dollar amount of reserves that Agent has determined it is necessary or appropriate to establish (based upon the Bank Product Providers' reasonable determination of their credit exposure to Holdings and its Subsidiaries in respect of Bank Product Obligations) in respect of Bank Products then provided or outstanding.

"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.

"Base Rate" means the greatest of (a) with respect to Obligations in respect of the Revolving Loans, 3.25% per annum and with respect to Obligations in respect of the Term Loans, 6.00% per annum, (b) the Federal Funds Rate plus ½%, (c) the LIBOR Rate (which rate shall be calculated based upon an Interest Period of 3 months and shall be determined on a daily basis), plus 1 percentage point, and (d) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate", with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such 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 publications as Wells Fargo may designate.

"Base Rate Loan" means a Loan or any portion thereof that bears interest based on the Base Rate.

"Borrowing" means a borrowing hereunder consisting of Loans made to Holdings on the same day by the Lenders under Article II.

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

(i) 70% of (a) the amount of Eligible Accounts less (b) the Warranty Reserve, less (c) the Dilution Reserve (provided that the Agent may elect to increase the advance rate up to 85% in the exercise of its Permitted Discretion following completion of the Post-Closing Field Audit), plus

(ii) the least of (a) $30,000,000, (b) 50% of the value of Eligible Inventory, and (c) 75% of the Inventory Orderly Liquidation Value of Eligible Inventory, less the Inventory Vendor Discount Reserve less the Inventory Volume Rebate Reserve, plus

(iii) the least of (a) $30,000,000, (b) 75% of the Fixed Assets Orderly Liquidation Value of Eligible Assets, plus 50% of the Appraised Value of Real Estate Collateral of the Mortgaged Property, and (c) 150% of the amount of credit availability created by clauses (i) and (ii) above, minus

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

Anything to the contrary in this Agreement notwithstanding, the Agent shall have the right (but not the obligation) to establish, increase, reduce, eliminate, or otherwise adjust reserves from time to time against the Borrowing Base in such amounts, and with respect to such matters, as the Agent in its Permitted Discretion shall deem necessary or appropriate, including (x) reserves in an amount equal to the Bank Product Reserve Amount, (y) without duplication, reserves in respect of Dilution, and (z) reserves with respect to (A) sums that Holdings or its Subsidiaries are required to pay under any Section of this Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay, and (B) amounts owing by Holdings or its Subsidiaries to any Person to the extent secured by a Lien on, or trust over, any of the Collateral (other than a Permitted Lien which by operation of law or contract would have priority over the Liens securing the Obligations), which Lien or trust, in the Permitted Discretion of the Agent likely would have a priority superior to the Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for ad valorem, excise, sales, or other taxes where given priority under applicable law) in and to such item of the Collateral.

"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 or California 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 Management Services" means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

"Cash Collateral Account" means that certain deposit account held at Wells Fargo (or such other interest-bearing deposit accounts held at Wells Fargo or its Affiliates satisfactory to the 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 Agent shall have a first priority Lien, on behalf of the Lenders and the other Secured Parties, and over which the Agent shall have dominion and control.

"Cash Collateralize" means (a) with respect to L/C Obligations or the Obligations (other than Bank Product Obligations) to pledge and deposit with or deliver to the 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, and (b) with respect to Bank Product Obligations to pledge and deposit with or deliver to the Agent, as additional collateral for the Bank Product Obligations, pursuant to the Loan Documents, cash or deposit account balances in an amount determined by the Agent as sufficient to satisfy the reasonably estimated credit exposure with respect to the then existing Bank Product Obligations (other than Hedge Obligations). 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: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority, or (c) 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.

"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 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 Agent.

"Collateral Documents" mean, collectively, (a) 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 Agent for the benefit of the Lenders and the other Secured Parties, now or hereafter delivered to the Lenders or the 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 Agent for the benefit of the Lenders and the other Secured Parties, as secured party, and (b) 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.

"Collections" means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, cash proceeds of asset sales, rental proceeds, and tax refunds).

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

"Commitment Fees" has the meaning specified in Section 2.10(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 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 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 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, (a) 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 (i) to purchase, repurchase or otherwise acquire such primary obligations or any security therefor, (ii) 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, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (iv) in connection with any synthetic lease or other similar off balance sheet lease transaction, or (v) otherwise to assure or hold harmless

the holder of any such primary obligation against loss in respect thereof (each a "Guaranty Obligation"); (b) 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; (c) 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; (d) in respect of Earn-Out Obligations; and (e) in respect of any Hedge Agreement. 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 Hedge Agreements, shall be equal to the maximum reasonably anticipated liability in respect thereof and, in the case of Contingent Obligations in respect of Hedge Agreements, shall be equal to the Hedge 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. A Person who owns or holds capital stock, beneficial interests or other securities representing ten percent (10%) or more of the total voting power of another Person shall be deemed, for purposes of this Agreement (other than the definition of "Subsidiary" contained herein), to "control" such other Person.

"Conversion/Continuation Date" means any date on which, under Section 2.04, Holdings (a) converts Loans of one Type to another Type, or (b) continues as Loans of the same Type, but with a new Interest Period, Loans having Interest Periods expiring on such date.

"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 (a) the making of any Revolving Loans or Term Loans hereunder (other than Term Loans that constitute capitalized payment-in-kind interest pursuant to Section 2.09(b)), and (b) the Issuance of any Letters of Credit or Reimbursement Undertakings hereunder.

"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 any Revolving Lender that (a) has failed to fund any amounts required to be funded by it under this Agreement on the date that it is required to do so under this Agreement (including the failure to make available to the Agent amounts required pursuant to a Settlement or to make a required payment in connection with a Letter of Credit Disbursement), (b) notified Holdings, the Agent, or any Lender in writing that it does not intend to comply with all or any portion of its funding obligations under this Agreement, (c) has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements generally (as reasonably determined by the Agent) under which it has committed to extend credit, (d) failed, within one (1) Business Day after written request by the Agent, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund any amounts required to be funded by it under this Agreement, (e) otherwise failed to pay over to the Agent or any other Lender any other amount required to be paid by it under this Agreement on the date that it is required to do so under this Agreement, or (f) (i) becomes or is insolvent or has a parent company that has become or is insolvent, or (ii) becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian or appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment.

"Defaulting Lender Rate" means (a) for the first 3 days from and after the date the relevant payment is due, the Base Rate, and (b) thereafter, the interest rate then applicable to Revolving Loans that are Base Rate Loans (inclusive of the Applicable Margin applicable thereto).

"Deferred Compensation Accounts" has the meaning specified in clause (iv) of the definition of "Liquidity".

"Designated Account" means the deposit account of Holdings identified on Schedule A-2.

"Dilution" means, as of any date of determination, a percentage, based upon the experience of the immediately prior 180 consecutive days, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Holdings' Accounts during such period, by (b) Holdings' billings with respect to Accounts during such period.

"Dilution Reserve" means, as of any date of determination after which Agent, in its Permitted Discretion, has increased the advance rate in clause (i) of the definition of "Borrowing Base" to 85%, an amount sufficient to reduce the advance rate against Eligible Accounts by one (1) percentage point for each percentage point by which Dilution is in excess of five percent (5%).

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

"Disposition" means the sale, lease, conveyance or other disposition of property, and 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.

"DKAP" means DK Acquisition Partners, L.P., a Delaware limited partnership.

"DKAP Fee Letter" means the Fee Letter, dated as of December 14, 2009, made by Holdings in favor of DKAP.

"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 (a) 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 pursuant to Section 2.09(b); and (b) 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 2.07, 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 earlier than January 1, 2010 or later than January 4, 2010.

"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 Agent in Agent's Permitted Discretion to address the results of any audit performed by Agent from time to time after the Effective Date. Eligible Accounts shall not include the following (unless the 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 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 Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and is directly drawable by Agent, or (z) the Account is covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to 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 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 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 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 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 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 Agent in Agent's Permitted Discretion to address the results of any audit or appraisal performed by Agent from time to time after the Effective Date. An item of fixed assets shall not be included in Eligible Fixed Assets (unless the 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 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 Agent in Agent's Permitted Discretion to address the results of any audit or appraisal performed by 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 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 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, 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.

"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 (a) 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 (b) 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 (a) a Reportable Event with respect to a Pension Plan; (b) 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; (c) a complete or partial withdrawal by Holdings or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) 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; (e) 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 (f) 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: (a) any loss, destruction or damage of such property; (b) 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 (c) 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, (a) EBITDA for such period minus (b) the sum of (i) 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, (ii) taxes paid in cash during such period, (iii) 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 2.07(a)(iv) through 2.07(a)(viii) and (2) repayments or prepayments of Indebtedness financed by incurring other Indebtedness, (iv) the amount, if any, by which net working capital increased during such period, and (v) 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 (i) through (v) shall be as set forth in the financial statements supplied to the 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 Agent, any Lender, the Issuing 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 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" means that certain fee letter, dated as of December 14, 2009, between Holdings and Agent, in form and substance reasonably satisfactory to Agent.

"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 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, (a) Total Sales for such period minus (b) 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.

"Hedge Agreement" means a "swap agreement" as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

"Hedge Obligations" means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of Holdings or its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Bank Product Providers.

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

"Holdings" has the meaning specified in the preamble.

"Indebtedness" of any Person means, without duplication, (a) all indebtedness for borrowed money; (b) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than trade payables entered into in the Ordinary Course of Business on ordinary terms and (i) not past due for more than 120 days, or (ii) 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); (c) all reimbursement or payment obligations with respect to Surety Instruments (contingent or otherwise); (d) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses; (e) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to property acquired by 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); (f) all obligations with respect to Capital Leases; (g) all indebtedness referred to in clauses (a) through (f) 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 (h) all Guaranty Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (a) through (g) 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, (a) 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 (b) 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.

"Intercompany Debt" means, with respect to each Loan Party, all indebtedness, liabilities, and other obligations of any other Loan Party owing to such Loan Party in respect of any and all loans or advances made by such Loan Party to such other Loan Party whether now existing or hereafter arising, and whether due or to become due, absolute or contingent, liquidated or unliquidated, determined or undetermined, including all fees and all other amounts payable by any other Loan Party to such Loan Party under or in connection with any documents or instruments related thereto.

"Intercompany Debt Payment" means any payment or distribution by or on behalf of the Loan Parties, directly or indirectly, of assets of the Loan Parties of any kind or character, whether in cash, property, or securities, including on account of the purchase, redemption, or other acquisition of Intercompany Debt, as a result of any collection, sale, or other disposition of collateral, or by setoff, exchange, or in any other manner, for or on account of the Intercompany Debt.

"Intercreditor Agreement" means that certain Intercreditor Agreement dated evenly herewith by and between WFF, 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).

"Interest Period" means, as to any LIBOR Rate Loan, the period commencing on the Borrowing Date of such Loan or on the Conversion/Continuation Date on which the Loan is converted into or continued as an LIBOR Rate Loan, and ending on the date one, two or three months thereafter, as selected by Holdings in its Notice of Borrowing or Notice of Conversion/Continuation; provided that:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, that Interest Period shall be extended to the following Business Day unless, in the case of an LIBOR Rate Loan, the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the preceding Business Day;

(ii) any Interest Period pertaining to an LIBOR Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period;

(iii) no Interest Period for any Term Loan shall extend beyond the Term Loan Maturity Date and no Interest Period for any Revolving Loan shall extend beyond the Revolving Loan Maturity Date; and

(iv) no Interest Period applicable to a Term Loan or portion thereof shall extend beyond any date upon which is due any scheduled principal payment in respect of such Term Loan unless the aggregate principal amount of such Term Loans represented by Base Rate Loans or LIBOR Rate Loans having Interest Periods that will expire on or before such date, equals or exceeds the amount of such principal payment.

"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 Orderly Liquidation Value" means the Dollar amount that is estimated to be recoverable in an orderly liquidation of the Eligible Inventory 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 Agent.

"Inventory Vendor Discount Reserve" means, as of any date of determination, (a) 100% multiplied by (b) 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, (a) 100% multiplied by (b) 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" means, with respect to any Letter of Credit, the date of Issuance thereof.

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

"Issuing Lender" means WFF or any other Lender that, at the request of Holdings and with the consent of the Agent, agrees, in such Lender's sole discretion, to become an Issuing Lender for the purpose of Issuing Letters of Credit or Reimbursement Undertakings pursuant to Section 3.01.

"L/C Cash Collateral Account" means that certain deposit account held at Wells Fargo (or such other interest-bearing deposit accounts held at Wells Fargo or its Affiliates satisfactory to the 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 Agent shall have a first priority Lien on behalf of the Lenders and the other Secured Parties, and over which the Agent shall have dominion and control.

"L/C Commitment" means the commitment of the Issuing Lender 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 2.05 or Section 2.07; 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 Obligations" means at any time the aggregate undrawn amount of all Letters of Credit then outstanding.

"Lender" has the meaning specified in the preamble, and includes Revolving Lenders and Term Lenders. References to the "Lenders" shall include WFF, including in its capacity as Issuing Lender; for purposes of clarification only, to the extent that WFF may have any rights or obligations in addition to those of the Lenders due to its status as Issuing Lender, its status as such will be specifically referenced.

"Lender Group" means each of the Lenders (including the Issuing Lender) and the Agent, or any one or more of them.

"Lender Group Expenses" means all (a) costs or expenses (including taxes, and insurance premiums) required to be paid by Holdings or its Subsidiaries under any of the Loan Documents that are paid, advanced, or incurred by the Lender Group, (b) out-of-pocket fees or charges paid or incurred by the Agent or DKAP in its capacity as a Lender in connection with the Lender Group's transactions with Holdings or its Subsidiaries under any of the Loan Documents, including, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, litigation, and UCC searches and including searches with the patent and trademark office, the copyright office, or the department of motor vehicles), filing, recording, publication, appraisal (including periodic collateral appraisals or business valuations to the extent of the fees and charges (and up to the amount of any limitation) contained in the Agreement or the Fee Letter), real estate surveys, real estate title policies and endorsements, and environmental audits, (c) out-of-pocket costs and expenses incurred by the Agent in the disbursement of funds to Holdings or other members of the Lender Group (by wire transfer or otherwise), (d) out-of-pocket charges paid or incurred by the Agent resulting from the dishonor of checks payable by or to any Loan Party, (e) reasonable out-of-pocket costs and expenses paid or incurred by the Lender Group to correct any default or enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (f) reasonable out-of-pocket audit fees and expenses (including travel, meals, and lodging) of the Agent or DKAP in its capacity as a Lender related to any inspections or audits to the extent of the fees and charges (and up to the amount of any limitation) contained in the Agreement, the Fee Letter, or the DKAP Fee Letter, (g) reasonable out-of-pocket costs and expenses of third party claims or any other suit paid or incurred by the Lender Group in enforcing or defending the Loan Documents or in connection with the transactions contemplated by the Loan Documents or the Lender Group's relationship with Holdings or any of its Subsidiaries, (h) the reasonable costs and expenses (including reasonable attorneys fees) incurred by the Agent or DKAP in its capacity as a Lender in advising, structuring, drafting, reviewing, administering (including travel, meals, and lodging), syndicating (including rating the Term Loans), or amending the Loan Documents, and (i) the Agent's and each Lender's reasonable costs and expenses (including reasonable attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning Holdings or any of its Subsidiaries or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether suit is brought, or in taking any remedial action concerning the Collateral.

"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 Agent in the manner provided by Section 11.02.

"Letter of Credit" means a letter of credit issued by Issuing Lender or a letter of credit issued by Underlying Issuer, as the context requires.

"Letter of Credit Disbursement" means a payment made by Issuing Lender or Underlying Issuer pursuant to a Letter of Credit.

"LIBOR Rate" means the greater of (a) with respect to Obligations in respect of the Revolving Loans, 2.00% per annum and with respect to Obligations in respect of the Term Loans, 3.00% per annum, and (b) the rate per annum rate appearing on Bloomberg L.P.'s (the "Service") Page BBAM1/(Official BBA USD Dollar Libor Fixings) (or on any successor or substitute page of such Service, or any successor to or substitute for such Service) two (2) Business Days prior to the commencement of the requested Interest Period, for a term and in an amount comparable to the Interest Period and the amount of the LIBOR Rate Loan requested (whether as an initial LIBOR Rate Loan or as a continuation of a LIBOR Rate Loan or as a conversion of a Base Rate Loan to a LIBOR Rate Loan) by Holdings in accordance with the Agreement, which determination shall be conclusive in the absence of manifest error.

"LIBOR Rate Loan" means a Loan or portion thereof that bears interest based on the LIBOR Rate.

"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.

"Life Insurance Policies" has the meaning specified in clause (iii) of the definition of "Liquidity".

"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 (the "Life Insurance Policies") (provided, however, that the add-back in this clause (iii) shall not exceed $16,300,000 in the aggregate for all periods); 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 (the "Deferred Compensation Accounts") (provided, however, that the add-back in this clause (iv) shall not exceed $1,300,000 in the aggregate for all periods).

"Loan" means an extension of credit by a Lender to Holdings under Article II, which may be a Base Rate Loan or an LIBOR Rate Loan (each a "Type" of Loan), and includes a Revolving Loan or Term Loan.

"Loan Documents" means this Agreement, the Notes, each Guaranty, the Collateral Documents, the Fee Letter, the DKAP Fee Letter, the Letters of Credit, any Borrowing Base Certificate, any documents evidencing or relating to Specified Hedge Agreements, the Intercreditor Agreement and all other documents delivered to the Agent or any Lender in connection herewith.

"Loan Party" means Holdings and each Guarantor.

"Majority Lenders" means (a) 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 (b) 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%.

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

"Material Adverse Effect" means (a) 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; (b) a material impairment of the ability of the Loan Parties to perform under the Loan Documents; or (c) a material adverse effect upon (i) the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document or (ii) the perfection or priority of any Lien granted under the Collateral Documents.

"Material Contract" means, with respect to any Person, each contract or agreement to which such Person or any of its Subsidiaries is a party which, if breached, terminated or suspended, could reasonably be expected to have a Material Adverse Effect.

"Minimum Amount" means (a) in respect of any Borrowing, conversion or continuation of Loans, an aggregate minimum amount of $250,000 or any integral multiple of $100,000 in excess thereof, (b) in the case of any reduction of the Commitments under Section 2.05, $250,000 or any multiple of $100,000 in excess thereof, and (c) in the case of any optional prepayment of Loans under Section 2.06, $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 five (5) 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: (a) the direct costs relating to such Disposition excluding amounts payable to such Person or any Affiliate of such Person, (b) sale, use or other transaction taxes and capital gains taxes paid or payable by such Person as a direct result thereof, and (c) 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 (i) all money actually applied to repair or reconstruct the damaged property or property affected by the condemnation or taking, (ii) all of the direct costs and expenses incurred in connection with the collection of such proceeds, award or other payments, and (iii) any amounts retained by or paid to parties having superior rights to such proceeds, awards or other payments.

"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.

"Notice of Conversion/Continuation" means a Notice of Revolving Loan Conversion/Continuation or a Notice of Term Loan Conversion/Continuation, as applicable.

"Notice of Revolving Loan Conversion/Continuation" means a notice in substantially the form of Exhibit K-1.

"Notice of Term Loan Conversion/Continuation" means a notice in substantially the form of Exhibit K-2.

"Obligations" means (a) all loans (including the Revolving Loans and the Term Loans), debts, principal, interest (including payment-in kind interest or any interest that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), contingent reimbursement or indemnification obligations with respect to Reimbursement Undertaking or with respect to Letters of Credit, premiums, liabilities, obligations (including indemnification obligations), fees (including the fees provided for in the Fee Letter or the DKAP Fee Letter), Lender Group Expenses (including any fees or expenses that accrue after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), guaranties, covenants, and duties of any kind and description owing by Holdings to the Lender Group pursuant to or evidenced by the Loan Documents 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, and including all interest not paid when due and all other expenses or other amounts that Holdings is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents, (b) all debts, liabilities, or obligations (including reimbursement obligations) owing by Holdings or any other Loan Party to an Underlying Issuer now or hereafter arising from or in respect of Underlying Letters of Credit, and (c) all Bank Product Obligations. Any reference in the Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency 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, (a) 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); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) 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 (a) such cash expenses of the Wind-Down Business Units, (b) tax expense, and (c) 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.

"Overadvances" means that, as of any date of determination, the Effective Amount of all Revolving Loans and L/C Obligations exceeds the Aggregate Revolving Commitment or the Borrowing Base.

"Participant" has the meaning specified therefore in Section 11.06.

"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 or any ERISA Affiliate sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, or 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 (a) 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 (b) 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 Hedge Obligations" means all obligations (contingent or otherwise) of Holdings or any Subsidiary existing or arising under Hedge Agreements, provided that each of the following criteria is satisfied: (a) 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 (b) such Hedge Agreement do not contain (i) any provision ("walk-away" provision) exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party, or (ii) 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.

"Post-Closing Field Audit" means a field audit performed by a firm satisfactory to Agent, the results of which are satisfactory to Agent.

"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.

"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).

"Protective Advances" has the meaning specified in Section 2.17(a).

"Reimbursement Undertaking" has the meaning specified in Section 3.01.

"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.

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

"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 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 Agent in their reasonable discretion or otherwise reasonably satisfactory to the Lenders and the 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 (a) make Revolving Loans to Holdings pursuant to Section 2.01(b), and (b) 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 Acceptance 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 earliest to occur of: (a) January 2, 2011, if the Term Loans have not been repaid in full on or prior to October 1, 2010; (b) January 2, 2012; and (c) 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 (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, and (d) 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 lenders from time to time party thereto, 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 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 Hedge Agreement" means any Hedge Agreement 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 Bank Product Provider which Hedge Agreement 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 Bank Product Provider in writing), and as to which the final scheduled payment by Holdings is not later than the Term Loan Maturity Date.

"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.

"Tax Proceeds Collateral Account" means that certain trust account held at Wells Fargo (or such other interest-bearing trust accounts held at Wells Fargo or its Affiliates satisfactory to the Lenders) in the name of Holdings and held in trust for the Lenders, in which any NOL Carry-back Tax Refunds shall from time to time be deposited pursuant to the Loan Documents as additional collateral for the Obligations, on which the Agent shall have a first priority Lien, on behalf of the Lenders, and over which the Agent shall have dominion and control.

"Tax Refunds" has the meaning set forth in Section 2.07(a)(v).

"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 Acceptance 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 January 2, 2011.

"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.

"Type" has the meaning specified in the definition of "Loan."

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

"Underlying Issuer" means Wells Fargo or one of its Affiliates.

"Underlying Letter of Credit" means a Letter of Credit that has been issued by an Underlying Issuer.

"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 Recital B, or any successor thereto by merger.

"WFF" means 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 (a) on Schedule 1.01D and (b) by Holdings from time to time after the Effective Date with the consent of the Agent and, for the purposes of Section 8.02(h), the Majority Lenders (such consents not to be unreasonably withheld or delayed).

"2009 Act" has the meaning set forth in Section 6.28.

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." The term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." 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 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 Agent, Holdings and the other parties, have been reviewed by counsel to the Agent, Holdings and such other parties, and are the products of all parties. Accordingly, they shall not be construed against the Lenders or the Agent merely because of the Agent's or Lenders' involvement in their preparation.

(f) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in full in cash or immediately available funds (or, (i) in the case of contingent obligations in respect of Letters of Credit, to Cash Collateralize Letters of Credit, and (ii) in the case of obligations in respect of Bank Products (other than Hedge Obligations), to Cash Collateralize Bank Products) of all of the Obligations (including the payment of the termination amount then applicable under Hedge Agreements provided by Hedge Providers) other than (A) unasserted contingent indemnification Obligations, (B) any Bank Product Obligations (other than Hedge Obligations) that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding without being required to be repaid or cash collateralized, and (C) any Hedge Obligations that, at such time, are allowed by the applicable Hedge Provider to remain outstanding without being required to be repaid.

(g) Any reference herein or in any other Loan Document to the Cash Collateralization of the Letters of Credit or the L/C Obligations shall mean the pledge or deposit of cash or deposit account balances in accordance with the terms hereof in an amount equal to 105% of the L/C Obligations.

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 and L/C Obligations shall not exceed the Aggregate Revolving Commitment, (ii) the Effective Amount of the Revolving Loans of any Revolving Lender 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 and L/C Obligations 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 2.06 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 Issuing Lender shall be evidenced by one or more accounts or records maintained by such Lender or Issuing Lender, as the case may be, in the ordinary course of business. The accounts or records maintained by the Agent, the Issuing Lender 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 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 Agent in the form of a Notice of Borrowing, which notice must be received by the Agent no later than 9:00 a.m. (California 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;

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

(iii) the Type of Loans comprising the Borrowing; and

(iv) if applicable, the duration of the Interest Period applicable to such Loans included in such notice, subject to the provisions of the definition of "Interest Period" herein. If the Notice of Borrowing fails to specify the duration of the Interest Period for any Borrowing comprised of LIBOR Rate Loans, such Interest Period shall be one month

(b) The 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 shall make the amount of such Lender's Proportionate Share of the requested Borrowing available to the Agent in immediately available funds, to the Agent's Account, not later than 11:00 a.m. (California time) on the Borrowing Date applicable thereto. After the Agent's receipt of the proceeds of such Borrowing, the Agent shall make the proceeds thereof available to Holdings on the applicable Borrowing Date by transferring immediately available funds equal to such proceeds received by the Agent to the Designated Account, 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 Conversion and Continuation Elections.

(a) Holdings may, upon irrevocable written notice to the Agent in accordance with Section 2.04(b):

(i) elect, as of any Business Day, in the case of Base Rate Loans, or as of the last day of the applicable Interest Period, in the case of any LIBOR Rate Loans, to convert any such Loans (or any part thereof in a Minimum Amount) into Loans of any other Type; or

(ii) elect, as of the last day of the applicable Interest Period, to continue any LIBOR Rate Loans having Interest Periods expiring on such day (or any part thereof in a Minimum Amount);

(b) Holdings shall deliver a Notice of Conversion/Continuation to be received by the Agent (i) not later than 9:00 a.m. (California time) at least three (3) Business Days in

advance of the Conversion/Continuation Date, if the Loans are to be converted into or continued as LIBOR Rate Loans, and (ii) prior to 9:00 a.m. (California time) on the Conversion/Continuation Date, if the Loans are to be converted into Base Rate Loans, specifying:

(i) the proposed Conversion/Continuation Date;

(ii) the aggregate amount of Loans to be converted or continued;

(iii) the Type of Loans resulting from the proposed conversion or continuation;

(iv) other than in the case of conversions into Base Rate Loans, the duration of the requested Interest Period, subject to the provisions of the definition of "Interest Period" herein; and

(v) whether such conversion or continuation shall be of Term Loans or Revolving Loans.

(c) If upon the expiration of any Interest Period applicable to LIBOR Rate Loans, Holdings has failed to select timely a new Interest Period to be applicable to such LIBOR Rate Loans, or if any Default then exists, Holdings shall be deemed to have elected to convert such LIBOR Rate Loans into Base Rate Loans effective as of the expiration date of such Interest Period.

(d) The Agent will promptly notify each Term Lender and Revolving Lender, as applicable, of its receipt of a Notice of Conversion/Continuation, or, if no timely notice is provided by Holdings, the Agent will promptly notify each applicable Lender of the details of any automatic conversion. All conversions and continuations shall be made ratably according to the respective outstanding principal amounts of the Loans with respect to which the notice was given held by each Lender.

(e) Unless the Majority Lenders otherwise consent, during the existence of an Event of Default, Holdings may not elect to have a Loan converted into or continued as a LIBOR Rate Loan.

(f) After giving effect to any conversion or continuation of Loans, unless the Agent shall otherwise consent, there may not be more than eight (8) different Interest Periods in effect.

(g) Anything to the contrary contained herein notwithstanding, neither Agent, nor any Lender is required actually to acquire eurodollar deposits to fund or otherwise match fund any Loan as to which interest accrues at the LIBOR Rate.

2.05 Voluntary Termination or Reduction of Revolving Commitments. Holdings may, at any time or from time to time, upon irrevocable written notice to the Agent provided prior to 11:00 a.m. (California time) on the day of such termination or reduction, terminate or permanently reduce the Revolving Commitments; 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 Agent on or prior to the specified prepayment date), subject to Section 4.04, if such condition is not satisfied; provided further, however, that the aggregate amount of any partial reduction is in a Minimum Amount unless, after giving effect thereto and to any prepayments of any Revolving Loans made on the effective date thereof, (i) the Effective Amount of all Revolving Loans 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 2.05, 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.

2.06 Optional Prepayments.

(a) Subject to Section 4.04, Holding may prepay the principal of any Revolving Loan at any time in whole or in part.

(b) Subject to Section 4.04, Holdings may, at any time or from time to time after the date that Holdings receives the NOL Carry-back Tax Refund (or if the NOL Carry-back Tax Refund is deposited in the Tax Proceeds Collateral Account), upon irrevocable written notice to the Agent provided prior to 11:00 a.m. (California time) on the day of such prepayment, prepay the principal of any Term Loan 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 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. The Agent will promptly notify the Term 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, any amounts required pursuant to Section 4.04, and amounts required pursuant to the DKAP Fee Letter.

2.07 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 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 Cash Collateralize the L/C Obligations in an amount equal to the applicable excess in the following order of priority: first, Holdings shall prepay the Revolving Loans then outstanding; and second (if any such excess remains), Holdings shall Cash Collateralize any 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 and L/C Obligations exceeds the Borrowing Base then in effect, Holdings shall immediately, and without notice or demand, prepay the outstanding principal amount of the Revolving Loans 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 the Revolving Loans then outstanding; and second (if any such excess remains), Holdings shall Cash Collateralize any L/C Obligations then outstanding in accordance with Section 3.07.

(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 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 and Cash Collateralize the L/C Obligations and prepay the outstanding principal amount of the Term Loans 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 following order of priority: first, Holdings shall prepay the Revolving Loans then outstanding (with a corresponding permanent reduction in the Aggregate Revolving Commitments to the extent of any such Net Proceeds in excess of the maximum amount permitted under Section 8.02(h)); second (if any excess remains), Holdings shall Cash Collateralize any L/C Obligations then outstanding in accordance with Section 3.07; and third (if any excess remains), Holdings shall prepay the Term Loans then outstanding; 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 2.07(a)(iv) until such time as aggregate Net Proceeds from Non-Excess Real Estate Dispositions in respect of which payments under this Section 2.07(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, state or local tax refunds for any tax year (including any NOL Carry-back Tax Refunds) (such amounts, "Tax Refunds"), or if any Tax Refunds are deposited in the Tax Proceeds Collateral Account, then promptly upon, and in no event later than one (1) Business Day after, receipt by Holdings or such Subsidiary of such Tax Refunds or deposit of such Tax Refunds in the Tax Proceeds Collateral Account, Holdings shall prepay the outstanding principal amount of the Term Loans and the Revolving Loans and Cash Collateralize the L/C Obligations in an amount equal to 100% of such Tax Refunds in the following order of priority: first, Holdings shall prepay the Term Loans then outstanding (together with the other amounts specified in the last sentence of this Section 2.07(a)(v)); second (if any excess remains), Holdings shall prepay the Revolving Loans then outstanding; and third (if any excess remains), Holdings shall Cash Collateralize any L/C Obligations then outstanding in accordance with Section 3.07; provided, however, that if any such Tax Refunds are less than $100,000, Holdings may delay the payments required under this Section 2.07(a)(v) until such time as aggregate Tax Refunds in respect of which payments under this Section 2.07(a)(v) have not been made exceed $100,000. For the avoidance of doubt, the Term Loans, all accrued interest, and any amounts due and payable pursuant to the DKAP Fee Letter shall be paid in full by Holdings prior to prepayment of the Revolving Loans or Cash Collateralization of L/C Obligations with proceeds of Tax Refunds pursuant to this Section 2.07(a)(v).

(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 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 and Cash Collateralize the L/C Obligations and prepay the outstanding principal amount of the Term Loans in an amount equal to 100% of the Net Proceeds of such Disposition in the following order or priority: first, Holdings shall prepay the Revolving Loans then outstanding; second (if any excess remains), Holdings shall Cash Collateralize any L/C Obligations then outstanding in accordance with Section 3.07; and third (if any excess remains), Holdings shall prepay the Term Loans then outstanding; 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 Issuances. Upon the receipt of Net Issuance Proceeds in respect of the issuance of Indebtedness (other than Indebtedness permitted under Section 8.05), Holdings shall, within one (1) Business Day of Holdings' or such Subsidiary's receipt of the proceeds thereof, prepay the outstanding principal amount of the Revolving Loans and Cash Collateralize the L/C Obligations and prepay the outstanding principal amount of the Term Loans in an aggregate amount equal to 100% of such Net Issuance Proceeds in the following order of priority: first, Holdings shall prepay the Revolving Loans then outstanding; second (if any excess remains), Holdings shall Cash Collateralize any L/C Obligations then outstanding in

accordance with Section 3.07; and third (if any excess remains), Holdings shall prepay the Term Loans then outstanding.

(viii) Equity Issuances (During Event of Default). 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, if an Event of Default has occurred and is continuing as of the date such prepayment is due, the outstanding principal amount of the Revolving Loans and Cash Collateralize the L/C Obligations and prepay the outstanding principal amount of the Term Loans in an aggregate amount equal to 100% of such Net Issuance Proceeds in the following order of priority: first, Holdings shall prepay the Revolving Loans then outstanding; second (if any excess remains), Holdings shall Cash Collateralize any L/C Obligations then outstanding in accordance with Section 3.07; and third (if any excess remains), Holdings shall prepay the Term Loans then outstanding.

(ix) 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 as of the date such prepayment is due, the outstanding principal amount of the Revolving Loans and Cash Collateralize the L/C Obligations and prepay the outstanding principal amount of the Term Loans in an aggregate amount equal to 100% of Excess Cash Flow for such fiscal year in the following order of priority: first, Holdings shall prepay the Revolving Loans then outstanding; second (if any excess remains), Holdings shall Cash Collateralize any L/C Obligations then outstanding in accordance with Section 3.07; and third (if any excess remains), Holdings shall prepay the Term Loans then outstanding. Each prepayment pursuant to this Section 2.07(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.

(x) 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 in an amount equal to the applicable excess.

(b) Interest; Other Amounts; No Deemed Consent. Holdings shall pay, together with each prepayment under this Section 2.07, accrued interest on the amount of any Loans prepaid, amounts required pursuant to the Fee Letter (in the case of a Revolving Loan) or the DKAP Fee Letter (in the case of a Term Loan) and any amounts required pursuant to Section 4.04. Nothing in this Section 2.07 shall be deemed consent of the Majority Lenders to any Disposition or issuance of Indebtedness or Equity Securities not otherwise permitted in Article VIII.

(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 Agent at or prior to the time and in the manner specified by the Agent, prior to any mandatory prepayment required to be made by Holdings under Section 2.07(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 Agent. Any Declined Proceeds rejected by such Term Lenders may be retained by Holdings.

2.08 Repayment.

(a) The Term Loans. Holdings shall repay to the 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 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.

2.09 Interest.

(a) Subject to Section 2.09(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 or the Base Rate, as the case may be, 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 Term 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 applicable Loans (whether at stated maturity, upon acceleration or otherwise) and upon payment (including prepayment) in full of the applicable Loans; provided that (A) additional interest accrued pursuant to Section 2.09(c) shall be due and payable in cash upon demand of the 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 interest on the principal amount repaid or prepaid shall be due and payable on the date of such repayment or prepayment. During the existence of any Event of Default, all interest accruing hereunder shall be payable in cash on demand of the Agent at the request or with the consent of the Majority Lenders.

(c) Notwithstanding Section 2.09(a), (i) at the election of the 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 (except for Bank Product 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 Base 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 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 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.

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

(a) Fee Letter. Holdings shall pay to the Agent, for the account of the Agent, as and when due and payable under the terms of the Fee Letter, the fees set forth in the Fee Letter.

(b) DKAP Fee Letter. Holdings shall pay to DKAP, for the account of DKAP, as and when due and payable under the terms of the DKAP Fee Letter, the fees set forth in the DKAP Fee Letter.

(c) Commitment Fees. Holdings shall pay to the 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 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 2.10, 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. 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 2.10(b) 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.

2.11 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 Agent shall be conclusive and binding on Holdings and the Lenders in the absence of manifest error. The 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 Agent in determining any interest rate and the resulting interest rate.

2.12 Payments Generally; 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 Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Payment Office in Dollars and in immediately available funds not later than 11:00 a.m. (California time) on the date specified herein. The 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 Agent after 11:00 a.m. (California 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 Agent.

(i) Funding by Lenders; Presumption by Agent. Unless the 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 Agent such Lender's share of such Borrowing, the 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 Agent, then the applicable Lender and Holdings severally agree to pay to the 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 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 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 Agent for the same or an overlapping period, the 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 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 Agent.

(ii) Payments by Holdings; Presumptions by Agent. Unless the Agent shall have received notice from Holdings prior to the date on which any payment is due to the Agent for the account of the Lenders or the Issuing Lender hereunder that Holdings will not make such payment, the 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 Issuing Lender, 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 Issuing Lender, as the case may be, severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender or the Issuing 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 Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

A notice of the 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 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 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 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(b) 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(b) 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(b).

2.13 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) Except for fees payable under the Fee Letter or the DKAP Fee Letter, which shall be paid in accordance with the terms thereof, each payment of interest (other than interest on Loans) and fees (other than Commitment Fees) shall be shared among the Lenders and the 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 Agent and (B) the dates on which such amounts became owing to such Lenders and the 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 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 2.13(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 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 2.13(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 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.

2.15 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 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 Agent.

2.16 Tax Proceeds Collateral Account. The Tax Proceeds Collateral Account and all cash collateral held therein shall be maintained pursuant to the Security Agreement. Holdings shall not have any access to the funds in the Tax Proceeds Collateral Account, nor may Holdings give instructions to the depository bank directing the disposition of the funds in the Tax Proceeds Collateral Account. The Tax Proceeds Collateral Account shall be a trust account held for the benefit of the Lenders. Holdings shall cause all NOL Carry-back Tax Refunds to be paid directly into the Tax Proceeds Collateral Account and no other funds shall be deposited in such account or co-mingled with the funds therein. The depository bank maintaining the Tax Proceeds Collateral Account shall agree that following any deposit into the Tax Proceeds Collateral Account, it shall promptly pay such amount by wire transfer directly to the Agent who will promptly apply such amount to the Obligations in accordance with Section 2.07(a)(v).

2.17 Protective Advances and Optional Overadvances.

(a) Any contrary provision of this Agreement or any other Loan Document notwithstanding, the Agent hereby is authorized by Holdings and the Lenders, from time to time in the Agent's sole discretion, (A) after the occurrence and during the continuance of a Default or an Event of Default, or (B) at any time that any of the other applicable conditions precedent set forth in Section 5.02 are not satisfied, to make Revolving Loans to, or for the benefit of, Holdings on behalf of the Revolving Lenders (in an aggregate amount for all such Revolving Loans taken together not exceeding $5,000,000 outstanding at any one time) that Agent, in its Permitted Discretion deems necessary or desirable (1) to preserve or protect the Collateral, or any portion thereof, or (2) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations) (any of the Revolving Loans described in this Section 2.17(a) shall be referred to as "Protective Advances").

(b) Any contrary provision of this Agreement or any other Loan Document notwithstanding, the Lenders hereby authorize the Agent, and the Agent may, but is not obligated to, knowingly and intentionally, continue to make Revolving Loans to Holdings notwithstanding that an Overadvance exists or thereby would be created, so long as (i) after giving effect to such Revolving Loans, the Effective Amount of Revolving Loans and L/C Obligations does not exceed the Borrowing Base by more than $5,000,000, and (B) after giving effect to such Revolving Loans, the Effective Amount of Revolving Loans and L/C Obligations (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) does not exceed the Maximum Revolver Amount. In the event the Agent obtains actual knowledge that the Effective Amount of Revolving Loans and L/C Obligations exceeds the amounts permitted by the immediately foregoing provisions, regardless of the amount of, or reason for, such excess, the Agent shall notify the Lenders as soon as practicable (and prior to making any (or any additional) intentional Overadvances (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) unless the Agent determines that prior notice would result in imminent harm to the Collateral or its value, in which case the Agent may make such Overadvances and provide notice as promptly as practicable thereafter), and the Revolving Lenders thereupon shall, together with the Agent, jointly determine the terms of arrangements that shall be implemented with Holdings intended to reduce, within a reasonable time, the outstanding principal amount of the Revolving Loans to Holdings to an amount permitted by the preceding sentence. In such circumstances, if any Revolving Lender objects to the proposed terms of reduction or repayment of any Overadvance, the terms of reduction or repayment thereof shall be implemented according to the determination of the Majority Lenders. The foregoing provisions are meant for the benefit of the Lenders and the Agent and are not meant for the benefit of Holdings, which shall continue to be bound by the provisions of Section 2.07. Each Revolving Lender shall be obligated to settle with the Agent as provided in Section 2.18 for the amount of such Lender's Proportionate Share of any unintentional Overadvances by the Agent reported to such Revolving Lender, any intentional Overadvances made as permitted under this Section 2.16(b), and any Overadvances resulting from the charging to the Loan Account of interest, fees, or Lender Group Expenses.

(c) Each Protective Advance and each Overadvance shall be deemed to be a Revolving Loan hereunder, except that no Protective Advance or Overadvance shall be eligible to be a LIBOR Rate Loan and, prior to Settlement therefor, all payments on the Protective Advances shall be payable to the Agent solely for its own account. The Protective Advances and Overadvances shall be repayable on demand, secured by the Agent's Liens, constitute

Obligations hereunder, and bear interest at the rate applicable from time to time to Revolving Loans that are Base Rate Loans. The ability of the Agent to make Protective Advances is separate and distinct from its ability to make Overadvances and its ability to make Overadvances is separate and distinct from its ability to make Protective Advances. For the avoidance of doubt, the limitations on the Agent's ability to make Protective Advances do not apply to Overadvances and the limitations on the Agent's ability to make Overadvances do not apply to Protective Advances. The provisions of this Section 2.17 are for the exclusive benefit of the Agent and the Lenders and are not intended to benefit Holdings in any way.

2.18 Settlement. It is agreed that each Revolving Lender's funded portion of the Revolving Loans is intended by the Revolving Lenders to equal, at all times, such Lender's Proportionate Share of the outstanding Revolving Loans. Such agreement notwithstanding, the Agent and the Revolving Lenders agree (which agreement shall not be for the benefit of Holdings) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among the Revolving Lenders as to the Revolving Loans and the Protective Advances shall take place on a periodic basis in accordance with the following provisions:

(a) The Agent shall request settlement ("Settlement") with the Revolving Lenders on a weekly basis, or on a more frequent basis if so determined by the Agent (1) for itself, with respect to the outstanding Protective Advances, and (2) with respect to Holdings' or its Subsidiaries' Collections or payments received, as to each by notifying the Revolving Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 2:00 p.m. (California time) on the Business Day immediately prior to the date of such requested Settlement (the date of such requested Settlement being the "Settlement Date"). Such notice of a Settlement Date shall include a summary statement of the amount of outstanding Revolving Loans and Protective Advances for the period since the prior Settlement Date. Subject to the terms and conditions contained herein: (y) if the amount of the Revolving Loans (including Protective Advances) made by a Revolving Lender that is not a Defaulting Lender exceeds such Lender's Proportionate Share of the Revolving Loans (including Protective Advances) as of a Settlement Date, then the Agent shall, by no later than 12:00 p.m. (California time) on the Settlement Date, transfer in immediately available funds to a deposit account of such Revolving Lender (as such Revolving Lender may designate), an amount such that each such Revolving Lender shall, upon receipt of such amount, have as of the Settlement Date, its Proportionate Share of the Revolving Loans (including Protective Advances), and (z) if the amount of the Revolving Loans (including Protective Advances) made by a Revolving Lender is less than such Revolving Lender's Proportionate Share of the Revolving Loans (including Protective Advances) as of a Settlement Date, such Revolving Lender shall no later than 12:00 p.m. (California time) on the Settlement Date transfer in immediately available funds to the Agent's Account, an amount such that each such Revolving Lender shall, upon transfer of such amount, have as of the Settlement Date, its Proportionate Share of the Revolving Loans (including Protective Advances). Such amounts made available to the Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable Protective Advances and shall constitute Revolving Loans of such Revolving Lenders. If any such amount is not made available to the Agent by any Revolving Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, the Agent shall be entitled to recover for its account such amount on demand from such Revolving Lender together with

interest thereon at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

(b) In determining whether a Revolving Lender's balance of the Revolving Loans and Protective Advances is less than, equal to, or greater than such Lender's Proportionate Share of the Revolving Loans and Protective Advances as of a Settlement Date, the Agent shall, as part of the relevant Settlement, apply to such balance the portion of payments actually received in good funds by the Agent with respect to principal, interest, fees payable by Holdings and allocable to the Revolving Lenders hereunder, and proceeds of Collateral.

(c) Between Settlement Dates, the Agent, to the extent Protective Advances are outstanding, may pay over to the Agent any Collections or payments received by the Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Loans, for application to the Protective Advances. During the period between Settlement Dates, the Agent with respect to Protective Advances, and each Revolving Lender (subject to the effect of agreements between the Agent and individual Lenders) with respect to the Revolving Loans and Protective Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by the Agent, or the Revolving Lenders, as applicable.

ARTICLE III.

THE LETTERS OF CREDIT

3.01 Subject to the terms and conditions of this Agreement, upon the request of Holdings made in accordance herewith, the Issuing Lender agrees to Issue, or to cause an Underlying Issuer, as Issuing Lender's agent, to Issue, a requested Letter of Credit. If Issuing Lender, at its option, elects to cause an Underlying Issuer to Issue a requested Letter of Credit, then Issuing Lender agrees that it will enter into arrangements relative to the reimbursement of such Underlying Issuer (which may include, among other means, by becoming an applicant with respect to such Letter of Credit or entering into undertakings which provide for reimbursements of such Underlying Issuer with respect to such Letter of Credit; each such obligation or undertaking, irrespective of whether in writing, a "Reimbursement Undertaking") with respect to Letters of Credit Issued by such Underlying Issuer. By submitting a request to Issuing Lender for the Issuance of a Letter of Credit, Holdings shall be deemed to have requested that Issuing Lender Issue or that an Underlying Issuer Issue the requested Letter of Credit and to have requested Issuing Lender to Issue a Reimbursement Undertaking with respect to such requested Letter of Credit if it is to be Issued by an Underlying Issuer (it being expressly acknowledged and agreed by Holdings that Holdings is and shall be deemed to be an applicant (within the meaning of Section 5102(a)(2) of the UCC) with respect to each Underlying Letter of Credit). Each request for the Issuance of a Letter of Credit, or the amendment, renewal, or extension of any outstanding Letter of Credit, shall be made in writing by a Responsible Officer of Holdings and delivered to the Issuing Lender via hand delivery, telefacsimile, or other electronic method of transmission reasonably in advance of the requested date of Issuance, amendment, renewal, or extension. Each such request shall be in form and substance reasonably satisfactory to the Issuing Lender and shall specify (i) the amount of such Letter of Credit, (ii) the date of Issuance, amendment, renewal, or extension of such Letter of Credit, (iii) the expiration date of such Letter

of Credit, (iv) the name and address of the beneficiary of the Letter of Credit, and (v) such other information (including, in the case of an amendment, renewal, or extension, identification of the Letter of Credit to be so amended, renewed, or extended) as shall be necessary to prepare, amend, renew, or extend such Letter of Credit. Anything contained herein to the contrary notwithstanding, the Issuing Lender may, but shall not be obligated to, Issue or cause the Issuance of a Letter of Credit or to Issue a Reimbursement Undertaking in respect of an Underlying Letter of Credit, in either case that supports the obligations of Holdings or its Subsidiaries (1) in respect of (A) a lease of real property, or (B) an employment contract, or (2) at any time that one or more of the Lenders is a Defaulting Lender. The Issuing Lender shall have no obligation to Issue a Letter of Credit or a Reimbursement Undertaking in respect of an Underlying Letter of Credit, in either case if any of the following would result after giving effect to the requested Issuance:

(i) the Effective Amount of all L/C Obligations would exceed the Borrowing Base less the outstanding amount of Revolving Loans, or

(ii) the Effective Amount of all L/C Obligations would exceed the L/C Commitment, or

(iii) the Effective Amount of all L/C Obligations would exceed the Aggregate Revolving Commitment less the outstanding amount of Revolving Loans.

Each Letter of Credit shall be in form and substance reasonably acceptable to the Issuing Lender, including the requirement that the amounts payable thereunder must be payable in Dollars. If Issuing Lender makes a payment under a Letter of Credit or an Underlying Issuer makes a payment under an Underlying Letter of Credit, Holdings shall pay to Agent an amount equal to the applicable Letter of Credit Disbursement on the date such Letter of Credit Disbursement is made and, in the absence of such payment, the amount of the Letter of Credit Disbursement immediately and automatically shall be deemed to be a Revolving Loan hereunder and, initially, shall bear interest at the rate then applicable to Revolving Loans that are Base Rate Loans. If a Letter of Credit Disbursement is deemed to be a Revolving Loan hereunder, Holdings' obligation to pay the amount of such Letter of Credit Disbursement to Issuing Lender shall be discharged and replaced by the resulting Revolving Loan. Promptly following receipt by the Agent of any payment from Holdings pursuant to this paragraph, the Agent shall distribute such payment to the Issuing Lender or, to the extent that Lenders have made payments pursuant to Section 3.02 to reimburse the Issuing Lender, then to such Lenders and the Issuing Lender as their interests may appear.

3.02 Promptly following receipt of a notice of a Letter of Credit Disbursement pursuant to Section 3.01, each Revolving Lender agrees to fund its Proportionate Share of any Revolving Loan deemed made pursuant to Section 3.01 on the same terms and conditions as if Holdings had requested the amount thereof as a Revolving Loan and the Agent shall promptly pay to Issuing Lender the amounts so received by it from the Revolving Lenders. By the Issuance of a Letter of Credit or a Reimbursement Undertaking (or an amendment to a Letter of Credit or a Reimbursement Undertaking increasing the amount thereof) and without any further action on the part of the Issuing Lender or the Revolving Lenders, the Issuing Lender shall be deemed to have granted to each Revolving Lender, and each Revolving Lender shall be deemed

to have purchased, a participation in each Letter of Credit Issued by Issuing Lender and each Reimbursement Undertaking, in an amount equal to its Proportionate Share of such Letter of Credit or Reimbursement Undertaking, and each Revolving Lender agrees to pay to the Agent, for the account of the Issuing Lender, such Revolving Lender's Proportionate Share of any Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer under the applicable Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Agent, for the account of the Issuing Lender, such Revolving Lender's Proportionate Share of each Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer and not reimbursed by Holdings on the date due as provided in Section 3.01, or of any reimbursement payment required to be refunded to Holdings for any reason. Each Revolving Lender acknowledges and agrees that its obligation to deliver to the Agent, for the account of the Issuing Lender, an amount equal to its respective Proportionate Share of each Letter of Credit Disbursement pursuant to this Section 3.02 shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 5.02. If any Revolving Lender fails to make available to the Agent the amount of such Revolving Lender's Proportionate Share of a Letter of Credit Disbursement as provided in this Section, such Revolving Lender shall be deemed to be a Defaulting Lender and the Agent (for the account of the Issuing Lender) shall be entitled to recover such amount on demand from such Revolving Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

3.03 Holdings hereby agrees to indemnify, save, defend, and hold the Lender Group and each Underlying Issuer harmless from any damage, loss, cost, expense, or liability, and reasonable attorneys fees incurred by Issuing Lender, any other member of the Lender Group, or any Underlying Issuer arising out of or in connection with any Reimbursement Undertaking or any Letter of Credit; provided, however, that Holdings shall not be obligated hereunder to indemnify for any loss, cost, expense, or liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of the Issuing Lender, any other member of the Lender Group, or any Underlying Issuer. Holdings agrees to be bound by the Underlying Issuer's regulations and interpretations of any Letter of Credit or by Issuing Lender's interpretations of any Reimbursement Undertaking even though this interpretation may be different from Holdings' own, and Holdings understands and agrees that none of the Issuing Lender, the Lender Group, or any Underlying Issuer shall be liable for any error, negligence, or mistake, whether of omission or commission, in following Holdings' instructions or those contained in the Letter of Credit or any modifications, amendments, or supplements thereto. Holdings understands that the Reimbursement Undertakings may require Issuing Lender to indemnify the Underlying Issuer for certain costs or liabilities arising out of claims by Holdings against such Underlying Issuer. Holdings hereby agrees to indemnify, save, defend, and hold Issuing Lender and the other members of the Lender Group harmless with respect to any loss, cost, expense (including reasonable attorneys fees), or liability incurred by them as a result of the Issuing Lender's indemnification of an Underlying Issuer; provided, however, that Holdings shall not be obligated hereunder to indemnify for any such loss, cost, expense, or liability to the extent that it is caused by the gross negligence or willful misconduct of the Issuing Lender or any other member of the Lender Group. Holdings hereby acknowledges and agrees that none of the Issuing Lender, any other member of the Lender Group, or any Underlying Issuer shall be responsible for delays, errors, or omissions resulting from the malfunction of equipment in connection with any Letter of Credit.

3.04 Holdings hereby authorizes and directs any Underlying Issuer to deliver to the Issuing Lender all instruments, documents, and other writings and property received by such Underlying Issuer pursuant to such Underlying Letter of Credit and to accept and rely upon the Issuing Lender's instructions with respect to all matters arising in connection with such Underlying Letter of Credit and the related application.

3.05 Any and all Issuance charges, usage charges, commissions, fees, and costs incurred by the Issuing Lender relating to Underlying Letters of Credit shall be Lender Group Expenses for purposes of this Agreement and shall be reimbursable immediately by Holdings to the Agent for the account of the Issuing Lender; it being acknowledged and agreed by Holdings that, as of the date of this Agreement, the usage charge imposed by the Underlying Issuer is .50% per annum times the undrawn amount of each Underlying Letter of Credit, that such usage charge may be changed from time to time, and that the Underlying Issuer also imposes a schedule of charges for amendments, extensions, drawings, and renewals.

3.06 If by reason of (i) any change after the date of this Agreement in any applicable law, treaty, rule, or regulation or any change in the interpretation or application thereof by any Governmental Authority, or (ii) compliance by the Issuing Lender, any other member of the Lender Group, or Underlying Issuer with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the FRB as from time to time in effect (and any successor thereto):

(a) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Letter of Credit Issued or caused to be Issued hereunder or hereby, or

(b) there shall be imposed on the Issuing Lender, any other member of the Lender Group, or Underlying Issuer any other condition regarding any Letter of Credit or Reimbursement Undertaking,

and the result of the foregoing is to increase, directly or indirectly, the cost to the Issuing Lender, any other member of the Lender Group, or an Underlying Issuer of Issuing, making, guaranteeing, or maintaining any Reimbursement Undertaking or Letter of Credit or to reduce the amount receivable in respect thereof, then, and in any such case, the Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Holdings, and Holdings shall pay within 30 days after demand therefor, such amounts as the Agent may specify to be necessary to compensate the Issuing Lender, any other member of the Lender Group, or an Underlying Issuer for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder; provided, however, that Holdings shall not be required to provide any compensation pursuant to this Section 3.06 for any such amounts incurred more than 180 days prior to the date on which the demand for payment of such amounts is first made to Holdings; provided further, however, that if an event or circumstance giving rise to such amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. The determination by the Agent of any amount due pursuant to this Section 3.06, as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

3.07 Cash Collateral Pledge. (a) If, as of the Revolving Loan Maturity Date, any Letters of Credit may for any reason remain outstanding and partially or wholly undrawn, or (b) upon the occurrence of the circumstances described in Sections 2.07(a)(i) or 2.07(a)(iii) requiring Holdings to Cash Collateralize Letters of Credit, or (c) upon the occurrence of the circumstances described elsewhere in Section 2.07(a) requiring Holdings to Cash Collateralize Letters of Credit, then Holdings shall immediately Cash Collateralize the L/C Obligations, or in such other applicable amount required under Section 2.07(a). In the case of the preceding clauses (a) and (b), 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 2.07(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 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 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 Agent has received a certification to such effect from a Responsible Officer of Holdings. If L/C Obligations are Cash Collateralized pursuant to Sections 2.07(a)(iv) through 2.07(a)(viii), then at any time thereafter Holdings may request in writing that the Agent release all or a portion of such cash collateral, and promptly following its receipt of such written request the 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 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 Agent. Such letter of credit 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.

(b) 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.

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 Agent, Lender or Issuing 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 Agent, each Lender and the Issuing 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 Agent, such Lender or the Issuing 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 or the Issuing Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender or the Issuing 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 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 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 Agent), at the time or times prescribed by applicable law or reasonably requested by Holdings or the 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 Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Holdings or

the Agent as will enable Holdings or the 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 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 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 Agent, any Lender or the Issuing 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 Agent, such Lender or the Issuing 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 Agent, such Lender or the Issuing 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 Agent, such Lender or the Issuing Lender in the event the Agent, such Lender or the Issuing Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Agent, any Lender or the Issuing 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.

(g) Nothing contained in this Section 4.01 shall override any term or provision of any Specified Hedge Agreement regarding withholding taxes relating to Hedge Agreements.

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 Agent, and solely with respect to such Lender's Loans, the 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 "Base Rate" until such Lender notifies the Agent and Holdings that the circumstances giving rise to such determination no longer exist.

(b) Before giving any notice to the 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 Issuing Lender;

(ii) subject any Lender or the Issuing Lender 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 Issuing Lender 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 Issuing Lender); or

(iii) impose on any Lender or the Issuing Lender 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 Issuing Lender 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 Issuing Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the Issuing Lender, Holdings will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the Issuing Lender determines that any Change in Law affecting such Lender or the Issuing Lender or any Lending Office of such Lender or such Lender's or the Issuing 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 or the

Issuing Lender's capital or on the capital of such Lender's or the Issuing Lender'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 Issuing Lender, to a level below that which such Lender or the Issuing Lender or such Lender's or the Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Lender's policies and the policies of such Lender's or the Issuing Lender's holding company with respect to capital adequacy), then from time to time Holdings will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender's or the Issuing Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the Issuing Lender delivered pursuant to Section 4.06 setting forth the amount or amounts necessary to compensate such Lender or the Issuing 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 or the Issuing Lender, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the Issuing Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the Issuing Lender's right to demand such compensation, provided that Holdings shall not be required to compensate a Lender or the Issuing 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 or the Issuing Lender, 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 Issuing 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).

4.04 Funding Losses. Upon demand of any Lender (with a copy to the 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 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 Agent will promptly so notify Holdings and each Lender. Thereafter, until the Agent upon the instruction of the Majority Lenders revokes such notice in writing, the 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 "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 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 Issuing Lender to make its initial Credit Extension hereunder shall be subject to the condition that the Agent shall have received on or before the Effective Date all of the following, in form and substance reasonably satisfactory to the 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 Issuing Lender; and (iii) the 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 Agent and the Lenders, dated the Effective Date, substantially in the form attached as Exhibit L;

(f) Payment of Lender Group Expenses. Evidence of payment by Holdings of all fees and Lender Group Expenses to the extent then due and payable on the Effective Date; including any such fees or Lender Group Expenses arising under or referenced in Section 2.10 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 and delivered 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 Agent for the benefit of the Lenders, or other evidence satisfactory to the 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 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 Agent;

(ii) receipt by the Agent of all certificates and instruments representing the Pledged Collateral, together with stock transfer powers executed in blank with signatures guaranteed, as the 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 Agent, (B) on an ALTA lender's extended coverage policy, in an amount and form reasonably satisfactory to the Agent, (C) naming the 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 Agent, and (E) containing such endorsements and affirmative coverage as the 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 Agent;

(i) Insurance Policies. Evidence that the 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 Agent deems necessary to ensure the 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 and is otherwise satisfactory to the Administrative Agent and the Lenders, in their reasonable discretion, providing for (i) approval of the execution of this Agreement and the other Loan Documents by Holdings and the Guarantors, and (ii) approval of the indemnification and expense provisions contained in this Agreement, including Holdings' obligations to pay the Administrative Agent, the L/C Issuer and each of the Originating Lenders and their Affiliates reasonable costs and expenses (including professional fees and expenses of counsel), (B) all conditions precedent to the effectiveness of Reorganization Plan shall have been satisfied and the Reorganization Plan has become effective; and (C) except as consented to by the Administrative Agent and the Lenders, the Bankruptcy Court's retention of jurisdiction under the Confirmation Order shall not govern the enforcement of the Loan Documents or any rights or remedies related thereto;

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

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

(p) Fee Letters. Evidence that the Fee Letter and the DKAP Fee Letter have been duly executed and delivered by all of the parties thereto.

(q) DIP Payoff. A payoff letter from the lenders under the DIP Credit Agreement setting forth the amount necessary to repay in full all of the obligations of Holdings

and its Subsidiaries owing under the DIP Credit Agreement (other than unasserted contingent reimbursement obligations in respect of letters of credit issued under the DIP Credit Agreement) and providing for the termination of all liens securing the obligations of Holdings and its Subsidiaries under the DIP Credit Agreement upon such payment.

(r) Facility Sale/Abandonment. Evidence that (i) C. Construction, Inc. has sold its Ontario Framing facilities on or before December 31, 2009; and (ii) Illinois Framing, Inc. and SelectBuild LLC have abandoned their facilities on or before December 31, 2009;

(s) Liquidity on Emergence. Evidence that Holdings' Liquidity (calculated 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 $55,000,000 minus any portion of the Prepetition Tax Liabilities paid by Holdings and its Subsidiaries on or prior to the Effective Date;

(t) Prepetition Tax Liabilities. Evidence satisfactory to the Agent and DKAP that the Prepetition Tax Liabilities, including any accrued interest and penalties related thereto, determined by the IRS to be due with respect to 2005 and 2006, of Holdings and its Subsidiaries have been paid in full and extinguished or will be so paid in full and extinguished concurrently with the funding of the initial Loans on the Effective Date;

(u) IRS Tax Refund Claim. Evidence satisfactory to the Agent and DKAP that the IRS claim filed in the Cases with respect to the Form 1139 Carryback Refunds received in 2009 has been either withdrawn or disallowed; and

(v) Tax Payment Mechanics. Evidence that Holdings has entered into arrangements satisfactory to the Agent and DKAP with respect to the mechanics for receipt of the NOL Carry-back Tax Refund, by either or both of the following methods as determined by the Agent and DKAP: (i) by wire transfer to the Tax Proceeds Collateral Account, or (ii) if so requested by the Agent and DKAP and permitted under applicable law, by check to a designee specified by the Agent and DKAP, including, without limitation, executing any documents and filing with the IRS any relevant forms required by the Agent and DKAP to authorize payment by the IRS of the NOL Carry-back Tax Refund;

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 Issuing Lender to Issue any Letter of Credit (including the initial Letter of Credit) or any Reimbursement Undertaking shall be subject to the satisfaction of the following conditions precedent on the relevant Borrowing Date or Issuance Date:

(a) Notice, Application. The Agent shall have received a Notice of Borrowing or, in the case of any Issuance of any Letter of Credit, the Issuing Lender and the Agent shall have received a request for such Issuance as required under Section 3.01;

(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 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 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 2.07(a)(iv) through 2.07(a)(viii) shall be zero; and

(g) Borrowing Base Certificate. Holdings shall have delivered to the 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 request for Issuance of a Letter of Credit 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.

5.03 Conditions Subsequent. The obligation of the Lenders to continue to make Revolving Loans (or otherwise extend credit hereunder) is subject to the fulfillment, on or before the date applicable thereto, of the following conditions subsequent (the failure by Holdings to so perform or cause to be performed such conditions subsequent as and when required by the terms hereof, shall constitute an immediate Event of Default):

(a) On or before January 31, 2010, the Agent shall have received evidence reasonably satisfactory to it that Life Insurance Policies with a surrender value equal to or greater than two-thirds of the surrender value of all of the Life Insurance Policies shall have been liquidated by the Loan Parties.

(c) On or before March 31, 2010, the Agent shall have received evidence reasonably satisfactory to it that all of the Life Insurance Policies shall have been liquidated by the Loan Parties.

(d) On or before March 31, 2010, the Agent shall have received evidence reasonably satisfactory to it that all of the Deferred Compensation Accounts shall have been liquidated by the Loan Parties.

(e) On or before the date that is 90 days after the Effective Date, (i) the Agent shall have received the results of a field audit on the Loan Parties completed after the Effective Date and performed by a firm satisfactory to the Agent, and (ii) the Agent shall have received the results of an appraisal of the Loan Parties' Inventory completed after the Effective Date and performed by a firm satisfactory to the Agent.

ARTICLE VI.

REPRESENTATIONS AND WARRANTIES

Holdings represents and warrants to the 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 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 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 Agent hereunder, and any financial projections furnished to the 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 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 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 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 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 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 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 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 Hedge Obligations. Neither Holdings nor any of its Subsidiaries has incurred any outstanding obligations under any Hedge Agreement, other than Permitted Hedge 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 Hedge Agreement. Neither Holdings nor any of its Subsidiaries has entered into any master agreement relating to Hedge Agreements and under which termination values resulting from Hedge Agreements that are Specified Hedge Agreements are nettable against termination values resulting from Hedge Agreements that are not Specified Hedge Agreements, unless only Specified Hedge Agreements 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 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. The Excess Real Estate is not necessary in, or material to, the business of any Loan Party or the business of the Loan Parties taken as a whole.

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 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 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 in a Borrowing Base Certificate submitted to 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.

6.27 Material Contracts. As of the Effective Date, neither Holdings nor any of its Subsidiaries is a party to any Material Contract, with the exception of this Agreement, the other Loan Documents and the Second Lien Term Loan Documents.

6.28 Taxes. Neither Holdings nor any member of its affiliated group is, or will at any relevant time be, described in Section 13(f) of the Worker, Homeownership and Business Assistance Act of 2009 (the "2009 Act"), and BMHC and each such member qualifies and will qualify for the 5-year carryback of its 2009 net operating losses under Section 172(b)(1)(H) of the Code, as amended by the 2009 Act.

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 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 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 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 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 Agent, at the request of any Lender, may from time to time request.

7.02 Certificates; Other Information. Holdings shall furnish to the Agent (which shall promptly furnish to each Lender), in form and detail satisfactory to the 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 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 at any time Availability is less than $12,500,000, Holdings shall deliver such Borrowing Base Certificate on a weekly basis setting forth the calculation of the Borrowing Base as of the close of business on each Friday, by no later than the following Wednesday; provided further, however, that, without in any way limiting Holdings' obligation to deliver Borrowing Base Certificates as set forth in this Section 7.02(h), Holdings may, at its option and at any time, deliver to Agent a Borrowing Base Certificate setting forth the calculation of the Borrowing Base.

(i) promptly upon the request from time to time of the 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 Agent may reasonably request;

(j) promptly upon the reasonable request of the 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 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 Agent and shall otherwise be in a form satisfactory to the Agent;

(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 Agent and the Lenders to discuss such

financial statements and such other matters as the Agent or any participating Lender may reasonably request; and

(n) the collateral reports set forth on Exhibit M at the times specified therein.

Holdings agrees to use commercially reasonable efforts in cooperation with the Agent to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the collateral reporting items set forth on this Section 7.02.

7.03 Notices. Holdings shall promptly notify the 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 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 Agent, the Hedge Termination Values, together with a description of the method by which such amounts were determined, relating to any Hedge Agreements 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 Hedge Agreement, together with the details thereof;

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

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

(l) of the occurrence of an event of default under the Second Lien Term Loan Credit Agreement.

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 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 Agent as loss payee and all liability insurance shall name the Agent as additional insured for the benefit of the Lenders, as their interests may appear. Upon the request of the Agent, Holdings shall furnish the Agent, with sufficient copies for each Lender, at reasonable intervals a certificate of a Responsible Officer of Holdings (and, if requested by the 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 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 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 Agent or the Majority Lenders may deem appropriate, Holdings will provide 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 Agent, Holdings shall submit and cause each of its Subsidiaries to submit, to the 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, for working capital and other general corporate purposes not in contravention of any Requirement of Law or of any Loan Document, and as otherwise expressly permitted pursuant to this Agreement.

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 Agent may approve in its discretion, each of the following to the 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 Agent and the Lenders, in form and substance reasonably acceptable to the 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 Agent on behalf of the Lenders in the Collateral of such Subsidiary and in which the 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 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 Agent's election, Holdings shall promptly cause such Subsidiary to deliver to the Agent a Mortgage, in form and substance reasonably satisfactory to the Agent, in respect of such real property, duly executed by the 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 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 Agent as provided in this Section 7.13(a)(iv).

(b) Additionally, Holdings and such Subsidiary shall execute and deliver to the Agent such other items as reasonably requested by the 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 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 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 Agent pursuant to the Security Agreement, (ii) execute and deliver, or cause such Guarantor to have executed and delivered, to the Agent stock transfer powers executed in blank with signatures guaranteed as the Agent shall request, and such UCC-1 financing statements (as furnished by the Agent) in each jurisdiction in which such filing is necessary to perfect the security interest of the Agent in the Collateral with respect to Holdings or such Guarantor, and (iii) deliver such other items as reasonably requested by the 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 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 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 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 Agent or the Majority Lenders, Holdings shall promptly deliver to the Agent a Mortgage, in form and substance satisfactory to the Agent, in respect of such real property, duly executed by the 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 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 Agent as provided in this Section 7.15(b).

(c) Promptly upon request by the 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 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 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 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 Agent within the meaning of Section 9314 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.

(a) 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.

(b) Holdings shall (i) file its 2009 consolidated Form 1120 (U.S. Corporation Income Tax Return) and its 2009 consolidated Form 1139 (Corporation Application for Tentative Refund) to carryback the full amount of its 2009 net operating loss for the extended 5-year carryback period, as soon as practicable and no later than April 30, 2010; and (ii) provide the Agent and DKAP and their respective tax advisors with an opportunity to review Holdings' 2009 Forms 1120 and 1139 at least 5 Business Day prior to the date when such Forms are filed and make such changes as the Agent or DKAP shall reasonable request in respect thereof. Such Forms shall reflect sufficient tax losses such that Holdings is entitled to a tax refund of not less than (1) in the event that it is determined that there has occurred an 'ownership change' as defined in Section 382(g) of the Internal Revenue Code prior to the Effective Date that would prevent the carry-back of loss created by the sale or closure (as the case may be) of the Ontario Framing business, the Illinois Framing business and the SelectBuild Illinois business, $50,000,000, and (2) in all other cases, $60,000,000. Holdings shall not file an amended 2009 Form 1120 or an amended 2009 Form 1139 prior to receipt of the full amount of the tentative refund claimed on the original 2009 Form 1139 filed pursuant to this Section 7.17(b) unless a material inaccuracy is noted therein that requires an amendment thereto or withdrawal thereof, and in the event of such material inaccuracy, any such amended 2009 Form 1120 and any such amended Form 1139 filed by Holdings reflect sufficient tax losses such that Holdings is entitled to a tax refund of not less than (1) in the event that it is determined that there has occurred an 'ownership change' as defined in Section 382(g) of the Internal Revenue Code prior to the Effective Date that would prevent the carry-back of loss created by the sale or closure (as the case may be) of the Ontario Framing business, the Illinois Framing business and the SelectBuild Illinois business (each of which sale or closure shall have occurred on or before December 31, 2009), $50.0 million and (2) in all other cases, $60.0 million. Holdings shall provide to the Agent and Lenders promptly upon the request from time to time of the Agent or any Lender, copies of any correspondence to or from the IRS with respect to its 2009 Form 1120 or 2009 Form 1139.

(c) Holdings shall claim the full amount of losses to which it is entitled resulting from the abandonment of the Illinois Framing, Inc. and SelectBuild Illinois, LLC facilities and the sale of C. Construction Inc.'s Ontario Framing business on its 2009 consolidated Form 1120.

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 2.07(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 2.07(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 Hedge Obligations or payments or advances under Hedge Agreements relating to Permitted Hedge 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, (iv) to repay any of the indebtedness under the Second Lien Term Loan Documents to the extent any such payment would be in contravention of the Intercreditor Agreement, or (v) for any use not permitted under Section 7.12. Holdings shall not, and shall not suffer or permit any Subsidiary to, use any portion of the Revolving Loan proceeds to prepay any Term Loan in whole or in part; provided that if (a) the NOL Carry-back Tax Refunds actually received by Holdings are less than $40,000,000 in the aggregate, (b) the NOL Carry-back Tax Refunds are used to prepay the Term Loans in accordance with Section 2.07(a)(v), and (c) Availability is greater than $20,000,000 immediately after giving effect thereto, Holdings may use Revolving Loan proceeds to prepay the Term Loans.

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 Hedge Agreements 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; (iii) optionally prepay the Indebtedness under the Second Lien Term Loan Documents; or (iv) 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) Intentionally Omitted.

(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	$(20,000,000)
Nine Months Ending September 30, 2010	$(14,250,000)

Twelve Months Ending December 31, 2010	$(8,500,000)
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

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	$8,625,000
Fiscal 2011	$11,500,000
Fiscal 2012	$11,500,000

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 Agent.

8.23 Organizational Documents.

(a) Holdings shall not, and shall not suffer or permit any Subsidiary to, amend, modify or otherwise change its name, jurisdiction of organization, organizational identification number or FEIN, except that Holdings or any of its Subsidiaries may change its name, jurisdiction of organization, organizational identification number or FEIN in connection with a transaction permitted by Section 8.03 and (ii) change its name upon at least 15 days' prior written notice by Holdings to the Agent of such change and so long as, at the time of such written notification, such Person provides any financing statements or fixture filings necessary to perfect and continue perfected the Agent's Liens; provided that, notwithstanding the foregoing, Holdings may change its name to BMC Select, Inc. upon at least 2 Business Days' prior written notice by Holdings to the Agent of such change and so long as, at the time of such written notification, such Person provides any financing statements or fixture filings necessary to perfect and continue perfected the Agent's Liens.

(b) Holdings shall not, and shall not suffer or permit any Subsidiary to, amend, modify or otherwise change any of its governing documents, including, without limitation, by the filing or modification of any certificate of designation, or any agreement or arrangement entered into by it, with respect to any of its Equity Securities (including any shareholders' agreement), or enter into any new agreement with respect to any of its Equity Securities or amend, modify or otherwise change any Material Contract, except any such amendments, modifications or changes or any such new agreements or arrangements pursuant to this Section 8.23(b) that would not reasonably be expected to have a Material Adverse Effect. The foregoing shall not limit or qualify Section 8.15 or 8.16.

8.24 No Revocation of Tax Documents. Holdings shall not, and shall not permit any of its Subsidiaries to, revoke or retract any documents executed or any IRS forms filed pursuant to Section 5.01(v).

8.25 Tax Refund. Holdings shall not, and shall not permit any of its Subsidiaries to, take any action inconsistent with the application for a tentative refund based on a carryback of its 2009 net operating loss for the extended 5-year carryback period, including, without limitation, to not file Form 1139 or an amended return to carry back its 2008 net operating loss for the extended 5-year carryback period.

8.26 Tax Representation. Holdings shall not, and shall not permit any of its Subsidiaries to, take any action that would cause the representation set forth in Section 6.28 to be inaccurate in any respect.

8.27 No Amendment of Tax Filing. Following the filing of Holding's 2009 Form 1120 and 2009 Form 1139 with the IRS, Holdings will not file an amended 2009 Form 1120 or an amended 2009 Form 1139 with the IRS until after its 2009 tentative refund is received in the Tax Proceeds Collateral Account, except as expressly permitted in accordance with Section 7.17(b).

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 Hedge Agreement, 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 Hedge Agreement);

(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 Hedge Agreement), 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 Hedge Agreement), 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 Hedge Agreement), 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 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 Hedge Agreements 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 Hedge Agreement an Early Termination Date (as defined in such Hedge Agreement) resulting from (1) any event of default under such Hedge Agreement as to which Holdings or any Subsidiary is the Defaulting Party (as defined in such Hedge Agreement) 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 Hedge 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 (f) or Section (g)), the Agent may or shall, upon instructions from the Majority Lenders, by written notice to Holdings (i) terminate the Revolving Commitments, any obligation of the Issuing Lender 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; or (iii) declare all or a portion of the outstanding Obligations

(other than Bank Product Obligations), whether evidenced by this Agreement or any of the other Loan Documents, immediately due and payable, whereupon the same shall become immediately due and payable and Holdings shall be obligated to repay all of such Obligations in full, 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 (f) or (g), immediately and without notice, (1) the Revolving Commitments, any obligation of the Issuing Lender 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 Agent may, or, upon the direction of the Majority Lenders, shall, 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) or while any Application Event has occurred and is continuing, any amounts received by the Agent (other than Tax Refunds, the application of which is addressed in the proviso below) on account of the Obligations shall be applied by the 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 Agent and amounts payable under Article IV) payable to the Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting interest due in respect of all Protective Advances;

Third, to payment of that portion of the Obligations constituting principal of all Protective Advances;

Fourth, 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(c) and Section 3.08(a)) payable to the Lenders and the Issuing Lender (including fees, charges and disbursements of counsel to the respective Lenders and the Issuing Lender and amounts payable under Article IV), ratably among them in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to payment of that portion of the Obligations constituting accrued and unpaid fees payable under Section 2.10(c) and Section 3.08(a) and interest on the Revolving Loans, ratably

among the Revolving Lenders and the Issuing Lender in proportion to the respective amounts described in this clause Fifth payable to them;

Sixth, (i) to payment of that portion of the Obligations constituting unpaid principal of the Revolving Loans, and (ii) to Cash Collateralize the L/C Obligations, ratably among the Revolving Lenders and the Issuing Lender in proportion to the respective amounts described in this clause Sixth held by them;

Seventh, to payment of that portion of the Obligations constituting interest on the Term Loans and other Obligations, ratably among the Term Lenders in proportion to the respective amounts described in this clause Seventh payable to them;

Eighth, to payment of that portion of the Obligations constituting unpaid principal of the Term Loans, ratably among the Term Lenders in proportion to the respective amounts described in this clause Eighth held by them;

Ninth, to payment of that portion of the Obligations constituting (i) amounts owing to any Bank Product Providers in respect of Specified Hedge Agreement and (ii) amounts owing to any Bank Product Provider in respect of Bank Product Agreements, ratably among the Bank Product Providers in proportion to the respective amounts described in this clause Ninth held by them;

Tenth, to payment of all other Obligations, ratably among the Persons owed such Obligations in proportion to the respective amounts described in this clause Tenth 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 Sixth 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;

provided, however, that any Tax Refunds received by the Agent 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) or while any Application Event has occurred and is continuing 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 Agent and amounts payable under Article IV) payable to the Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts payable to the Term Lenders (including fees, charges and disbursements of

counsel to the respective Term Lenders 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 interest on the Term Loans, ratably among the Term 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 Term Loans, ratably among the Term Lenders in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to payment of that portion of the Obligations constituting interest due in respect of all Protective Advances;

Sixth, to payment of that portion of the Obligations constituting principal of all Protective Advances;

Seventh, 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(c) and Section 3.08(a)) payable to the Revolving Lenders and the Issuing Lender (including fees, charges and disbursements of counsel to the respective Revolving Lenders and the Issuing Lender and amounts payable under Article IV), ratably among them in proportion to the respective amounts described in this clause Seventh payable to them;

Eigth, to payment of that portion of the Obligations constituting accrued and unpaid fees payable under Section 2.10(c) and Section 3.08(a) and interest on the Revolving Loans and other Obligations, ratably among the Revolving Lenders and the Issuing Lender in proportion to the respective amounts described in this clause Fifth payable to them;

Ninth, (i) to payment of that portion of the Obligations constituting unpaid principal of the Revolving Loans, and (ii) to Cash Collateralize the L/C Obligations, ratably among the Revolving Lenders and the Issuing Lender in proportion to the respective amounts described in this clause Ninth held by them;

Tenth, to payment of that portion of the Obligations constituting (i) amounts owing to any Bank Product Providers in respect of Specified Hedge Agreement and (ii) amounts owing to any Bank Product Provider in respect of Bank Product Agreements, ratably among the Bank Product Providers in proportion to the respective amounts described in this clause Tenth held by them;

Eleventh, to payment of all other Obligations, ratably among the Persons owed such Obligations in proportion to the respective amounts described in this clause Eleventh 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 Ninth 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 Hedge Agreement Remedies. Notwithstanding any other provision of this Article IX, but subject to Section 0, each Bank Product Provider shall have the right, with prior notice to the Agent, but without the approval or consent of the Agent or the other Lenders, with respect to any Specified Hedge Agreement of such Bank Product 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 Hedge Agreement), (b) to determine net termination amounts in accordance with the terms of such Specified Hedge Agreements and to set-off amounts between such Specified Hedge Agreement, and (c) to prosecute any legal action against Holdings to enforce net amounts owing to such Bank Product Provider.

ARTICLE X.

THE AGENT

10.01 Appointment and Authorization of Agent. Each Lender hereby designates and appoints WFF as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes (and by entering into a Bank Product Agreement or Hedge Agreement, each Bank Product Provider shall be deemed to designate, appoint, and authorize) the Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to the Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. The Agent agrees to act as agent for and on behalf of the Lenders (and the Bank Product Providers) on the conditions contained in this Article X. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, the Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall the Agent have or be deemed to have any fiduciary relationship with any Lender (or Bank Product Provider), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes (and by entering into a Bank Product Agreement or Hedge Agreement, each Bank Product Provider shall be deemed to authorize) the Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, the Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that the Agent expressly is entitled to take or assert under or pursuant to

this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to the Agent, Lenders agree that the Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, the Collections of Holdings and its Subsidiaries, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, (c) make Revolving Loans, for itself or on behalf of Lenders, as provided in the Loan Documents, (d) exclusively receive, apply, and distribute the Collections of Holdings and its Subsidiaries as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as the Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes with respect to the Collateral and the Collections of Holdings and its Subsidiaries, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to Holdings or its Subsidiaries, the Obligations, the Collateral, the Collections of Holdings and its Subsidiaries, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as the Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

10.02 Delegation of Duties. The Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

10.03 Liability of Agent. None of the Agent Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders (or Bank Product Providers) for any recital, statement, representation or warranty made by Holdings or any of its Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Holdings or its Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent Related Person shall be under any obligation to any Lenders (or Bank Product Providers) to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of Holdings or its Subsidiaries.

10.04 Reliance by Agent. The Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of

legal counsel (including counsel to Holdings or counsel to any Lender), independent accountants and other experts selected by the Agent. The Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless the Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, the Agent shall act, or refrain from acting, as it deems advisable. If the Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders (and, if it so elects, the Bank Product Providers) against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the requisite Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders (and Bank Product Providers).

10.05 Notice of Default or Event of Default. The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to the Agent for the account of the Lenders and, except with respect to Events of Default of which the Agent has actual knowledge, unless the Agent shall have received written notice from a Lender or Holdings referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." The Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which the Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and the Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 10.04, the Agent shall take such action with respect to such Default or Event of Default as may be requested by the Majority Lenders in accordance with Article IX; provided, however, that unless and until the Agent has received any such request, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

10.06 Credit Decision. Each Lender (and Bank Product Provider) acknowledges that none of the the Agent Related Persons has made any representation or warranty to it, and that no act by the Agent hereinafter taken, including any review of the affairs of Holdings and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent Related Person to any Lender (or Bank Product Provider). Each Lender represents (and by entering into a Bank Product Agreement or Hedge Agreement, each Bank Product Provider shall be deemed to represent) to the Agent that it has, independently and without reliance upon any Agent Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Holdings or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Holdings. Each Lender also represents (and by entering into a Bank Product Agreement or Hedge Agreement, each Bank Product Provider shall be deemed to represent) that it will, independently and without reliance upon any Agent Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and

the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Holdings or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by the Agent, the Agent shall not have any duty or responsibility to provide any Lender (or Bank Product Provider) with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Holdings or any other Person party to a Loan Document that may come into the possession of any of the Agent Related Persons. Each Lender acknowledges (and by entering into a Bank Product Agreement or Hedge Agreement, each Bank Product Provider shall be deemed to acknowledge) that the Agent does not have any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender (or Bank Product Provider) with any credit or other information with respect to Holdings, its Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into the Agent's or its Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement (or such Bank Product Provider entered into a Bank Product Agreement or Hedge Agreement).

10.07 Costs and Expenses; Indemnification. The Agent may incur and pay Lender Group Expenses to the extent the Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Holdings is obligated to reimburse the Agent or Lenders for such expenses pursuant to this Agreement or otherwise. The Agent is authorized and directed to deduct and retain sufficient amounts from the Collections of Holdings and its Subsidiaries received by the Agent to reimburse the Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders (or Bank Product Providers). In the event the Agent is not reimbursed for such costs and expenses by Holdings or its Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to the Agent such Lender's Proportionate Share thereof. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Agent Related Persons (to the extent not reimbursed by or on behalf of Holdings and without limiting the obligation of Holdings to do so), according to their Proportionate Shares, from and against any and all Indemnified Liabilities; provided, however, that no Lender shall be liable for the payment to any Agent Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make a Revolving Loan or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse the Agent upon demand for such Lender's Proportionate Share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Agent is not reimbursed

for such expenses by or on behalf of Holdings. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of the Agent.

10.08 Agent in Individual Capacity. WFF and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire equity interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Holdings and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though WFF were not the Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, WFF or its Affiliates may receive information regarding Holdings or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Holdings or such other Person and that prohibit the disclosure of such information to the Lenders (or Bank Product Providers), and the Lenders acknowledge (and by entering into a Bank Product Agreement or Hedge Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver the Agent will use its reasonable best efforts to obtain), the Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include WFF in its individual capacity.

10.09 Successor Agent. The Agent may resign as Agent upon 30 days prior written notice to the Lenders (unless such notice is waived by the Majority Lenders) and Holdings (unless such notice is waived by Holdings) and without any notice to the Bank Product Providers. If the Agent resigns under this Agreement, the Majority Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the consent of Holdings (such consent not to be unreasonably withheld, delayed, or conditioned), appoint a successor Agent for the Lenders (and the Bank Product Providers). If, at the time that the Agent's resignation is effective, it is acting as the Issuing Lender, such resignation shall also operate to effectuate its resignation as Issuing Lender, and it shall automatically be relieved of any further obligation to issue Letters of Credit or to cause the Underlying Issuer to issue Letters of Credit. If no successor Agent is appointed prior to the effective date of the resignation of the Agent, the Agent may appoint, after consulting with the Lenders and Holdings, a successor Agent. If the Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Majority Lenders may agree in writing to remove and replace the Agent with a successor Agent from among the Lenders with (so long as no Event of Default has occurred and is continuing) the consent of Holdings (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article X shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

10.10 Lender in Individual Capacity. Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Holdings and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group (or the Bank Product Providers). The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement or Hedge Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding Holdings or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Holdings or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge (and by entering into a Bank Product Agreement or Hedge Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

10.11 Collateral Matters.

(a) The Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement or Hedge Agreement, each Bank Product Provider shall be deemed to authorize) the Agent to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by Holdings of all of the Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Holdings certifies to the Agent that the sale or disposition is permitted under this Agreement (and the Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which Holdings or its Subsidiaries owned no interest at the time the Agent's Lien was granted nor at any time thereafter, or (iv) constituting property leased to Holdings or its Subsidiaries under a lease that has expired or is terminated in a transaction permitted under this Agreement. The Loan Parties and the Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement or Hedge Agreement, each Bank Product Provider shall be deemed to authorize) the Agent, based upon the instruction of the Majority Lenders, to credit bid and purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted by the Agent under the provisions of the UCC, including pursuant to Sections 9610 or 9620 of the UCC, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code, or at any sale or foreclosure conducted by the Agent (whether by judicial action or otherwise) in accordance with applicable law. Except as provided above, the Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders (without requiring the authorization of the Bank Product Providers), or (z) otherwise, the Majority Lenders (without requiring the authorization of the Bank Product Providers). Upon request by the Agent or Holdings at any time, the Lenders will (and is so requested, the Bank Product Providers will) confirm in writing the Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 10.11; provided, however, that (1) the Agent shall not be required to execute any document necessary to evidence such release on

terms that, in the Agent's opinion, would expose the Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of Holdings in respect of) all interests retained by Holdings, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. The Lenders further hereby irrevocably authorize (and by entering into a Bank Product Agreement or Hedge Agreement, each Bank Product Provider shall be deemed to authorize) the Agent, at its option and in its sole discretion, to subordinate any Lien granted to or held by the Agent under any Loan Document to the holder of any Permitted Lien on such property if such Permitted Lien secures purchase money indebtedness permitted under this Agreement.

(b) The Agent shall have no obligation whatsoever to any of the Lenders (or the Bank Product Providers) to assure that the Collateral exists or is owned by Holdings or its Subsidiaries or is cared for, protected, or insured or has been encumbered, or that the Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or that any particular items of Collateral meet the eligibility criteria applicable in respect thereof or whether to impose or maintain any particular reserve hereunder or whether the amount of any such reserve is appropriate or not, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, the Agent may act in any manner it may deem appropriate, in its sole discretion given the Agent's own interest in the Collateral in its capacity as one of the Lenders and that the Agent shall have no other duty or liability whatsoever to any Lender (or Bank Product Provider) as to any of the foregoing, except as otherwise provided herein.

10.12 Restrictions on Actions by Lenders; Sharing of Payments.

(a) Each of the Lenders agrees that it shall not, without the express written consent of the Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of the Agent, set off against the Obligations, any amounts owing by such Lender to Holdings or its Subsidiaries or any deposit accounts of Holdings or its Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by the Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against Holdings or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from the Agent pursuant to the terms of this Agreement, or (ii) payments from the Agent in excess of such Lender's Proportionate Share of all such distributions by the Agent, such Lender promptly shall (A) turn the same over to the Agent, in kind, and with such endorsements as may be required to negotiate the same to the Agent, or in immediately available funds, as applicable, for the account

of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Proportionate Shares; provided, however, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

10.13 Agency for Perfection. The Agent hereby appoints each other Lender (and each Bank Product Provider) as its agent (and each Lender hereby accepts (and by entering into a Bank Product Agreement or Hedge Agreement, each Bank Product Provider shall be deemed to accept) such appointment) for the purpose of perfecting the Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the UCC can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver possession or control of such Collateral to the Agent or in accordance with the Agent's instructions.

10.14 Payments by Agent to the Lenders. All payments to be made by the Agent to the Lenders (or Bank Product Providers) shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to the Agent. Concurrently with each such payment, the Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

10.15 Concerning the Collateral and Related Loan Documents. Each member of the Lender Group authorizes and directs the Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees (and by entering into a Bank Product Agreement or Hedge Agreement, each Bank Product Provider shall be deemed to agree) that any action taken by the Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by the Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders (and such Bank Product Provider).

10.16 Audits and Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that the Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report respecting Holdings or its Subsidiaries (each a "Report" and collectively, "Reports") prepared by or at the request of the Agent, and the Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that the Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or other party performing any audit or examination will inspect only specific information regarding Holdings and its Subsidiaries and will rely significantly upon Holdings and its Subsidiaries' books and records, as well as on representations of Holdings' personnel,

(d) agrees to keep all Reports and other material, non-public information regarding Holdings and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 11.07, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Holdings, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Holdings, and (ii) to pay and protect, and indemnify, defend and hold the Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys fees and costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing: (x) any Lender may from time to time request of the Agent in writing that the Agent provide to such Lender a copy of any report or document provided by Holdings or its Subsidiaries to the Agent that has not been contemporaneously provided by Holdings or such Subsidiary to such Lender, and, upon receipt of such request, the Agent promptly shall provide a copy of same to such Lender, (y) to the extent that the Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from Holdings or its Subsidiaries, any Lender may, from time to time, reasonably request the Agent to exercise such right as specified in such Lender's notice to the Agent, whereupon the Agent promptly shall request of Holdings the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Holdings or such Subsidiary, the Agent promptly shall provide a copy of same to such Lender, and (z) any time that the Agent renders to Holdings a statement regarding the Loan Account, the Agent shall send a copy of such statement to each Lender.

10.17 Several Obligations; No Liability. Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of the Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of the Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one

time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 10.07, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to Holdings or any other Person for any failure by any other Lender (or Bank Product Provider) to fulfill its obligations to make credit available hereunder, nor to advance for such Lender (or Bank Product Provider) or on its behalf, nor to take any other action on behalf of such Lender (or Bank Product Provider) hereunder or in connection with the financing contemplated herein.

10.18 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 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 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 Issuing Lender and the Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Lender and the Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Lender and the Agent under Sections 2.10, 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 Issuing Lender to make such payments to the Agent and, in the event that the Agent shall consent to the making of such payments directly to the Lenders and the Issuing Lender, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.10 and 11.04.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Lender or the Issuing Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Agent to vote in respect of the claim of any Lender in any such proceeding.

10.19 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 Agent to enter into the Intercreditor Agreement on behalf of such Lender and agrees that the 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 Agent and the Majority Lenders (or the 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.

10.19 Tax Refunds. For the avoidance of doubt, and anything to the contrary contained herein notwithstanding, the Agent hereby agrees that if it receives the proceeds of any Tax Refunds (whether from the Tax Proceeds Collateral Account other otherwise) it shall apply such proceeds (a) if no Application Event has occurred and is continuing, in accordance with the waterfall set forth in Section 2.07(a)(v), and (b) if an Application Event has occurred and is continuing, in accordance with the proviso set forth in Section 9.03.

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 Majority Lenders (or the 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 Majority Lenders (or the 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 2.09(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 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 2.09(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 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 2.13 or Section 0; 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 Agent in addition to the Lenders required hereinabove to take such action, affect the rights, obligations or duties of the Agent under any Loan Document, (2) no amendment, waiver or consent shall, unless in writing and signed by the Issuing Lender in addition to the Lenders required hereinabove to take such action, affect the rights, obligations or duties of the Issuing Lender under any Loan Document and (3) the Fee Letter and documents evidencing Specified Hedge Agreements may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, (a) 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, and (b) the Term Lenders shall not have the right to approve or disapprove any amendment, waiver or consent hereunder related to Section 8.19 or Section 8.21 to the extent that such amendment, waiver, or consent permits a deviation from the applicable amount or ratio required pursuant to Section 8.19 or Section 8.21 as of the date hereof in an amount not to exceed 15 percent for any measurement period for any covenant set forth in Section 8.19 or Section 8.21.

(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 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 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 Agent or the Issuing Lender, 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 Issuing Lender hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender or the Issuing Lender pursuant to Article II or Article III if such Lender or the Issuing Lender, as applicable, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The 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 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 Agent and the Issuing Lender 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 Agent and the Issuing Lender.

(d) Reliance by Agent, Issuing Lender and Lenders. The Agent, the Issuing Lender 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 Agent, the Issuing Lender, 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

Agent may be recorded by the 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 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 Indemnity; Damage Waiver.

(a) Indemnification by Holdings. Holdings shall indemnify the Agent (and any sub-agent thereof), each Lender and the Issuing 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 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 Issuing Lender 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, (iv) the Cases, the Reorganization Plan or the Confirmation Order, or (v) 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.

(b) 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 Agent (or any sub-agent thereof), the Issuing Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Agent (or any such sub-agent), the Issuing Lender 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 Agent (or any such sub-agent) or the Issuing Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) or Issuing Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(c) 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.

(d) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(e) Survival. The agreements in this Section shall survive the resignation of the Agent and the Issuing Lender, 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 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 Agent or the Lenders, or the 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 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 Agent upon demand its Proportionate Share of any amount so recovered from or repaid by the Agent.

11.06 Assignments and Participations.

(a) With the prior written consent of Holdings, which consent of Holdings shall not be unreasonably withheld, delayed or conditioned, and shall not be required (1) if an Event of Default has occurred and is continuing or (2) in connection with an assignment to a Person that is a Lender or an Affiliate (other than individuals) or Related Fund of a Lender and with the prior written consent of the Agent, which consent of the Agent shall not be unreasonably withheld, delayed or conditioned, and shall not be required in connection with an assignment to a Person that is a Lender or an Affiliate (other than individuals) or Related Fund of a Lender, any Lender may assign and delegate to one or more assignees (each, an "Assignee"; provided, however, that (I) no Loan Party or Affiliate of a Loan Party shall be permitted to become an Assignee, and (II) no Person that, as of the effective date of the proposed assignment, holds more than 10% of the outstanding principal amount of the Obligations under, and as defined in, the Second Lien Term Loan Credit Agreement or any of its Affiliates shall be permitted to become an Assignee unless such Person is an Affiliate or Related Fund of a Lender (it being understood and agreed that Wells Fargo is an Affiliate of WFF)) all or any portion of the Obligations, the Commitments and the other rights and obligations of such Lender hereunder and under the other Loan Documents, in a minimum amount (unless waived by the Agent) of (1) with respect to assignments of the Revolving Commitments or the Revolving Loans, $5,000,000 (except such minimum amount shall not apply to (x) an assignment or delegation by any Lender to any other Lender or an Affiliate of any Lender or (y) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least $5,000,000), and (2) with respect to assignments of the Term Loans, $1,000,000 (except such minimum amount shall not apply to (x) an assignment or delegation by any Lender to any other Lender or an Affiliate of any Lender or (y) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least $1,000,000) ; provided, however, that Holdings and the Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until (i) written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Holdings and the Agent by such Lender and the Assignee, (ii) such Lender and its Assignee have delivered to Holdings and the Agent an Assignment and Acceptance and the Agent has notified the assigning Lender of its receipt thereof in accordance with Section 11.06(b), and (iii) unless waived by the Agent, the assigning Lender or Assignee has paid to the Agent for the Agent's separate account a processing fee in the amount of $3,500.

(b) From and after the date that the Agent notifies the assigning Lender (with a copy to Holdings) that it has received an executed Assignment and Acceptance and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall be a "Lender" and shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 11.04(a)) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, however, that nothing

contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Article X and Section 11.07.

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Holdings or the performance or observance by Holdings of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon the Agent, such assigning Lender 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 this Agreement, (v) such Assignee appoints and authorizes the Agent to take such actions and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Agent, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon the Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 11.06(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender pro tanto.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, however, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Holdings, the Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with

respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender (other than a waiver of default interest), or (E) change the amount or due dates of scheduled principal repayments or prepayments or premiums, and (v) all amounts payable by Holdings hereunder shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, the Agent, Holdings, the Collections of Holdings or its Subsidiaries, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(f) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 11.07, disclose all documents and information which it now or hereafter may have relating to Holdings and its Subsidiaries and their respective businesses.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any FRB in accordance with Regulation A of the FRB or U.S. Treasury Regulation 31 CFR §203.24, and such FRB may enforce such pledge or security interest in any manner permitted under applicable law.

(h) The Agent (as a non-fiduciary agent on behalf of Holdings) shall maintain, or cause to be maintained, a register (the "Register") on which it enters the name and address of each Lender as the registered owner of the Term Loan (and the principal amount thereof and stated interest thereon) held by such Lender (each, a "Registered Loan"). Other than in connection with an assignment by a Lender of all or any portion of its portion of the Term Loan to an Affiliate of such Lender or a Related Fund of such Lender (i) a Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide) and (ii) any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the

designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any evidencing the same), Holdings shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary. In the case of any assignment by a Lender of all or any portion of its Term Loan to an Affiliate of such Lender or a Related Fund of such Lender, and which assignment is not recorded in the Register, the assigning Lender, on behalf of Holdings, shall maintain a register comparable to the Register.

(i) In the event that a Lender sells participations in the Registered Loan, such Lender, as a non-fiduciary agent on behalf of Holdings, shall maintain (or cause to be maintained) a register on which it enters the name of all participants in the Registered Loans held by it (and the principal amount (and stated interest thereon) of the portion of such Registered Loans that is subject to such participations) (the "Participant Register"). A Registered Loan (and the Registered Note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register.

(j) The Agent shall make a copy of the Register (and each Lender shall make a copy of its Participant Register in the extent it has one) available for review by Holdings from time to time as Holdings may reasonably request.

11.07 Treatment of Certain Information; Confidentiality. Each of the Agent, the Lenders and the Issuing Lender 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 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 Agent, any Lender, the Issuing 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 Agent, any Lender or the Issuing 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 the Agent will make available to the Lenders and the Issuing Lender 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 Issuing Lender 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 Issuing 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 or the Issuing Lender, irrespective of whether or not such Lender or the Issuing 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 or the Issuing Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender, the Issuing Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Lender or their respective Affiliates may have. Each Lender and the Issuing Lender agrees to notify Holdings and the 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 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 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 Agent, the Issuing Lender 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 Agent, the Issuing Lender 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 Agent, the Issuing Lender 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 Agent, the Issuing Lender 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 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 Agent, the Issuing Lender and the Lenders may collect from such Guarantor even if the 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 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 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 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 Agent and the Lenders under the Collateral Documents in respect of the

property of such Subsidiary shall thereupon terminate. Holdings shall promptly notify the Agent of the consummation of any such transaction or series of transactions. The 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.

(n) Intercompany Subordination.

(i) As to each Loan Party, all payments on account of the Intercompany Debt shall be subject, subordinate, and junior, in right of payment and exercise of remedies, to the extent and in the manner set forth herein, to the prior payment, in full, in cash and cash equivalents of the Obligations.

(ii) As to each Loan Party, in the event of any payment or distribution of assets of any other Loan Party of any kind or character, whether in cash, property, or securities, upon the dissolution, winding up, or total or partial liquidation or reorganization, readjustment, arrangement, or similar proceeding relating to such other Loan Party or its property, whether voluntary or involuntary, or in an Insolvency Proceeding or upon any other marshaling or composition of the assets and liabilities of such other Loan Party, or otherwise: (A) all amounts owing on account of the Obligations shall first be paid, in full, in cash, or payment provided for in cash and cash equivalents, before any Intercompany Debt Payment is made; and (B) to the extent permitted by applicable law, any Intercompany Debt Payment to which such Loan Party would be entitled except for the provisions hereof, shall be paid or delivered by the trustee in bankruptcy, receiver, assignee for the benefit of creditors, or other liquidating agent making such payment or distribution directly to the Agent for the benefit of the Lenders for application to the payment of the Obligations in accordance with clause (A), after giving effect to any concurrent payment or distribution or provision therefor to the Lenders, or the Agent for the benefit thereof, in respect of such Obligations.

(iii) So long as no Event of Default shall have occurred and be continuing, each Loan Party may make, and each other Loan Party shall be entitled to accept and receive, payments on account of the Intercompany Debt in the ordinary course of business. If the Obligations have been declared or otherwise become due upon or following the occurrence of any Event of Default, or if an Event of Default has occurred and is continuing and the Agent delivers written notice to the Loan Parties to cease all payments on account of Intercompany Debt, then until such Event of Default is cured or waived, each Loan Party shall not make, and each other Loan Party shall not accept or receive, any Intercompany Debt Payment, and any payment received by any Loan Party on account of Intercompany Debt in contravention of this clause (iii) shall be held in trust for, and paid over to, the Agent.

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 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 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;

(d) if such Lender is DKAP or an Affiliate or Related Fund thereof, Holdings shall have paid to DKAP the amount payable pursuant to the DKAP Fee Letter; and

(e) 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 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 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. The foregoing to the contrary notwithstanding, all Bank Product Agreements and Hedge Agreement, if any, are independent agreements governed by the written provisions of such Bank Product Agreements and Hedge Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreements and Hedge Agreements. Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by the Agent and when the 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 Agent and the 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 NEW YORK.

(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 NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, 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 NEW YORK 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 ISSUING 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 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 HEDGE AGREEMENT.

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.

11.18 Lender Group Expenses. Holdings agrees to pay any and all Lender Group Expenses promptly (but in no event later than ten (10) Business Days) after demand therefor by the Agent and agrees that its obligations contained in this Section 11.18 shall survive payment or satisfaction in full of all other Obligations.

11.19 Bank Product Providers. Each Bank Product Provider shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom the Agent is acting. The Agent hereby agrees to act as agent for such Bank Product Providers and, by virtue of entering into a Bank Product Agreement or Hedge Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed the Agent as its agent and to have accepted the benefits of the Loan Documents; it being understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to the Agent and the right to share in payments and collections out of the Collateral as

more fully set forth herein. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement or Hedge Agreement, shall be automatically deemed to have agreed that the Agent shall have the right, but shall have no obligation, to establish, maintain, relax, or release reserves in respect of the Bank Product Obligations and that if reserves are established there is no obligation on the part of the Agent to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, the Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to the Agent as to the amounts that are due and owing to it and such written certification is received by the Agent a reasonable period of time prior to the making of such distribution. The Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the relevant Bank Product Provider. In the absence of an updated certification, the Agent shall be entitled to assume that the amount due and payable to the relevant Bank Product Provider is the amount last certified to the Agent by such Bank Product Provider as being due and payable (less any distributions made to such Bank Product Provider on account thereof). Holdings may obtain Bank Products from any Bank Product Provider, although Holdings is not required to do so. Holdings acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider.

(remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered 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 FOOTHILL, LLC,
as Agent, Issuing Lender and Revolving Lender

By _____
Name:
Title:

DK ACQUISITION PARTNERS, L.P.,
as Term Lender

By: M.H. Davidson & Co., its general partner

By _____
Name:
Title:

EXHIBIT A

FORM OF NOTICE OF BORROWING

Date: _____

To: Wells Fargo Foothill, LLC,
as Agent

Ladies and Gentlemen:

The undersigned, Building Materials Holding Corporation ("Holdings"), refers to the Senior Secured Credit Agreement, dated as of January __, 2010 (as amended, restated, supplemented, modified, renewed or extended from time to time, the "Credit Agreement"), by and among Holdings, as borrower, certain subsidiaries of Holdings party thereto as "Guarantors", the lenders from time to time party thereto (collectively, the "Lenders") and Wells Fargo Foothill, LLC, a Delaware limited liability company, as agent for the Lenders (in such capacity, "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] using the [Base Rate][LIBOR Rate].

[4. The LIBOR Rate Loan will have an Interest Period of [1][2][3] month(s) commencing on _____.][1]

[This notice further confirms Holdings' acceptance, for purposes of determining the rate of interest based on the LIBOR Rate under the Credit Agreement, of the LIBOR Rate as determined pursuant to the Credit Agreement.][2]

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

[1] To be included only with respect to Loans requested using the LIBOR Rate.
[2] To be included only with respect to Loans requested using the LIBOR Rate.

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 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 2.07(a)(iv) through 2.07(a)(viii) of the Credit Agreement is zero; and

(g) the statements contained in the most recent Borrowing Base Certificate delivered by Holdings to 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, a Delaware 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 January __, 2010 (as amended, restated, supplemented, modified, renewed or extended from time to time, the "Credit Agreement"), by and among Building Materials Holdings Corporation, a Delaware corporation, as borrower ("Holdings"), certain subsidiaries of Holdings as "Guarantors", the lenders from time to time party thereto (collectively, the "Lenders") and Wells Fargo Foothill, LLC, a Delaware limited liability company, as agent for the Lenders (in such capacity, "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 Agent on the behalf of Holdings and each of its 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, correct and complete copies of (i) 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, and 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; and (ii) a certificate of the Independent Auditor stating that in the course of the regular examination of the financial statements delivered in accordance with the preceding clause (i), nothing has come to the attention of such Independent Auditor which would cause it to believe that an Event of Default under Section 8.19 of the Credit Agreement has occurred and is continuing, or if, in the opinion of such Independent Auditor, an Event of Default under Section 8.19 of the Credit Agreement has occurred and is continuing, a statement as to the nature thereof (as such certificate may be limited to the extent required by accounting rules or guidelines).

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 consolidated financial position and the results of operations and cash flows of Holdings and its 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 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 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, a Delaware corporation

By:_____
Name:
Title:

Schedule 1
to Compliance Certificate

Effective Date of Calculation:	_____	
A. 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		$_____
In compliance with Section 8.19(b) of the Credit Agreement?	[Yes/No]	
B. 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		$_____
C. 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 $8,625,000 for Fiscal 2010, $11,500,000 for Fiscal 2011 or $11,500,000 for Fiscal 2012		$_____
D. 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 the aggregate for all Operating Leases in any fiscal year		$_____

EXHIBIT C

FORM OF ASSIGNMENT AND ACCEPTANCE AGREEMENT

This **ASSIGNMENT AND ACCEPTANCE AGREEMENT** ("Assignment Agreement") is entered into as of _____ between _____ ("Assignor") and ____ _____ ("Assignee"). Reference is made to the Credit Agreement described in Annex I hereto (the "Credit Agreement"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Credit Agreement.

In accordance with the terms and conditions of Section 11.06 of the Credit Agreement, the Assignor hereby sells and assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, that interest in and to the Assignor's rights and obligations under the Loan Documents as of the date hereof with respect to the Obligations owing to the Assignor, and Assignor's portion of the Commitments, all to the extent specified on Annex I.

The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim and (ii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment Agreement and to consummate the transactions contemplated hereby; (b) makes no representation or warranty and assumes no responsibility with respect to (i) any statements, representations or warranties made in or in connection with the Loan Documents, or (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any other instrument or document furnished pursuant thereto; (c) makes no representation or warranty and assumes no responsibility with respect to the financial condition of Holdings or any Guarantor or the performance or observance by Holdings or any Guarantor of any of their respective obligations under the Loan Documents or any other instrument or document furnished pursuant thereto, and (d) represents and warrants that the amount set forth as the Purchase Price on Annex I represents the amount owed by Holdings to Assignor with respect to Assignor's share of the Term Loans and the Revolving Loans assigned hereunder, as reflected on Assignor's books and records.

The Assignee (a) confirms that it is eligible as an assignee under Section 11.06 of the Credit Agreement and has received copies of the Credit Agreement and the other Loan Documents, together with copies of the financial statements referred to therein and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment Agreement; (b) agrees that it will, independently and without reliance upon Agent, Assignor, or any other Lender, based upon such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the Loan Documents; (c) appoints and authorizes Agent to take such action as agent on its behalf and to exercise such powers under the Loan Documents as are delegated to Agent by the terms thereof, together with such powers as are reasonably incidental thereto; (d) agrees that 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; [and (e) attaches the forms prescribed by the Internal Revenue Service of the United States certifying as to the Assignee's status for purposes of determining exemption from United

States withholding taxes with respect to all payments to be made to the Assignee under the Credit Agreement or such other documents as are necessary to indicate that all such payments are subject to such rates at a rate reduced by an applicable tax treaty.]

Following the execution of this Assignment Agreement by the Assignor and Assignee, the Assignor will deliver this Assignment Agreement to Agent for recording by Agent. The effective date of this Assignment (the "Settlement Date") shall be the latest to occur of (a) the date of the execution and delivery hereof by the Assignor and the Assignee, (b) the receipt by Agent for its sole and separate account a processing fee in the amount of $3,500 (the "Processing Fee") (unless waived by Agent), (c) the date that Agent notifies Assignor (with a copy to Holdings) that it has received an executed Assignment Agreement and, if applicable, the Processing Fee, (d) the receipt of any required consent of Agent and Holdings, and (e) the date specified in Annex I.

As of the Settlement Date (a) the Assignee shall be a party to the Credit Agreement and, to the extent of the interest assigned pursuant to this Assignment Agreement, have the rights and obligations of a Lender thereunder and under the other Loan Documents, and (b) the Assignor shall, to the extent of the interest assigned pursuant to this Assignment Agreement, relinquish its rights and be released from its obligations under the Credit Agreement and the other Loan Documents, provided, however, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Article 10 and Section 11.07 of the Credit Agreement.

Upon the Settlement Date, Assignee shall pay to Assignor the Purchase Price (as set forth in Annex I). From and after the Settlement Date, Agent shall make all payments that are due and payable to the holder of the interest assigned hereunder (including payments of principal, interest, fees and other amounts) to Assignor for amounts which have accrued up to but excluding the Settlement Date and to Assignee for amounts which have accrued from and after the Settlement Date. On the Settlement Date, Assignor shall pay to Assignee an amount equal to the portion of any interest, fee, or any other charge that was paid to Assignor prior to the Settlement Date on account of the interest assigned hereunder and that are due and payable to Assignee with respect thereto, to the extent that such interest, fee or other charge relates to the period of time from and after the Settlement Date.

This Assignment Agreement may be executed in counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. This Assignment Agreement may be executed and delivered by telefacsimile or other electronic method of transmission all with the same force and effect as if the same were a fully executed and delivered original manual counterpart.

THIS ASSIGNMENT AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment Agreement and Annex I hereto to be executed by their respective officers, as of the first date written above.

[NAME OF ASSIGNOR],
as Assignor

By:_____
Name:
Title:

[NAME OF ASSIGNEE],
as Assignee

By:_____
Name:
Title:

[ACCEPTED THIS ____ DAY OF
_____

WELLS FARGO FOOTHILL, INC.,
a California corporation, as Agent

By:_____
Name:
Title:][3]

[ACCEPTED THIS ____ DAY OF
_____

BUILDING MATERIALS HOLDINGS CORPORATION,
a Delaware corporation, as borrower

By:_____
Name:
Title:][4]

[3] Include to the extent required by Section 11.06(a) of the Credit Agreement.
[4] Include to the extent required by Section 11.06(a) of the Credit Agreement.

ANNEX FOR ASSIGNMENT AND ACCEPTANCE

ANNEX I

1. Borrower: Building Materials Holding Corporation, a Delaware corporation ("Holdings")

2. Name and Date of Credit Agreement:

   Credit Agreement, dated as of January __, 2010, by and among Holdings, certain subsidiaries of Holdings party thereto as "Guarantors", the lenders from time to time party thereto (collectively, the "Lenders"), Wells Fargo Foothill, LLC, a Delaware limited liability company, as agent for the Lenders (in such capacity, "Agent")

3. Date of Assignment Agreement: _____

4. Amounts:

   a. Assigned Amount of Revolving Commitment $_____

   b. Assigned Amount of Revolving Loans $_____

   c. Assigned Amount of Term Loans $_____

5. Settlement Date: _____

6. Purchase Price $_____

7. Notice and Payment Instructions, etc.

Assignee:	Assignor:
_____	_____
_____	_____
_____	_____

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 January __, 2010 (as amended, restated, supplemented, modified, renewed or extended from time to time, the "Credit Agreement"), by and among Holdings, as borrower, certain subsidiaries of Holdings as "Guarantors", the lenders from time to time party thereto, and Wells Fargo Foothill, LLC, a Delaware limited liability company, as agent for such lenders (in such capacity, "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 New York.

BUILDING MATERIALS HOLDING CORPORATION, a Delaware 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 January __, 2010 (as amended, restated, supplemented, modified, renewed or extended from time to time, the "Credit Agreement"), by and among Holdings, as borrower, certain subsidiaries of Holdings as "Guarantors", the lenders from time to time party thereto and Wells Fargo Foothill, LLC, a Delaware limited liability company, as agent for such lenders (in such capacity, "Agent"), on the dates and in the amounts provided in 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 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 New York.

BUILDING MATERIALS HOLDING CORPORATION, a Delaware 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

To each of the Lenders party to the Credit Agreement
referred to below, and to Wells Fargo Foothill, LLC, as Agent

Ladies and Gentlemen:

This Additional Guarantor Assumption Agreement, dated as of _____ (this "Additional Guarantor Assumption Agreement"), is made and delivered pursuant to Section 7.13 of that certain Senior Secured Credit Agreement, dated as of January __, 2010 (as amended, restated, supplemented, modified, renewed or extended from time to time, the "Credit Agreement"), by and among Building Materials Holding Corporation, a Delaware corporation, as borrower ("Holdings"), certain subsidiaries of Holdings as "Guarantors", the lenders from time to time party thereto (collectively, the "Lenders") and Wells Fargo Foothill, LLC, a Delaware limited liability company, as agent for the Lenders (in such capacity, "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 "New Grantor") hereby confirms, represents and warrants to Agent and the Lenders that the New Grantor is a United States Subsidiary effective as of _____.

The documents required to be delivered to Agent under clauses (ii), (iii) and (iv) of Section 7.13(a) of the Credit Agreement will be furnished to Agent in accordance with the requirements of the Credit Agreement.

The parties hereto hereby confirm that with effect from the date hereof, the New Grantor shall be a party to the Credit Agreement and a party to the Security Agreement (as amended), and shall have the obligations which the New Grantor would have had if the New Grantor 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 New Grantor hereby unconditionally grants, assigns, and pledges to Agent, for the benefit of the Lender Group and the Bank Product Provider, to secure the Secured Obligations (as defined in the Security Agreement), a continuing security interest in and to all of such New Grantor's Collateral (as defined in the Security Agreement). The New Grantor 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 New Grantor 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 Agent, for the benefit of the 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.

THE PROVISIONS IN THE CREDIT AGREEMENT WITH RESPECT TO GOVERNING LAW, JURISDICTION AND VENUE, SERVICE OF PROCESS, AND JURY TRIAL WAIVER ARE APPLICABLE TO THIS ADDITIONAL GUARANTOR ASSUMPTION AGREEMENT AS IF FULLY SET FORTH HEREIN.

[signature pages follow]

IN WITNESS WHEREOF, the New Grantor has caused this Additional Guarantor Assumption Agreement to be duly executed and delivered by its proper and duly authorized officer as of the day and year first above written.

[NEW GRANTOR]

By:_____
Name:
Title:

EXHIBIT F

SECURITY AGREEMENT

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement"), dated as of January __, 2009, is made by and among the Grantors listed on the signature pages hereof and those additional entities that hereafter become parties hereto as provided in Section 25 hereof (collectively, jointly, and severally, the "Grantors" and each, individually, a "Grantor"), and Wells Fargo Foothill, LLC, a Delaware limited liability company, in its capacity as agent for the Secured Parties (in such capacity, together with its successors and assigns in such capacity, "Agent").

RECITALS

WHEREAS, Building Materials Holding Corporation, a Delaware corporation ("Holdings"), certain subsidiaries of Holdings party thereto as "Guarantors", the Lenders party thereto, and Agent are parties to that certain Senior Secured Credit Agreement dated as of even date herewith (as amended, restated, supplemented, modified, renewed or extended from time to time, the "Credit Agreement"); and

WHEREAS, Agent has agreed to act as agent for the benefit of the Secured Parties in connection with the transactions contemplated by the Credit Agreement and this Agreement; and

WHEREAS, in order to induce the Lender Group to enter into the Credit Agreement and the other Loan Documents and to induce the Lender Group to make financial accommodations to Holdings as provided for in the Credit Agreement, Grantors have agreed to grant a continuing security interest in and to the Collateral in order to secure the prompt and complete payment, observance and performance of, among other things, the Secured Obligations;

NOW, THEREFORE, for and in consideration of the recitals made above and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, 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" has the meaning specified therefor in the Credit Agreement.

"Bank Product Agreements" has the meaning specified therefor in the Credit Agreement.

"Bank Product Obligations" has the meaning specified therefor in the Credit Agreement.

"Bank Product Provider" has the meaning specified therefor in the Credit Agreement.

"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 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.

"Grantor" and "Grantors" have the respective meanings specified therefor in the preamble to this Agreement.

"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 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.

"Lender Group" has the meaning specified therefor in the Credit Agreement.

"Lenders" has the meaning specified therefor in the Credit Agreement, and includes, without limitation, the Revolving Lenders, the Term Lenders, and the Issuing Lender.

"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.

"Negotiable Collateral" means promissory notes, and drafts (as each such term is defined in 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 Agent has been executed and delivered to 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, Negotiable Collateral, Proceeds and Supporting Obligations.

"Second Lien Agent" has the meaning specified in the Intercreditor Agreement.

"Secured Hedge Obligations" means all obligations and liabilities of any Grantor of any kind arising under all Specified Hedge Agreements, including obligations and liabilities arising in connection with or as a result of early termination of a Hedge Agreement, 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.

"Secured Obligations" means all indebtedness, liabilities and other obligations (including the Obligations and the Guaranteed 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 (including the Obligations and the Guaranteed Obligations) of the Grantors to 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 Hedge 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 Hedge 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 Agent and any Bank Product Provider, and each of their respective successors, transferees and assigns.

"Securities Account" means any deposit account, as such term is defined in Article 8 of the UCC.

"Specified Hedge Agreement" has the meaning specified therefor in the Credit Agreement.

"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 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 unconditionally grants and pledges to Agent, for the benefit of each of the Secured Parties, a security interest in all of such Grantor's right, title and interest in, to and under all of the following, wherever located and whether now existing or owned or hereafter acquired or arising (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; (xii) all Books; (xiii) all Negotiable Collateral; and (xiv) 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 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 (1) the proceeds from the disposition of Excluded Contracts and Leases whether now or hereafter arising, whether tangible or intangible, and wherever located, and (2) monies due or to become due under or in connection with any Excluded Contracts and Leases; (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 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 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 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 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.

(d) Security for Secured Obligations. The security interest created hereby secures the payment and performance of the Secured Obligations, whether now existing or arising hereafter. Without limiting the generality of the foregoing, this Agreement secures the payment of all amounts which constitute part of the Secured Obligations and would be owed by Grantors, or any of them, to Agent, the Lender Group, the Bank Product Providers or any of them, but for the fact that they are unenforceable or not allowable (in whole or in part) as a claim in an Insolvency Proceeding involving any Grantor due to the existence of such Insolvency Proceeding.

SECTION 3 Perfection Procedures. Each Grantor shall (if necessary) execute and deliver to Agent concurrently with the execution of this Agreement, and each Grantor hereby authorizes 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 Agent, and take all other action, as Agent or the Majority Lenders may request, to perfect and continue perfected, maintain the priority of or provide notice of 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 Agent of any financing statements filed prior to the date hereof, (2) authorizes 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 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 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 Agent pursuant to subsection 5(e).

(b) Delivery of Pledged Collateral. Each Grantor hereby agrees to deliver to or for the account of Agent, at the address and to the Person to be designated by 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 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 Agent, shall hold it in trust for 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 Agent, at the address and to the Person to be designated by 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 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 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 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 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 Agent to effect a transfer of a perfected first priority security interest in and pledge of the Pledged Collateral to 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 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 Agent may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of Agent's security interest in Collateral consisting of Deposit Accounts (other than any Zero Balance Accounts, unless 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 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 Agent, then 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 Agent or to another deposit account over which 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 Agent, concurrently with the execution of this Agreement, such Intellectual Property Security Agreements as Agent may reasonably request, and authorizes 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 Agent may reasonably request, to perfect 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 Agent under the Credit Agreement, (B) shall execute such Intellectual Property Security Agreement(s) as may be requested by Agent in respect thereof and (C) authorizes 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 Agent may reasonably request, to perfect Agent's security interest in such Intellectual Property Collateral.

(f) Documents, Etc. Each Grantor shall deliver to Agent, or an agent designated by it, appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, all Documents, Negotiable Collateral, and Chattel Paper, and all other Rights to Payment at any time evidenced by 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, Negotiable Collateral, Chattel Paper, 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 Agent, Grantors shall mark all Documents, Negotiable Collateral and Chattel Paper with such legends as Agent shall reasonably specify.

(g) Bailees. At any time and from time to time, 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, Agent, and obtain such Person's written acknowledgment thereof. Without limiting the generality of the foregoing, each Grantor, upon Agent's reasonable request, will join with Agent in notifying any Person who has possession of any Collateral of Agent's security interest therein and obtaining an acknowledgment from such Person that it is holding the Collateral for the benefit of Agent.

(h) Control. Without limiting the foregoing provisions of this Section 3, each Grantor will cooperate with Agent in obtaining control (as defined in the UCC) of Collateral consisting of any Deposit Accounts (other than any Zero Balance Account, unless 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, Letter-of-Credit Rights, or Negotiable Collateral.

(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 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) 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 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 Agent and (ii) financing statements in favor of Agent in its capacity as 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 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 Agent or as otherwise disclosed in writing to 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 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 Agent or with respect to the foreclosure, transfer or disposition thereof by 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 Agent.

(n) Other Investment Property; Instruments; Negotiable Collateral; 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, Negotiable Collateral 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 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 Hedge Agreement 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 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 Agent as provided in this Section 5(d); and (ii) give prompt written notice to 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 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 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 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 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 Agent may reasonably require, in form and substance satisfactory to Agent.

(l) Rights to Payment. Each Grantor shall:

(i) with such frequency as Agent may require, furnish to Agent such information relating to the Accounts as 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 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 Agent in the Books relating to such Account or other Right to Payment when such Books are requested for inspection by Agent, and in connection with any invoice or report furnished by any Grantor to 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 Agent thereof and execute any documents and instruments and take any other steps reasonably requested by Agent in order that all monies due and to become due thereunder shall be assigned to 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 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 Agent or to such other Person or location as 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 Agent shall require.

(m) Deposit Accounts and Securities Accounts. Each Grantor shall give 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 Agent shall request, prepare and deliver to Agent a report of all Inventory, in form and substance reasonably satisfactory to Agent;

(ii) upon the request of Agent, take a physical listing of the Inventory and promptly deliver a copy of such physical listing to 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 Agent's request, deliver to Agent a report of each item of Equipment, in form and substance reasonably satisfactory to 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 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 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 Agent's Lien thereon; (ii) furnish to Agent such statements and schedules further identifying and describing the Collateral and such other reports and other information in connection with the Collateral as Agent may reasonably request, all in reasonable detail; and (iii) upon reasonable request of 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 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 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 Agent or the Lenders or that adversely affects the validity, perfection or priority of 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 Agent, and in any event not less often than annually, each Grantor shall furnish 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 Agent (or 10 days' prior written notice if 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 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 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 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 Agent. If any Grantor shall receive any insurance proceeds which are to be paid to Agent pursuant to the previous sentence, such Grantor shall hold such proceeds in trust for Agent, shall segregate such proceeds from other funds of such Grantor, and shall immediately forward such proceeds in the form received to Agent (appropriately indorsed by such Grantor to the order of Agent or in such other manner as shall be satisfactory to Agent). All such insurance proceeds may be retained by Agent as part of Collateral hereunder and held in the Cash Collateral Account, applied by 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 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 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 Agent, during the continuance of any Event of Default, all remittances received by any Grantor shall be held in trust for Agent and, in accordance with Agent's instructions, remitted to Agent or deposited to an account with 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 Agent, during the continuance of any Event of Default, 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 Agent and, in accordance with Agent's instructions, remitted to Agent or deposited to an account with 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, 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 Agent were the absolute owner thereof; provided that 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 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 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. 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) Agent shall be entitled to receive all distributions and payments of any nature with respect to the Pledged Collateral, to be held by Agent as part of the Collateral; and

(ii) 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 Agent were the absolute owner thereof.

(e) Distributions to Be Held for 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 Agent, be segregated from the other property or funds of such Grantor, and be forthwith paid over or delivered to Agent in the same form as so received.

(f) Certain Other Administrative Matters. 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 Agent's reasonable discretion, such action is necessary or desirable to protect or exercise Agent's rights and interests hereunder. 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; Agent Appointed Attorney-in-Fact. Agent shall have the right to, in the name of any Grantor, or in the name of Agent or otherwise, without notice to or assent by such Grantor, and each Grantor hereby constitutes and appoints Agent (and any of Agent's officers or employees or agents designated by 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 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 Negotiable Collateral, acceptances, checks, 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 Agent may designate (provided that 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 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 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 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 Agent may deem necessary or desirable to maintain, preserve and protect the Collateral, to collect the Collateral or to enforce the rights of Agent with respect to the Collateral;

(l) execute any and all applications, documents, papers and instruments necessary for 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 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 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 Agent may deem necessary or advisable (A) to realize upon the Collateral, and (B) to maintain, protect and preserve the Collateral and Agent's security interest therein and to accomplish the purposes of this Agreement.

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 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 Hedge Agreement 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 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 Agent Performance of Company Obligations. 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 Agent on demand for any amounts paid by Agent pursuant to this Section 8.

SECTION 9 Agent's Duties. Notwithstanding any provision contained in this Agreement, 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 Agent's possession and the accounting for moneys actually received by Agent hereunder, 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, 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) 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 Agent may determine.

(ii) Agent may sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of Agent's offices or elsewhere, for cash, on credit, and upon such other terms as Agent may deem commercially reasonable.

(iii) Agent may require any Grantor to assemble all or any part of the Collateral and make it available to Agent, at any place and time designated by Agent.

(iv) 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 Agent may determine.

(v) Agent shall have the right to secure the appointment of a receiver of the Collateral or any part thereof (to the extent and in the manner provided by applicable law), and each Grantor hereby consents to such right and such appointment and hereby waives any objection such Grantor may have thereto or the right to have a bond or other security posted by Agent. In furtherance of the foregoing, each Grantor hereby acknowledges that the Secured Obligations arise out of a commercial transaction, and agrees that if an Event of Default shall occur and be continuing Agent has the right to an immediate writ of possession without notice of a hearing.

(vi) Agent may withdraw (or cause to be withdrawn) any and all funds from any Deposit Accounts or Securities Accounts.

(vii) 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 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 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 Agent. 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. 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 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. Each Grantor agrees that the internet shall constitute a "place" for purposes of Section 9-610(b) of the UCC. Each Grantor agrees that any sale of Collateral to a licensor pursuant to the terms of a license agreement between such licensor and a Grantor is sufficient to constitute a commercially reasonable sale (including as to method, terms, manner, and time) within the meaning of Section 9-610 of the UCC.

(b) Sale of Collateral; Agent's Obligations. Neither Agent nor any Lender shall have any obligation to clean up or otherwise prepare the Collateral for sale. Agent has no obligation to attempt to satisfy the Secured Obligations by collecting them from any other Person liable for them and 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 Agent's or any Lender's rights against the Grantors. Each Grantor waives any right it may have to require Agent or any Lender to pursue any third Person for any of the Secured Obligations. 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. Agent may sell the Collateral without giving any warranties as to the Collateral. 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 Agent sells any of the Collateral upon credit, the Grantors will be credited only with payments actually made by the purchaser, received by Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, 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 Agent to exercise its rights and remedies under this Section 10 or otherwise in connection with this Agreement, each Grantor hereby grants to 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 Hedge Agreement), 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 Agent for such purpose (which shall constitute a Deposit Account included within the Collateral hereunder) until such time as Agent may elect to apply such proceeds to the Secured Obligations, and each Grantor agrees that such retention of such proceeds by Agent shall not be deemed strict foreclosure with respect thereto; (ii) in any manner elected by 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 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 Agent, to make any withdrawal from the Proceeds Account and the right, without the consent of Agent, to instruct 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 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 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 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 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 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 Agent or any Lender.

SECTION 14 Costs and Expenses; Indemnification; Other Charges.

(a) Costs and Expenses. The Grantors, jointly and severally, shall, upon demand, pay to Agent (or Agent, may charge to the loan account set forth in Section 2.2(a) of the Credit Agreement) all the Lender Group Expenses which Agent may incur in connection with (i) the administration of this Agreement, (ii) the custody, preservation, use or operation of, or, upon an Event of Default, the sale of, collection from, or other realization upon, any of the Collateral in accordance with this Agreement and the other Loan Documents, (iii) the exercise or

enforcement of any of the rights of Agent hereunder or (iv) the failure by any Grantor to perform or observe any of the provisions hereof.

(b) Indemnification. The Grantors jointly and severally hereby agree to indemnify, defend and hold 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 all reasonable fees and disbursements of any law firm or other external counsel, the allocated cost of internal legal services and all disbursements of internal counsel) 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 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 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, Agent, each Secured Party, and 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 NEW YORK, 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 NEW YORK; PROVIDED THAT 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 AGENT EACH IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, 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 NEW YORK 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 AGENT, ANY LENDER OR THE ISSUING 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 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 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 Hedge Agreements and payment and performance in full of all Secured Obligations, the security interests granted under this Agreement shall terminate and 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 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, 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 Agent has not assigned its rights and interests to any other Person).

SECTION 25 Accession. Upon execution and delivery to 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.

SECTION 26 Agent. Each reference herein to any right granted to, benefit conferred upon or power exercisable by the "Agent" shall be a reference to Agent, for the benefit of each of the Secured Parties.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered 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

AGENT: WELLS FARGO FOOTHILL, LLC

By _____
Name:
Title:

[SIGNATURE PAGE TO SECURITY AGREEMENT]

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, Negotiable Collateral and Chattel Paper**

8. **Leased Equipment**

9. **Commercial Tort Claims**

10. **Letter-of-Credit Rights**

SCHEDULE 2
to the Security Agreement

1. <u>Patents, Trademarks, Copyrights, Etc.</u>

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 Foothill, LLC, as Agent

Reference is made to the Senior Secured Credit Agreement, dated as of January __, 2010 (as amended, restated, supplemented, modified, renewed or extended from time to time, the "Credit Agreement"), by and among Building Materials Holding Corporation, a Delaware corporation, as borrower ("Holdings"), certain subsidiaries of Holdings as "Guarantors", the lenders from time to time party thereto (collectively, the "Lenders") and Wells Fargo Foothill, LLC, a Delaware limited liability company, as agent for the Lenders (in such capacity, "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 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 Agent and the Lenders on behalf of each Loan Party that, during the Reporting Period, no new (i) Deposit Account (as defined in the Security Agreement) or (ii) Securities Account (as defined in the Security Agreement) with respect to any

Investment Property (as 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 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, (iv) Commercial Tort Claims, or (v) Negotiable Collateral (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:

5. Negotiable Collateral. During the Reporting Period, each Loan Party identified below acquired Negotiable Collateral 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 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 Agent, and take all other action, as Agent may deem reasonable, to perfect and continue perfected, maintain the priority of or provide notice of any security interest of Agent in the Collateral and to accomplish the purposes of the Credit Agreement.

[signature page follows]

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, a Delaware corporation

By:_____
Name:
Title:

EXHIBIT H

FORM OF BORROWING BASE CERTIFICATE

[DATE]

WELLS FARGO FOOTHILL, LLC,
as Agent
2450 Colorado Avenue
Suite 3000 West
Santa Monica, California 90404
Attn: Business Finance Division Manager

Ladies and Gentlemen:

The undersigned Responsible Officer of Building Materials Holding Corporation ("Holdings"), pursuant to Section 7.02(h) of that certain Senior Secured Credit Agreement, dated as of January __, 2010 (as amended, restated, supplemented, modified, renewed or extended from time to time, the "Credit Agreement"), by and among Holdings, as borrower, certain subsidiaries of Holdings as "Guarantors", the lenders from time to time party thereto (collectively, the "Lenders") and Wells Fargo Foothill, LLC, as agent for the Lenders (in such capacity, "Agent"), hereby certifies, solely in such capacity, to 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, a Delaware 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		_____
Borrowing Base Availability		_____
Revolver Availability	*Lesser of (i) Borrowing Base and (ii)* $40,000,000 *(Aggregate Revolving Commitment* ($50,000,000) *minus* the Availability Reserve ($10,000,000))	_____
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%[5]	
Accounts Receivable Availability	A	_____	
Eligible Inventory Cap	B.1	$30,000,000	
Gross Inventory		_____	
Less: Ineligible Inventory and Applicable Reserves		_____	See Schedule A.2
Eligible Inventory		_____	
Advance Rate		50%	
Available Eligible Inventory	B.2	_____	
Eligible Inventory (use the number from above)	B.3.a	_____	
Net Orderly Liquidation Value Percentage from Appraisal	B.3.b	_____	
Eligible Inventory Orderly Liquidation Value (B.3.a *multiplied by* B.3.b)		_____	
Advance Rate		75%	
		_____	
Less: Applicable Reserves		_____	
Available Eligible Inventory Orderly Liquidation Value	B.3	_____	
Inventory Availability (the least of B.1, B.2 and B.3)	B	_____	

[5] Agent may elect to increase the advance rate up to 85% in the exercise of its Permitted Discretion following completion of the Post-Closing Field Audit.

Fixed Asset Cap	C.1	$30,000,000	
Appraised Value of the Mortgaged Land & Buildings		_____	
Less: Dispositions from Prior Borrowing Base		_____	See Schedule A.3
Eligible Land & Buildings		_____	
Advance Rate		50%	
Land & Building Availability	C.2.a	_____	
Fixed Asset Orderly Liquidation Value of Eligible Assets		_____	
Advance Rate		75%	
Fixed Asset Total	C.2.b	_____	
C.2.a *plus* C.2.b	C.2	_____	
A *plus* B		_____	
Advance Rate		150%	
	C.3	_____	
Fixed Asset Availability (the least of C.1, C.2 and C.3)	C	_____	
Availability Reserve	D.1	$10,000,000	
Other Reserves	D.2	_____	
Total Reserves (D.1 *plus* D.2)	D	_____	
Borrowing Base	A+B+C-D=E	_____	

EXHIBIT I

FORM OF ROLLING 13-WEEK CONSOLIDATED CASH FLOW FORECAST

Date: _____

To: Wells Fargo Foothill, LLC,
as Agent

Ladies and Gentlemen:

Reference is made to that certain Senior Secured Credit Agreement, dated as of January __, 2010 (as amended, restated, supplemented, modified, renewed or extended from time to time, the "Credit Agreement"), by and among Building Materials Holding Corporation, a Delaware corporation, as borrower ("Holdings"), certain subsidiaries of Holdings as "Guarantors", the lenders from time to time party thereto (collectively, the "Lenders") and Wells Fargo Foothill, LLC, a Delaware limited liability company, as agent for the Lenders (in such capacity, "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 (i) he/she is the _____ of Holdings, and that, as such, he/she is authorized to execute and deliver this Certificate to Agent on the behalf of Holdings and its Subsidiaries, and (ii) the attached cash flow forecast is delivered pursuant to Section 7.01(c) of the Credit Agreement and represents Holdings' reasonable good faith estimates and assumptions as to future performance, which Holdings believes to be fair and reasonable as of _____ in light of then current and reasonably foreseeable business conditions (it being understood that forecasts and projections by their nature involve approximations and uncertainties).

[signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Certificate as the _____ of Holdings as of _____.

BUILDING MATERIALS HOLDING CORPORATION, a Delaware corporation

By:_____
Name:
Title:

BUILDING MATERIALS HOLDING CORPORATION
ROLLING 13-WEEK CONSOLIDATED CASH FLOW FORECAST
UPDATED AS OF _____

NOTES & ASSUMPTIONS

[STATE ASSUMPTIONS USED IN PREPARING FORECAST]

13-WEEK CASH FLOW FORECAST

	Week Endings													
	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
Continuing Operations Receipts														
Continuing Business Unit Receipts	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Corporate Administrative Receipts	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Total Receipts	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Continuing Operations Disbursements														
Materials	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Continuing Business Unit Payroll	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Field SG&A Payroll	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Corporate Administrative Payroll	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Insurance	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Capital Expenditures	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Other Operating Expenses	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Total Expenses	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
NET OPERATING CASH FLOW	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Wind-Down & Discontinued Operations														
Wind Down & Disc Ops Receipts	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Wind Down & Disc Ops Disbursements	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Restructuring Expenses	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Net Wind-Down & Discontinued	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Operating Cash Flow after Wind-Down & Disc Ops	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Financing Related														
Tax Refund	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
First Lien - Interest	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
First Lien - Principal Payments	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Second Lien - Interest	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Second Lien - Principal Payments	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Banking Fees	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Transfers (To) / From Cash Collateral Account	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Other	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Total Financing Related	#	#	#	#	#	#	#	#	#	#	#	#	#	#
NET CASH FLOW	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Opening Book Cash Balance	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Ending Book Cash Balance	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Estimated Float	#	#	#	#	#	#	#	#	#	#	#	#	#	#
ENDING BANK CASH / (REVOLVER)	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Cash Collateral Account														
Opening Balance	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Transfers To / (From) Cash Collateral Account	#	#	#	#	#	#	#	#	#	#	#	#	#	#
ENDING BALANCE	#	#	#	#	#	#	#	#	#	#	#	#	#	#

13-WEEK CASH FLOW FORECAST VARIANCE

	Week Ending X			
	Actual	Forecast	Favorable / (Unfavorable)	Reasons for Variance
Continuing Operations Receipts				
Continuing Business Unit Receipts	#	#	#	
Corporate Administrative Receipts	#	#	#	
Total Receipts	#	#	#	
Continuing Operations Disbursements				
Materials	(#)	(#)	#	
Continuing Business Unit Payroll	(#)	(#)	#	
Field SG&A Payroll	(#)	(#)	#	
Corporate Administrative Payroll	(#)	(#)	#	
Insurance	(#)	(#)	#	
Capital Expenditures	(#)	(#)	#	
Other Operating Expenses	(#)	(#)	#	
Total Expenses	(#)	(#)	#	
NET OPERATING CASH FLOW	#	#	#	
Wind-Down & Discontinued Operations				
Wind Down & Disc Ops Receipts	#	#	#	
Wind Down & Disc Ops Disbursements	(#)	(#)	#	
Restructuring Expenses	(#)	(#)	#	
Net Wind-Down & Discontinued	#	#	#	
Operating Cash Flow after Wind-Down & Disc Ops	#	#	#	
Financing Related				
Tax Refund	(#)	(#)	#	
First Lien - Interest	(#)	(#)	#	
First Lien - Principal Payments	(#)	(#)	#	
Second Lien - Interest	(#)	(#)	#	
Second Lien - Principal Payments	(#)	(#)	#	
Banking Fees	(#)	(#)	#	
Transfers (To) / From Cash Collateral Account	(#)	(#)	#	
Other	(#)	(#)	#	
Total Financing Related	#	#	#	
NET CASH FLOW	#	#	#	
Opening Book Cash Balance	#	#	#	
Ending Book Cash Balance	#	#	#	
Estimated Float	#	#	#	
ENDING BANK CASH / (REVOLVER)	#	#	#	

EXHIBIT J

FORM OF ANNUAL FINANCIAL FORECAST AND RECONCILIATION

Date: _____

To: Wells Fargo Foothill, LLC,
as Agent

Ladies and Gentlemen:

Reference is made to that certain Senior Secured Credit Agreement, dated as of January __, 2010 (as amended, restated, supplemented, modified, renewed or extended from time to time, the "Credit Agreement"), by and among Building Materials Holding Corporation, a Delaware corporation, as borrower ("Holdings"), certain subsidiaries of Holdings as "Guarantors", the lenders from time to time party thereto (the "Lenders") and Wells Fargo Foothill, LLC, a Delaware limited liability company, as agent for the Lenders (in such capacity, "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 (i) he/she is the _____ of Holdings, and that, as such, he/she is authorized to execute and deliver this Certificate to Agent on the behalf of Holdings and its Subsidiaries, and (ii) the attached consolidated financial forecast and reconciliation for Holdings and its Subsidiaries is delivered pursuant to Section 7.01(d) of the Credit Agreement and represents Holdings' reasonable good faith estimates and assumptions as to future performance, which Holdings believes to be fair and reasonable as of _____ in light of then current and reasonably foreseeable business conditions (it being understood that forecasts and projections by their nature involve approximations and uncertainties).

[signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Certificate as the _____ of Holdings as of _____.

BUILDING MATERIALS HOLDING CORPORATION

By:_____
Name:
Title:

BUILDING MATERIALS HOLDING CORPORATION
ANNUAL FINANCIAL FORECAST AND RECONCILIATION
UPDATED AS OF _____

NOTES & ASSUMPTIONS

[STATE ALL ASSUMPTIONS USED IN PREPARING FORECAST INCLUDING BUT NOT LIMITED TO:

- **SALES GROWTH ASSUMPTIONS BY MARKET**
- **GROSS MARGINS ASSUMPTIONS**
- **FIELD OVERHEAD COST ASSUMPTIONS**
- **CORPORATE OVERHEAD COST ASSUMPTIONS**
- **WORKING CAPITAL ASSUMPTIONS**
- **BORROWING BASE ROLL-FORWARD ASSUMPTIONS]**

BUILDING MATERIALS HOLDING CORPORATION
ANNUAL FINANCIAL FORECAST
[Provide monthly forecast for FY 2010 TO FY 2012]
UPDATED AS OF _____

INCOME STATEMENT FORECAST	FY 201X												
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Net Sales	#	#	#	#	#	#	#	#	#	#	#	#	#
COGS	#	#	#	#	#	#	#	#	#	#	#	#	#
Gross Margin	#	#	#	#	#	#	#	#	#	#	#	#	#
Gross Margin	%	%	%	%	%	%	%	%	%	%	%	%	%
Field SG&A	#	#	#	#	#	#	#	#	#	#	#	#	#
Corporate SG&A	#	#	#	#	#	#	#	#	#	#	#	#	#
Operating Income Continuing Operations	#	#	#	#	#	#	#	#	#	#	#	#	#
Other Income / (Expense)	#	#	#	#	#	#	#	#	#	#	#	#	#
Loan Amortization Costs	#	#	#	#	#	#	#	#	#	#	#	#	#
Interest Expense , net	#	#	#	#	#	#	#	#	#	#	#	#	#
Income Taxes	#	#	#	#	#	#	#	#	#	#	#	#	#
Net Income Continuing Operations	#	#	#	#	#	#	#	#	#	#	#	#	#
Non-Go Forward Income / (Expense)	#	#	#	#	#	#	#	#	#	#	#	#	#
Restructuring Expenses	#	#	#	#	#	#	#	#	#	#	#	#	#
Non-Recurring Items	#	#	#	#	#	#	#	#	#	#	#	#	#
Net Income	#	#	#	#	#	#	#	#	#	#	#	#	#
Operating Income Continuing Operations	#	#	#	#	#	#	#	#	#	#	#	#	#
Covenant Addbacks	#	#	#	#	#	#	#	#	#	#	#	#	#
Depreciation & Amortization	#	#	#	#	#	#	#	#	#	#	#	#	#
EBITDA from Continuing Operations	#	#	#	#	#	#	#	#	#	#	#	#	#

BUILDING MATERIALS HOLDING CORPORATION
ANNUAL FINANCIAL FORECAST
[Provide monthly forecast for FY 2010 TO FY 2012]
UPDATED AS OF _____

BALANCE SHEET FORECAST

	FY 201X											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Continuing Operations Assets												
Cash	#	#	#	#	#	#	#	#	#	#	#	#
Accounts Receivable, net	#	#	#	#	#	#	#	#	#	#	#	#
Inventory	#	#	#	#	#	#	#	#	#	#	#	#
Costs in Excess of Billings	#	#	#	#	#	#	#	#	#	#	#	#
Tax Refund/Deferred Tax Asset	#	#	#	#	#	#	#	#	#	#	#	#
Prepaid Expenses and Other	#	#	#	#	#	#	#	#	#	#	#	#
Current Assets	#	#	#	#	#	#	#	#	#	#	#	#
Property, Plant & Equipment, net	#	#	#	#	#	#	#	#	#	#	#	#
Capitalized Financing Fee	#	#	#	#	#	#	#	#	#	#	#	#
Goodwill and Other Intangibles	#	#	#	#	#	#	#	#	#	#	#	#
Other Long-Term Assets	#	#	#	#	#	#	#	#	#	#	#	#
Total Continuing Operation Assets	#	#	#	#	#	#	#	#	#	#	#	#
Wind-Down and Disc Ops Assets												
Accounts Receivable, net	#	#	#	#	#	#	#	#	#	#	#	#
Inventory	#	#	#	#	#	#	#	#	#	#	#	#
Costs in Excess of Billings	#	#	#	#	#	#	#	#	#	#	#	#
Property, Plant & Equipment, net	#	#	#	#	#	#	#	#	#	#	#	#
[other as necessary]	#	#	#	#	#	#	#	#	#	#	#	#
Wind-Down and Disc Ops Assets	#	#	#	#	#	#	#	#	#	#	#	#
TOTAL ASSETS	#	#	#	#	#	#	#	#	#	#	#	#

BUILDING MATERIALS HOLDING CORPORATION
ANNUAL FINANCIAL FORECAST
[Provide monthly forecast for FY 2010 TO FY 2012]
UPDATED AS OF _____

BALANCE SHEET FORECAST (continued)	FY 201X											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Continuing Operations Liabilities												
Accounts Payable	#	#	#	#	#	#	#	#	#	#	#	#
Insurance Deductible Reserves	#	#	#	#	#	#	#	#	#	#	#	#
Billings in Excess of Costs	#	#	#	#	#	#	#	#	#	#	#	#
Accrued Compensation	#	#	#	#	#	#	#	#	#	#	#	#
Current Liabilities	#	#	#	#	#	#	#	#	#	#	#	#
Exit Revolver	#	#	#	#	#	#	#	#	#	#	#	#
Exit Term Loan	#	#	#	#	#	#	#	#	#	#	#	#
Reinstated Debt	#	#	#	#	#	#	#	#	#	#	#	#
Accrued Pre-Petition L/C Interest	#	#	#	#	#	#	#	#	#	#	#	#
IRS Tax Claim	#	#	#	#	#	#	#	#	#	#	#	#
Other Long-Term Liabilities	#	#	#	#	#	#	#	#	#	#	#	#
Accrued Restructuring Expenses	#	#	#	#	#	#	#	#	#	#	#	#
Total Continuing Operation Liabilities	#	#	#	#	#	#	#	#	#	#	#	#
Wind-Down and Disc Ops Liabilities												
Accounts Payable	#	#	#	#	#	#	#	#	#	#	#	#
Billings in Excess of Costs	#	#	#	#	#	#	#	#	#	#	#	#
Accrued Compensation	#	#	#	#	#	#	#	#	#	#	#	#
[other as necessary]	#	#	#	#	#	#	#	#	#	#	#	#
Wind-Down and Disc Ops Liabilities	#	#	#	#	#	#	#	#	#	#	#	#
Total Liabilities	#	#	#	#	#	#	#	#	#	#	#	#
Retained Earnings	#	#	#	#	#	#	#	#	#	#	#	#
Shareholders' Equity	#	#	#	#	#	#	#	#	#	#	#	#
Total Equity	#	#	#	#	#	#	#	#	#	#	#	#
TOTAL LIABILITIES AND EQUITY	#	#	#	#	#	#	#	#	#	#	#	#

BUILDING MATERIALS HOLDING CORPORATION
ANNUAL FINANCIAL FORECAST
[Provide monthly forecast for FY 2010 TO FY 2012]
UPDATED AS OF _____

STATEMENT OF CASH FLOWS FORECAST	FY 201X												
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Net Income Continuing Operations	#	#	#	#	#	#	#	#	#	#	#	#	#
Depreciation & Amortization	#	#	#	#	#	#	#	#	#	#	#	#	#
Changes in Working Capital	#	#	#	#	#	#	#	#	#	#	#	#	#
Cash Flow from Continuing Operations	#	#	#	#	#	#	#	#	#	#	#	#	#
Non-Go Forward Income / (Expense)	#	#	#	#	#	#	#	#	#	#	#	#	#
Restructuring Expenses	#	#	#	#	#	#	#	#	#	#	#	#	#
Non-Recurring Items	#	#	#	#	#	#	#	#	#	#	#	#	#
Changes in Non-Go Forward Working Capital	#	#	#	#	#	#	#	#	#	#	#	#	#
Cash Flow from All Operations	#	#	#	#	#	#	#	#	#	#	#	#	#
Proceeds from Asset Sales, net	#	#	#	#	#	#	#	#	#	#	#	#	#
Capital Expenditures	#	#	#	#	#	#	#	#	#	#	#	#	#
Cash Flow From Investing Activities	#	#	#	#	#	#	#	#	#	#	#	#	#
FREE CASH FLOW	#	#	#	#	#	#	#	#	#	#	#	#	#
Exit Revolver (Payments) / Borrowings	#	#	#	#	#	#	#	#	#	#	#	#	#
Exit Term Loan (Payments) / PIK	#	#	#	#	#	#	#	#	#	#	#	#	#
Reinstated Debt (Payments) / PIK	#	#	#	#	#	#	#	#	#	#	#	#	#
Restructuring Expenses	#	#	#	#	#	#	#	#	#	#	#	#	#
PIK Pre Petition LC Interest	#	#	#	#	#	#	#	#	#	#	#	#	#
PIK Post-Petition LC Interest	#	#	#	#	#	#	#	#	#	#	#	#	#
IRS Tax Claim Principal Payments	#	#	#	#	#	#	#	#	#	#	#	#	#
Other Proceeds / (Expenses)	#	#	#	#	#	#	#	#	#	#	#	#	#
Cash Flow From Financing Activities	#	#	#	#	#	#	#	#	#	#	#	#	#
Net Cash Flow	#	#	#	#	#	#	#	#	#	#	#	#	#
Opening Book Cash Balance	#	#	#	#	#	#	#	#	#	#	#	#	#
Ending Book Cash Balance	#	#	#	#	#	#	#	#	#	#	#	#	#
Estimated Float	#	#	#	#	#	#	#	#	#	#	#	#	#
Ending Bank Cash	#	#	#	#	#	#	#	#	#	#	#	#	#

BUILDING MATERIALS HOLDING CORPORATION
ANNUAL FINANCIAL FORECAST RECONCILIATION
UPDATED AS OF _____

INCOME STATEMENT RECONCILIATION

	FY 201X			
	Actual	Forecast	Favorable / (Unfavorable)	Reasons for Variance
Net Sales	#	#	#	
COGS	#	#	#	
Gross Margin	#	#	#	
Gross Margin	%	%	%	
Field SG&A	#	#	#	
Corporate SG&A	#	#	#	
Operating Income Continuing Operations	#	#	#	
Other Income / (Expense)	#	#	#	
Loan Amortization Costs	#	#	#	
Interest Expense , net	#	#	#	
Income Taxes	#	#	#	
Net Income Continuing Operations	#	#	#	
Non-Go Forward Income / (Expense)	#	#	#	
Restructuring Expenses	#	#	#	
Non-Recurring Items	#	#	#	
Net Income	#	#	#	
Operating Income Continuing Operations	#	#	#	
Covenant Addbacks	#	#	#	
Depreciation & Amortization	#	#	#	
EBITDA from Continuing Operations	#	#	#	

BUILDING MATERIALS HOLDING CORPORATION
ANNUAL FINANCIAL FORECAST AND RECONCILIATION
UPDATED AS OF _____

BALANCE SHEET RECONCILIATION	FY 201X			
	Actual	Forecast	Favorable / (Unfavorable)	Reasons for Variance
Continuing Operations Assets				
Cash	#	#	#	
Accounts Receivable, net	#	#	#	
Inventory	#	#	#	
Costs in Excess of Billings	#	#	#	
Tax Refund/Deferred Tax Asset	#	#	#	
Prepaid Expenses and Other	#	#	#	
Current Assets	#	#	#	
Property, Plant & Equipment, net	#	#	#	
Capitalized Financing Fee	#	#	#	
Goodwill and Other Intangibles	#	#	#	
Other Long-Term Assets	#	#	#	
Total Continuing Operation Assets	#	#	#	
Wind-Down and Disc Ops Assets				
Accounts Receivable, net	#	#	#	
Inventory	#	#	#	
Costs in Excess of Billings	#	#	#	
Property, Plant & Equipment, net	#	#	#	
[other as necessary]	#	#	#	
Wind-Down and Disc Ops Assets	#	#	#	
TOTAL ASSETS	#	#	#	

BUILDING MATERIALS HOLDING CORPORATION
ANNUAL FINANCIAL FORECAST AND RECONCILIATION
UPDATED AS OF _____

BALANCE SHEET RECONCILIATION
(Continued)

	FY 201X			
	Actual	Forecast	Favorable / (Unfavorable)	Reasons for Variance
Continuing Operations Liabilities				
Accounts Payable	#	#	#	
Insurance Deductible Reserves	#	#	#	
Billings in Excess of Costs	#	#	#	
Accrued Compensation	#	#	#	
Current Liabilities	#	#	#	
Exit Revolver	#	#	#	
Exit Term Loan	#	#	#	
Reinstated Debt	#	#	#	
Accrued Pre-Petition L/C Interest	#	#	#	
IRS Tax Claim	#	#	#	
Other Long-Term Liabilities	#	#	#	
Accrued Restructuring Expenses	#	#	#	
Total Continuing Operation Liabilities	#	#	#	
Wind-Down and Disc Ops Liabilities				
Accounts Payable	#	#	#	
Billings in Excess of Costs	#	#	#	
Accrued Compensation	#	#	#	
[other as necessary]	#	#	#	
Wind-Down and Disc Ops Liabilities	#	#	#	
Total Liabilities	#	#	#	
Retained Earnings	#	#	#	
Shareholders' Equity	#	#	#	
Total Equity	#	#	#	
TOTAL LIABILITIES AND EQUITY	#	#	#	

BUILDING MATERIALS HOLDING CORPORATION
ANNUAL FINANCIAL FORECAST AND RECONCILIATION
UPDATED AS OF _____

STATEMENT OF CASH FLOWS RECONCILIATION

	FY 201X			
	Actual	Forecast	Favorable / (Unfavorable)	Reasons for Variance
Net Income Continuing Operations	#	#	#	
Depreciation & Amortization	#	#	#	
Changes in Working Capital	#	#	#	
Cash Flow from Continuing Operations	#	#	#	
Non-Go Forward Income / (Expense)	#	#	#	
Restructuring Expenses	#	#	#	
Non-Recurring Items	#	#	#	
Changes in Non-Go Forward Working Capital	#	#	#	
Cash Flow from All Operations	#	#	#	
Proceeds from Asset Sales, net	#	#	#	
Capital Expenditures	#	#	#	
Cash Flow From Investing Activities	#	#	#	
FREE CASH FLOW	#	#	#	
Exit Revolver (Payments) / Borrowings	#	#	#	
Exit Term Loan (Payments) / PIK	#	#	#	
Reinstated Debt (Payments) / PIK	#	#	#	
Restructuring Expenses	#	#	#	
PIK Pre Petition LC Interest	#	#	#	
PIK Post-Petition LC Interest	#	#	#	
IRS Tax Claim Principal Payments	#	#	#	
Other Proceeds / (Expenses)	#	#	#	
Cash Flow From Financing Activities	#	#	#	
Net Cash Flow	#	#	#	
Opening Book Cash Balance	#	#	#	
Ending Book Cash Balance	#	#	#	
Estimated Float	#	#	#	
Ending Bank Cash	#	#	#	

_____, 20__

EXHIBIT K-1

FORM OF NOTICE OF REVOLVING LOAN CONVERSION/CONTINUATION

Reference is made to that certain Senior Secured Credit Agreement, dated as of January __, 2010 (as amended, restated, supplemented, modified, renewed or extended from time to time, the "Credit Agreement"), by and among Building Materials Holding Corporation, a Delaware corporation, as borrower ("Holdings"), certain subsidiaries of Holdings as "Guarantors", the lenders from time to time party thereto (the "Lenders") and Wells Fargo Foothill, LLC, a Delaware limited liability company, as agent for the Lenders (in such capacity, "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 that, with respect to the existing outstanding [Base Rate/LIBOR Rate] Revolving Loan under the Revolving Loan Commitment in the original principal amount of $_____:

(a) that such Revolving Loan be converted or continued as follows:

(i) $_____ of such amount shall be converted to a Base Rate Revolving Loan, effective _____, ____;

(ii) $_____ of such amount shall be [converted to/continued as] a LIBOR Rate Revolving Loan with an Interest Period of [1][2][3] months, effective _____, ____;

(iii) $_____ of such amount shall be repaid on _____, ____; and

(iv) after giving effect to the foregoing, there shall not be more than eight (8) different Interest Periods in effect; and

(b) no Event of Default has occurred or is continuing.

The foregoing instructions shall be irrevocable. This Notice of Revolving Loan Conversion/Continuation shall be a Loan Document. Capitalized terms used herein and not otherwise defined are used as defined in the Credit Agreement.

[signature page follows]

Dated as of this _____ day of _____, 20__.

BUILDING MATERIALS HOLDING CORPORATION, a Delaware corporation

By:_____
Name:
Title:

_____, 20__

EXHIBIT K-2

FORM OF NOTICE OF TERM LOAN CONVERSION/CONTINUATION

Reference is made to that certain Senior Secured Credit Agreement, dated as of January __, 2010 (as amended, restated, supplemented, modified, renewed or extended from time to time, the "Credit Agreement"), by and among Building Materials Holding Corporation, a Delaware corporation, as borrower ("Holdings"), certain subsidiaries of Holdings as "Guarantors", the lenders from time to time party thereto (the "Lenders") and Wells Fargo Foothill, LLC, a Delaware limited liability company, as agent for the Lenders (in such capacity, "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 that, with respect to the existing outstanding [Base Rate/LIBOR Rate] Term Loan in the original principal amount of $_____:

(a) that such Term Loan or the portion thereof referred to below be converted or continued as follows:

(i) $_____ of such amount shall be converted to a Base Rate Term Loan, effective _____, ____;

(ii) $_____ of such amount shall be [converted to/continued as] a LIBOR Rate Term Loan with an Interest Period of [1][2][3] months, effective _____, ____;

(iii) $_____ of such amount shall be repaid on _____, ____; and

(iv) after giving effect to the foregoing, there shall not be more than eight (8) different Interest Periods in effect; and

(b) no Event of Default has occurred or is continuing.

The foregoing instructions shall be irrevocable. This Notice of Term Loan Conversion/Continuation shall be a Loan Document. Capitalized terms used herein and not otherwise defined are used as defined in the Credit Agreement.

[signature page follows]

Dated as of this _____ day of _____, 20__.

BUILDING MATERIALS HOLDING CORPORATION, a Delaware corporation

By:_____
Name:
Title:

EXHIBIT L

LEGAL OPINIONS

EXHIBIT M

COLLATERAL REPORT

Provide Agent (and if so requested by Agent, with copies for each Lender) with each of the documents set forth below at the following times in form satisfactory to Agent:

Weekly (no later than each Wednesday), at any time Availability is less than $12,500,000, and otherwise, monthly (no later than the 10th day of each month)	(a) a detailed accounts receivable aging, by total, of Holdings' and its Subsidiaries' Accounts, together with a reconciliation to the general ledger and supporting documentation for any reconciling items noted (delivered electronically in an acceptable format, if Holdings has implemented electronic reporting), and (b) Inventory system/perpetual reports specifying the cost of Holdings' and its Subsidiaries' Inventory, by category, with additional detail showing additions to and deletions therefrom (delivered electronically in an acceptable format, if Holdings has implemented electronic reporting).
Monthly (no later than the 30th day of each month)	(c) a detailed accounts receivable aging, by total, of Holdings' and its Subsidiaries' Accounts, together with a reconciliation to the general ledger and supporting documentation for any reconciling items noted (delivered electronically in an acceptable format, if Holdings has implemented electronic reporting), (d) a detailed calculation of those Accounts that are not eligible for the Borrowing Base, if Holdings has not implemented electronic reporting, (e) a detailed Inventory system/perpetual report together with a reconciliation to Holdings' and its Subsidiaries' general ledger accounts (delivered electronically in an acceptable format, if Holdings has implemented electronic reporting), (f) a summary accounts payable aging, by vendor, of Holdings' and its Subsidiaries' accounts payable, accrued expenses and any book overdraft (delivered electronically in acceptable format, if Holdings has implemented electronic reporting), together with a reconciliation to the general ledger and supporting documentation for any reconciling items noted, and an aging, by vendor, of any held checks, (g) a detailed calculation of Inventory categories that are not eligible for the Borrowing Base, if Holdings has not implemented electronic reporting, (h) a monthly Account roll-forward, in a format acceptable to Agent in its discretion, tied to the beginning and ending account receivable balances of Holdings' and its Subsidiaries' general ledger, (i) a detailed report regarding Holdings' and its Subsidiaries' cash and Cash Equivalents, including an indication of which amounts constitute Qualified Cash, (j) evidence of Holdings' and its Subsidiaries' payment of all taxes due and payable, including all accrued, but unpaid *ad valorem* taxes, real estate taxes, and Canadian taxes, and

	(k) a reconciliation of Accounts, trade accounts payable, and Inventory of Holdings' and its Subsidiaries' general ledger accounts to its monthly financial statements including any book reserves related to each category.
Immediately after Holdings as knowledge thereof	(o) notice of any labor strikes, lockouts or slowdowns against Holdings or any of its Subsidiaries, (p) notice and copies of any notices regarding termination, expiration, material defaults or claimed violations that Holdings or any of its Subsidiaries executes or receives in connection with any Material Contract, and (q) notice of any disposition of fixed assets (including real estate) that is Collateral.
Upon request by Agent	(r) such other reports as to the Collateral or the financial condition of Holdings and its Subsidiaries, as Agent may reasonably request.

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 as of [_____] by and among Holdings, as borrower, the financial institutions party thereto, as lenders, and Wells Fargo Foothill, LLC, as 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.

"Intercompany Debt" means, with respect to each Loan Party, all indebtedness, liabilities, and other obligations of any other Loan Party owing to such Loan Party in respect of any and all loans or advances made by such Loan Party to such other Loan Party whether now existing or hereafter arising, and whether due or to become due, absolute or contingent, liquidated or unliquidated, determined or undetermined, including all fees and all other amounts payable by any other Loan Party to such Loan Party under or in connection with any documents or instruments related thereto.

"Intercompany Debt Payment" means any payment or distribution by or on behalf of the Loan Parties, directly or indirectly, of assets of the Loan Parties of any kind or character, whether in cash, property, or securities, including on account of the purchase, redemption, or other acquisition of Intercompany Debt, as a result of any collection, sale, or other disposition of collateral, or by setoff, exchange, or in any other manner, for or on account of the Intercompany Debt.

"Intercreditor Agreement" means that certain Intercreditor Agreement dated as of [_____] by and between Wells Fargo Foothill, LLC, 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.

"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 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 (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 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 $305,025,137.82.

"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 New York.

"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." The word "or" shall, except where otherwise indicated, be construed to have the same inclusive meaning and effect as the phrase "and/or". 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 2.07(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 50% of 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-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) 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 $17,250,000.

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) (i) Indebtedness incurred pursuant to the Loan Documents or (ii) subject to the provisions of the Intercreditor Agreement, the First Lien Loan Documents and any refinancings, refunds, renewals or extensions thereof to the extent not prohibited by the terms of the Intercreditor Agreement;

(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 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	$(23,000,000)
Nine Months Ending September 30, 2010	$(16,387,500)
Twelve Months Ending December 31, 2010	$(9,775,000)
Twelve Months Ending March 31, 2011	$1,806,250
Twelve Months Ending June 30, 2011	$7,225,000
Twelve Months Ending September 30, 2011	$14,450,000
Twelve Months Ending December31, 2011	$21,675,000
Twelve Months Ending March 31, 2012	$21,675,000
Twelve Months Ending June 30, 2012	$28,900,000
Twelve Months Ending September 30, 2012	$43,350,000
Twelve Months Ending December31, 2012	$54,187,500

(b) 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	$9,918,750
Fiscal 2011	$13,225,000
Fiscal 2012	$13,225,000

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(b), 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 or its Affiliate 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 or its Affiliate 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.

(n) Intercompany Subordination.

(i) As to each Loan Party, all payments on account of the Intercompany Debt shall be subject, subordinate, and junior, in right of payment and exercise of remedies, to the extent and in the manner set forth herein, to the prior payment, in full, in cash and cash equivalents of the Obligations.

(ii) As to each Loan Party, in the event of any payment or distribution of assets of any other Loan Party of any kind or character, whether in cash, property, or securities, upon the dissolution, winding up, or total or partial liquidation or reorganization, readjustment, arrangement, or similar proceeding relating to such other Loan Party or its property, whether voluntary or involuntary, or in an Insolvency Proceeding or upon any other marshaling or composition of the assets and liabilities of such other Loan Party, or otherwise: (A) all amounts owing on account of the Obligations shall first be paid, in full, in cash, or payment provided for in cash and cash equivalents, before any Intercompany Debt Payment is made; and (B) to the extent permitted by applicable law, and subject to the provisions of the Intercreditor Agreement, any Intercompany Debt Payment to which such Loan Party would be entitled except for the provisions hereof shall be paid or delivered by the trustee in bankruptcy, receiver, assignee for the benefit of creditors, or other liquidating agent making such payment or distribution directly to the Administrative Agent for the benefit of the Lenders for application to the payment of the Obligations in accordance with clause (A), after giving effect to any concurrent payment or distribution or provision therefor to the Lenders, or the Administrative Agent for the benefit thereof, in respect of such Obligations.

(iii) So long as no Event of Default shall have occurred and be continuing, each Loan Party may make, and each other Loan Party shall be entitled to accept and receive, payments on account of the Intercompany Debt in the ordinary course of business. If the Obligations have been declared or otherwise become due upon or following the occurrence of any Event of Default, or if an Event of Default has occurred and is continuing and the

Administrative Agent delivers written notice to the Loan Parties to cease all payments on account of Intercompany Debt, then until such Event of Default is cured or waived, each Loan Party shall not make, and each other Loan Party shall not accept or receive, any Intercompany Debt Payment and, subject to the provisions of the Intercreditor Agreement, any payment received by any Loan Party on account of Intercompany Debt in contravention of this clause (iii) shall be held in trust for, and paid over to, the Administrative Agent.

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 NEW YORK.

(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 NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, 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 NEW YORK 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:	_____	
B. Section 7.18(a) – 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(a) 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 $9,918,750 for Fiscal 2010, $13,225,000 for Fiscal 2011 or $13,225,000 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

Date: _____

To: Wells Fargo Bank,
National Association,
as Administrative Agent

Ladies and Gentlemen:

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 (i) 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 (ii) the attached cash flow forecast is delivered pursuant to Section 6.01(c) of the Credit Agreement and represents Holdings' reasonable good faith estimates and assumptions as to future performance, which Holdings believes to be fair and reasonable as of _____ in light of then current and reasonably foreseeable business conditions (it being understood that forecasts and projections by their nature involve approximations and uncertainties).

IN WITNESS WHEREOF, the undersigned has executed this Certificate as the _____ of Holdings as of _____.

BUILDING MATERIALS HOLDING CORPORATION

By: _____
Name: _____
Title: _____

BUILDING MATERIALS HOLDING CORP.
ROLLING 13-WEEK CONSOLIDATED CASH FLOW FORECAST
UPDATED AS OF _____

NOTES & ASSUMPTIONS

[STATE ASSUMPTIONS USED IN PREPARING FORECAST]

13-WEEK CASH FLOW FORECAST

	Week Endings													
	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
Continuing Operations Receipts														
Continuing Business Unit Receipts	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Corporate Administrative Receipts	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Total Receipts	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Continuing Operations Disbursements														
Materials	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Continuing Business Unit Payroll	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Field SG&A Payroll	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Corporate Administrative Payroll	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Insurance	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Capital Expenditures	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Other Operating Expenses	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Total Expenses	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
NET OPERATING CASH FLOW	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Wind-Down & Discontinued Operations														
Wind Down & Disc Ops Receipts	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Wind Down & Disc Ops Disbursements	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Restructuring Expenses	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Net Wind-Down & Discontinued	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Operating Cash Flow after Wind-Down & Disc Ops	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Financing Related														
Tax Refund	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
First Lien - Interest	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
First Lien - Principal Payments	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Second Lien - Interest	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Second Lien - Principal Payments	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Banking Fees	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Transfers (To) / From Cash Collateral Account	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Other	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Total Financing Related	#	#	#	#	#	#	#	#	#	#	#	#	#	#
NET CASH FLOW	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Opening Book Cash Balance	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Ending Book Cash Balance	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Estimated Float	#	#	#	#	#	#	#	#	#	#	#	#	#	#
ENDING BANK CASH / (REVOLVER)	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Cash Collateral Account														
Opening Balance	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Transfers To / (From) Cash Collateral Account	#	#	#	#	#	#	#	#	#	#	#	#	#	#
ENDING BALANCE	#	#	#	#	#	#	#	#	#	#	#	#	#	#

13-WEEK CASH FLOW FORECAST VARIANCE

	Week Ending X			
	Actual	Forecast	Favorable / (Unfavorable)	Reasons for Variance
Continuing Operations Receipts				
Continuing Business Unit Receipts	#	#	#	
Corporate Administrative Receipts	#	#	#	
Total Receipts	#	#	#	
Continuing Operations Disbursements				
Materials	(#)	(#)	#	
Continuing Business Unit Payroll	(#)	(#)	#	
Field SG&A Payroll	(#)	(#)	#	
Corporate Administrative Payroll	(#)	(#)	#	
Insurance	(#)	(#)	#	
Capital Expenditures	(#)	(#)	#	
Other Operating Expenses	(#)	(#)	#	
Total Expenses	(#)	(#)	#	
NET OPERATING CASH FLOW	#	#	#	
Wind-Down & Discontinued Operations				
Wind Down & Disc Ops Receipts	#	#	#	
Wind Down & Disc Ops Disbursements	(#)	(#)	#	
Restructuring Expenses	(#)	(#)	#	
Net Wind-Down & Discontinued	#	#	#	
Operating Cash Flow after Wind-Down & Disc Ops	#	#	#	
Financing Related				
Tax Refund	(#)	(#)	#	
First Lien - Interest	(#)	(#)	#	
First Lien - Principal Payments	(#)	(#)	#	
Second Lien - Interest	(#)	(#)	#	
Second Lien - Principal Payments	(#)	(#)	#	
Banking Fees	(#)	(#)	#	
Transfers (To) / From Cash Collateral Account	(#)	(#)	#	
Other	(#)	(#)	#	
Total Financing Related	#	#	#	
NET CASH FLOW	#	#	#	
Opening Book Cash Balance	#	#	#	
Ending Book Cash Balance	#	#	#	
Estimated Float	#	#	#	
ENDING BANK CASH / (REVOLVER)	#	#	#	

EXHIBIT H

FORM OF ANNUAL FINANCIAL FORECAST AND RECONCILIATION

Date: _____

To: Wells Fargo Bank,
National Association,
as Administrative Agent

Ladies and Gentlemen:

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 (i) 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 (ii) the attached consolidated financial forecast and reconciliation for Holdings and its Subsidiaries is delivered pursuant to Section 6.01(d) of the Credit Agreement and represents Holdings' reasonable good faith estimates and assumptions as to future performance, which Holdings believes to be fair and reasonable as of _____ in light of then current and reasonably foreseeable business conditions (it being understood that forecasts and projections by their nature involve approximations and uncertainties).

IN WITNESS WHEREOF, the undersigned has executed this Certificate as the _____ of Holdings as of _____.

BUILDING MATERIALS HOLDING CORPORATION

By: _____
Name: _____
Title: _____

BUILDING MATERIALS HOLDING CORP.
ANNUAL FINANCIAL FORECAST AND RECONCILIATION
UPDATED AS OF _____

NOTES & ASSUMPTIONS

[STATE ALL SSUMPTIONS USED IN PREPARING FORECAST INCLUDING BUT NOT LIMITED TO:

- SALES GROWTH ASSUMPTIONS BY MARKET
- GROSS MARGINS ASSUMPTIONS
- FIELD OVERHEAD COST ASSUMPTIONS
- CORPORATE OVERHEAD COST ASSUMPTIONS
- WORKING CAPTIAL ASSUMPTIONS
- BORROWING BASE ROLL-FORWARD ASSUMPTIONS]

BUILDING MATERIALS HOLDING CORP.
ANNUAL FINANCIAL FORECAST
[Provide monthly forecast for FY 2010 TO FY 2012]
UPDATED AS OF _____

INCOME STATEMENT FORECAST	FY 201X												
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Net Sales	#	#	#	#	#	#	#	#	#	#	#	#	#
COGS	#	#	#	#	#	#	#	#	#	#	#	#	#
Gross Margin	#	#	#	#	#	#	#	#	#	#	#	#	#
Gross Margin	%	%	%	%	%	%	%	%	%	%	%	%	%
Field SG&A	#	#	#	#	#	#	#	#	#	#	#	#	#
Corporate SG&A	#	#	#	#	#	#	#	#	#	#	#	#	#
Operating Income Continuing Operations	#	#	#	#	#	#	#	#	#	#	#	#	#
Other Income / (Expense)	#	#	#	#	#	#	#	#	#	#	#	#	#
Loan Amortization Costs	#	#	#	#	#	#	#	#	#	#	#	#	#
Interest Expense , net	#	#	#	#	#	#	#	#	#	#	#	#	#
Income Taxes	#	#	#	#	#	#	#	#	#	#	#	#	#
Net Income Continuing Operations	#	#	#	#	#	#	#	#	#	#	#	#	#
Non-Go Forward Income / (Expense)	#	#	#	#	#	#	#	#	#	#	#	#	#
Restructuring Expenses	#	#	#	#	#	#	#	#	#	#	#	#	#
Non-Recurring Items	#	#	#	#	#	#	#	#	#	#	#	#	#
Net Income	#	#	#	#	#	#	#	#	#	#	#	#	#
Operating Income Continuing Operations	#	#	#	#	#	#	#	#	#	#	#	#	#
Covenant Addbacks	#	#	#	#	#	#	#	#	#	#	#	#	#
Depreciation & Amortization	#	#	#	#	#	#	#	#	#	#	#	#	#
EBITDA from Continuing Operations	#	#	#	#	#	#	#	#	#	#	#	#	#

BUILDING MATERIALS HOLDING CORP.
ANNUAL FINANCIAL FORECAST
[Provide monthly forecast for FY 2010 TO FY 2012]
UPDATED AS OF _____

BALANCE SHEET FORECAST

	FY 201X											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Continuing Operations Assets												
Cash	#	#	#	#	#	#	#	#	#	#	#	#
Accounts Receivable, net	#	#	#	#	#	#	#	#	#	#	#	#
Inventory	#	#	#	#	#	#	#	#	#	#	#	#
Costs in Excess of Billings	#	#	#	#	#	#	#	#	#	#	#	#
Tax Refund/Deferred Tax Asset	#	#	#	#	#	#	#	#	#	#	#	#
Prepaid Expenses and Other	#	#	#	#	#	#	#	#	#	#	#	#
Current Assets	#	#	#	#	#	#	#	#	#	#	#	#
Property, Plant & Equipment, net	#	#	#	#	#	#	#	#	#	#	#	#
Capitalized Financing Fee	#	#	#	#	#	#	#	#	#	#	#	#
Goodwill and Other Intangibles	#	#	#	#	#	#	#	#	#	#	#	#
Other Long-Term Assets	#	#	#	#	#	#	#	#	#	#	#	#
Total Continuing Operation Assets	#	#	#	#	#	#	#	#	#	#	#	#
Wind-Down and Disc Ops Assets												
Accounts Receivable, net	#	#	#	#	#	#	#	#	#	#	#	#
Inventory	#	#	#	#	#	#	#	#	#	#	#	#
Costs in Excess of Billings	#	#	#	#	#	#	#	#	#	#	#	#
Property, Plant & Equipment, net	#	#	#	#	#	#	#	#	#	#	#	#
[other as necessary]	#	#	#	#	#	#	#	#	#	#	#	#
Wind-Down and Disc Ops Assets	#	#	#	#	#	#	#	#	#	#	#	#
TOTAL ASSETS	#	#	#	#	#	#	#	#	#	#	#	#

BUILDING MATERIALS HOLDING CORP.
ANNUAL FINANCIAL FORECAST
[Provide monthly forecast for FY 2010 TO FY 2012]
UPDATED AS OF _____

BALANCE SHEET FORECAST (continued)	FY 201X											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Continuing Operations Liabilities												
Accounts Payable	#	#	#	#	#	#	#	#	#	#	#	#
Insurance Deductible Reserves	#	#	#	#	#	#	#	#	#	#	#	#
Billings in Excess of Costs	#	#	#	#	#	#	#	#	#	#	#	#
Accrued Compensation	#	#	#	#	#	#	#	#	#	#	#	#
Current Liabilities	#	#	#	#	#	#	#	#	#	#	#	#
Exit Revolver	#	#	#	#	#	#	#	#	#	#	#	#
Exit Term Loan	#	#	#	#	#	#	#	#	#	#	#	#
Reinstated Debt	#	#	#	#	#	#	#	#	#	#	#	#
Accrued Pre-Petition L/C Interest	#	#	#	#	#	#	#	#	#	#	#	#
IRS Tax Claim	#	#	#	#	#	#	#	#	#	#	#	#
Other Long-Term Liabilities	#	#	#	#	#	#	#	#	#	#	#	#
Accrued Restructuring Expenses	#	#	#	#	#	#	#	#	#	#	#	#
Total Continuing Operation Liabilities	#	#	#	#	#	#	#	#	#	#	#	#
Wind-Down and Disc Ops Liabilities												
Accounts Payable	#	#	#	#	#	#	#	#	#	#	#	#
Billings in Excess of Costs	#	#	#	#	#	#	#	#	#	#	#	#
Accrued Compensation	#	#	#	#	#	#	#	#	#	#	#	#
[other as necessary]	#	#	#	#	#	#	#	#	#	#	#	#
Wind-Down and Disc Ops Liabilities	#	#	#	#	#	#	#	#	#	#	#	#
Total Liabilities	#	#	#	#	#	#	#	#	#	#	#	#
Retained Earnings	#	#	#	#	#	#	#	#	#	#	#	#
Shareholders' Equity	#	#	#	#	#	#	#	#	#	#	#	#
Total Equity	#	#	#	#	#	#	#	#	#	#	#	#
TOTAL LIABILITIES AND EQUITY	#	#	#	#	#	#	#	#	#	#	#	#

BUILDING MATERIALS HOLDING CORP.
ANNUAL FINANCIAL FORECAST
[Provide monthly forecast for FY 2010 TO FY 2012]
UPDATED AS OF _____

STATEMENT OF CASH FLOWS FORECAST	FY 201X												
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Net Income Continuing Operations	#	#	#	#	#	#	#	#	#	#	#	#	#
Depreciation & Amortization	#	#	#	#	#	#	#	#	#	#	#	#	#
Changes in Working Capital	#	#	#	#	#	#	#	#	#	#	#	#	#
Cash Flow from Continuing Operations	#	#	#	#	#	#	#	#	#	#	#	#	#
Non-Go Forward Income / (Expense)	#	#	#	#	#	#	#	#	#	#	#	#	#
Restructuring Expenses	#	#	#	#	#	#	#	#	#	#	#	#	#
Non-Recurring Items	#	#	#	#	#	#	#	#	#	#	#	#	#
Changes in Non-Go Forward Working Capital	#	#	#	#	#	#	#	#	#	#	#	#	#
Cash Flow from All Operations	#	#	#	#	#	#	#	#	#	#	#	#	#
Proceeds from Asset Sales, net	#	#	#	#	#	#	#	#	#	#	#	#	#
Capital Expenditures	#	#	#	#	#	#	#	#	#	#	#	#	#
Cash Flow From Investing Activities	#	#	#	#	#	#	#	#	#	#	#	#	#
FREE CASH FLOW	#	#	#	#	#	#	#	#	#	#	#	#	#
Exit Revolver (Payments) / Borrowings	#	#	#	#	#	#	#	#	#	#	#	#	#
Exit Term Loan (Payments) / PIK	#	#	#	#	#	#	#	#	#	#	#	#	#
Reinstated Debt (Payments) / PIK	#	#	#	#	#	#	#	#	#	#	#	#	#
Restructuring Expenses	#	#	#	#	#	#	#	#	#	#	#	#	#
PIK Pre Petition LC Interest	#	#	#	#	#	#	#	#	#	#	#	#	#
PIK Post-Petition LC Interest	#	#	#	#	#	#	#	#	#	#	#	#	#
IRS Tax Claim Principal Payments	#	#	#	#	#	#	#	#	#	#	#	#	#
Other Proceeds / (Expenses)	#	#	#	#	#	#	#	#	#	#	#	#	#
Cash Flow From Financing Activities	#	#	#	#	#	#	#	#	#	#	#	#	#
Net Cash Flow	#	#	#	#	#	#	#	#	#	#	#	#	#
Opening Book Cash Balance	#	#	#	#	#	#	#	#	#	#	#	#	#
Ending Book Cash Balance	#	#	#	#	#	#	#	#	#	#	#	#	#
Estimated Float	#	#	#	#	#	#	#	#	#	#	#	#	#
Ending Bank Cash	#	#	#	#	#	#	#	#	#	#	#	#	#

BUILDING MATERIALS HOLDING CORP.
ANNUAL FINANCIAL FORECAST RECONCILIATION
UPDATED AS OF _____

INCOME STATEMENT RECONCILIATION	FY 201X			
	Actual	Forecast	Favorable / (Unfavorable)	Reasons for Variance
Net Sales	#	#	#	
COGS	#	#	#	
Gross Margin	#	#	#	
Gross Margin	%	%	%	
Field SG&A	#	#	#	
Corporate SG&A	#	#	#	
Operating Income Continuing Operations	#	#	#	
Other Income / (Expense)	#	#	#	
Loan Amortization Costs	#	#	#	
Interest Expense , net	#	#	#	
Income Taxes	#	#	#	
Net Income Continuing Operations	#	#	#	
Non-Go Forward Income / (Expense)	#	#	#	
Restructuring Expenses	#	#	#	
Non-Recurring Items	#	#	#	
Net Income	#	#	#	
Operating Income Continuing Operations	#	#	#	
Covenant Addbacks	#	#	#	
Depreciation & Amortization	#	#	#	
EBITDA from Continuing Operations	#	#	#	

BUILDING MATERIALS HOLDING CORP.
ANNUAL FINANCIAL FORECAST AND RECONCILIATION
UPDATED AS OF _____

BALANCE SHEET RECONCILIATION

	FY 201X			
	Actual	Forecast	Favorable / (Unfavorable)	Reasons for Variance
Continuing Operations Assets				
Cash	#	#	#	
Accounts Receivable, net	#	#	#	
Inventory	#	#	#	
Costs in Excess of Billings	#	#	#	
Tax Refund/Deferred Tax Asset	#	#	#	
Prepaid Expenses and Other	#	#	#	
Current Assets	#	#	#	
Property, Plant & Equipment, net	#	#	#	
Capitalized Financing Fee	#	#	#	
Goodwill and Other Intangibles	#	#	#	
Other Long-Term Assets	#	#	#	
Total Continuing Operation Assets	#	#	#	
Wind-Down and Disc Ops Assets				
Accounts Receivable, net	#	#	#	
Inventory	#	#	#	
Costs in Excess of Billings	#	#	#	
Property, Plant & Equipment, net	#	#	#	
[other as necessary]	#	#	#	
Wind-Down and Disc Ops Assets	#	#	#	
TOTAL ASSETS	#	#	#	

BUILDING MATERIALS HOLDING CORP.
ANNUAL FINANCIAL FORECAST AND RECONCILIATION
UPDATED AS OF _____

BALANCE SHEET RECONCILIATION
(Continued)

	FY 20XX			
	Actual	Forecast	Favorable/ (Unfavorable)	Reasons for Variance
Continuing Operations Liabilities				
Accounts Payable	#	#	#	
Insurance Deductible Reserves	#	#	#	
Billings in Excess of Costs	#	#	#	
Accrued Compensation	#	#	#	
Current Liabilities	#	#	#	
Exit Revolver	#	#	#	
Exit Term Loan	#	#	#	
Reinstated Debt	#	#	#	
Accrued Pre-Petition L/C Interest	#	#	#	
IRS Tax Claim	#	#	#	
Other Long-Term Liabilities	#	#	#	
Accrued Restructuring Expenses	#	#	#	
Total Continuing Operation Liabilities	#	#	#	
Wind-Down and Disc Ops Liabilities				
Accounts Payable	#	#	#	
Billings in Excess of Costs	#	#	#	
Accrued Compensation	#	#	#	
[other as necessary]	#	#	#	
Wind-Down and Disc Ops Liabilities	#	#	#	
Total Liabilities	#	#	#	
Retained Earnings	#	#	#	
Shareholders' Equity	#	#	#	
Total Equity	#	#	#	
TOTAL LIABILITIES AND EQUITY	#	#	#	

BUILDING MATERIALS HOLDING CORP.
ANNUAL FINANCIAL FORECAST AND RECONCILIATION
UPDATED AS OF _____

STATEMENT OF CASH FLOWS RECONCILIATION	FY 201X			
	Actual	Forecast	Favorable / (Unfavorable)	Reasons for Variance
Net Income Continuing Operations	#	#	#	
Depreciation & Amortization	#	#	#	
Changes in Working Capital	#	#	#	
Cash Flow from Continuing Operations	#	#	#	
Non-Go Forward Income / (Expense)	#	#	#	
Restructuring Expenses	#	#	#	
Non-Recurring Items	#	#	#	
Changes in Non-Go Forward Working Capital	#	#	#	
Cash Flow from All Operations	#	#	#	
Proceeds from Asset Sales, net	#	#	#	
Capital Expenditures	#	#	#	
Cash Flow From Investing Activities	#	#	#	
FREE CASH FLOW	#	#	#	
Exit Revolver (Payments) / Borrowings	#	#	#	
Exit Term Loan (Payments) / PIK	#	#	#	
Reinstated Debt (Payments) / PIK	#	#	#	
Restructuring Expenses	#	#	#	
PIK Pre Petition LC Interest	#	#	#	
PIK Post-Petition LC Interest	#	#	#	
IRS Tax Claim Principal Payments	#	#	#	
Other Proceeds / (Expenses)	#	#	#	
Cash Flow From Financing Activities	#	#	#	
Net Cash Flow	#	#	#	
Opening Book Cash Balance	#	#	#	
Ending Book Cash Balance	#	#	#	
Estimated Float	#	#	#	
Ending Bank Cash	#	#	#	

EXHIBIT E
[Intercreditor Agreement]

INTERCREDITOR AGREEMENT

This INTERCREDITOR AGREEMENT is dated as of December __, 2009, and entered into by and between WELLS FARGO FOOTHILL, LLC, in its capacity as 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 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 Borrower 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, (f) Cash Management Services or (g) transactions under Hedge Agreements.

"**Bank Product Agreements**" means those agreements entered into from time to time by Borrower 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 Borrower 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.

"**Cash Management Services**" means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

"**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 definition, 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 or immediately available funds of the First Lien Obligations (other than outstanding Letters of Credit and Bank Product Obligations and unasserted contingent indemnity obligations);

(b) termination 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 (or any portion thereof), 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 $125,000,000.

"**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.

"**Hedge Agreement**" means a "swap agreement" as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

"**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 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 so long as such exercise is not inconsistent with the terms of this Agreement; 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.

3.9 Proceedings. In the event of any Insolvency Proceeding involving a Debtor, (i) all First Lien Obligations first shall be paid in full in cash before any payment of or with respect to the Second Lien Obligations shall be made; (ii) any payment or distribution, whether in cash, property or securities which, but for the terms hereof, otherwise would be payable or deliverable in respect of the Second Lien Obligations, shall be paid or delivered directly to Agent until all First Lien Obligations are paid in full in cash, and each Second Lien Claimholder irrevocably authorizes, empowers and directs all receivers, trustees, liquidators, custodians, conservators and others having authority in the premises to effect all such payments and distributions, and each Second Lien Claimholder also irrevocably authorizes, empowers and directs Agent, on behalf of the First Lien Claimholders, to collect and receive every such payment or distribution on behalf of the First Lien Claimholders; (iii) each Second Lien Claimholder agrees to execute and deliver to Agent or its representative all such further instruments reasonably requested by Agent confirming the authorization referred to in the foregoing clause (ii), and (iv) each Second Lien Claimholder agrees to execute and file any proofs of claim in respect of the Second Lien Obligations reasonably requested by Agent in connection with any such Insolvency Proceeding and hereby irrevocably authorizes, empowers, and appoints Agent its agent and attorney-in-fact (which right is coupled with an interest) to execute and file such proofs of claim upon the failure of such Second Lien Claimholder to do so prior to 30 days before the expiration of the time to file any such proof of claim; provided Agent shall have no obligation to execute and/or file any such proof of claim. The First Lien Obligations shall continue to be treated as First Lien Obligations and the provisions of this Agreement shall continue to govern the relative rights and priorities of the First Lien Claimholders and Second Lien Claimholders even if all or part of the Liens securing such First Lien Obligations are subordinated, set aside, avoided or disallowed in connection with any such Insolvency Proceeding (or if all or part of the First Lien Obligations are subordinated, set aside, avoided or disallowed in connection with any such Insolvency

Proceeding as a result of the fraudulent conveyance or fraudulent transfer provisions under the Bankruptcy Code or under any state fraudulent conveyance or fraudulent transfer statute or if any interest accruing on the First Lien Obligations following the commencement of such Insolvency Proceeding is otherwise disallowed) and this Agreement shall be reinstated if at any time any payment of any of the First Lien Obligations is rescinded or must otherwise be returned by any holder of First Lien Obligations or any representative of such holder.

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 Second Lien Mandatory Prepayments. Anything to the contrary contained herein notwithstanding, unless a First Lien Default has occurred and is continuing, proceeds from (a) any Disposition of Excess Real Estate permitted under the First Lien Credit Agreement, (b) issuance and sale of Equity Securities, or (c) Excess Cash Flow (collectively, **"Second Lien Prepayment Sources"**) 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 a First Lien Default has occurred and is continuing, proceeds from any Second Lien Prepayment Source shall be applied pursuant to Section 4.1 of this Agreement. In the event that Borrower or any Guarantor shall pay or the Second Lien Claimholders shall collect any proceeds from any Second Lien Prepayment Source 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 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 Revolving Commitments, plus outstanding principal amount of the Term Loans, 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 Wells Fargo Foothill, LLC, 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 NEW YORK.**

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 FOOTHILL, LLC

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. If any Stockholder receives a request for information regarding the Company or the Stockholder's interest as an equity holder in the Company from any regulatory or other governmental authority having jurisdiction over such Stockholder, or if any Stockholder is otherwise required by applicable law or regulation or by subpoena or similar legal process to provide any such information to any regulatory authority or other governmental authority or any other Person, then the Company will cooperate in good faith with such Stockholder to provide such information to such regulatory authority or other governmental authority or to such other Person.

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			

EXHIBIT M
[Financing Commitment Letters]

1. DK Acquisition Partners, L.P.

December 14, 2009

Building Materials Holding Corporation
Four Embarcadero Center, Suite 3200
San Francisco, CA 94111
Attn.: Bill Smartt, Senior Vice President and
Chief Financial Officer

Re: Financing Commitment

Ladies and Gentlemen:

In accordance with our recent discussions, you have advised DK Acquisition Partners, L.P. ("**DKAP**") that Building Materials Holding Corporation and its subsidiaries, as debtors-in-possession ("**BMHC**" or the "**Company**"), as such entities are reorganized pursuant to their pending chapter 11 cases (the "**Chapter 11 Cases**") under Chapter 11 of Title 11 of the United States Bankruptcy Code, will require financing in the form of a senior secured term loan in the principal amount of $40,000,000 (such financing, the "**Requested Financing**"). The Requested Financing would be secured on a perfected first lien, "first out" basis by any Tax Refunds (defined below), and on a perfected first lien, "last out" basis by all other Collateral (defined below). You have further advised DKAP that the proceeds from the Requested Financing will be used by BMHC (together with the proceeds of the ABL Facility (defined below)) to: (i) facilitate consummation of the plan of reorganization of the Company (the "**Plan of Reorganization**"), (ii) refinance amounts outstanding under the Company's debtor-in-possession credit facility (the "**DIP Facility**"), (iii) provide working capital to BMHC, (iv) provide for fees and expenses associated with the transaction, and (v) provide for general corporate purposes.

DKAP is pleased to advise you that DKAP is willing to provide BMHC with the Requested Financing, on the terms and conditions set forth in the December 14, 2009 draft of the Senior Secured Credit Agreement attached hereto as **Exhibit A** (the "**Draft Credit Agreement**"), to be entered into by Building Materials Holding Corporation as borrower ("**Borrower**"), the subsidiaries of Borrower named therein as guarantors ('**Guarantors**"), WFF (defined below) as revolving credit lender, DKAP as term loan lender and WFF as administrative agent and collateral agent, provided that, in addition to satisfaction of the conditions precedent set forth in Sections 5.01 and 5.02 of the Draft Credit Agreement, DKAP's commitment is subject to satisfaction of the conditions precedent set forth in paragraph 3 of this letter. In connection with DKAP's commitment as to the Requested Financing, BMHC agrees with DKAP as follows:

1. **Acknowledgment.** Each of BMHC and DKAP acknowledges that:

(a) the Requested Financing is to be advanced concurrently with a $50 million senior secured revolving credit facility from Wells Fargo Foothill, LLC ("**WFF**"), which would be secured on a perfected first lien, "first out" basis by all Collateral other than Tax Refunds and on a perfected first lien, "last out" basis by any Tax Refunds (the "**ABL Facility**"),

(b) the definitive loan documentation for the Requested Financing and the ABL Facility will be a credit agreement in the form of the Draft Credit Agreement, together with the other Loan Documents (as defined in the Draft Credit Agreement) listed below, each in the form attached hereto:

(i) the Notes (as defined in the Draft Credit Agreement) in the form attached as **Exhibit G**;

(ii) the Collateral Documents (as defined in the Draft Credit Agreement), including the Security Agreement and Form of Mortgage referred to below and the Collateral Documents in the form attached as **Exhibit G**;

(iii) the Intercreditor Agreement referred to below; and

(iv) each control agreement executed in respect of the Cash Collateral Account (as defined in the Draft Credit Agreement), the Tax Proceeds Collateral Account (as defined in the Draft Credit Agreement) or any other deposit account, trust account or securities account of the Borrower and the Guarantors in the form attached as **Exhibit G**,

(c) the Draft Credit Agreement provides, among other things, for the priority of payments as between the Requested Financing, on the one hand, and the ABL Facility, on the other-hand; in addition, WFF and DKAP will enter into an agreement among lenders with respect to certain matters, which shall be the form of the draft Agreement Among Lenders dated December 14, 2009 (the "**Draft Agreement Among Lenders**"),

(d) all schedules to the Draft Credit Agreement and the other Loan Documents, dated as of the date hereof, which have been provided to and received by DKAP and WFF, and are attached as **Exhibit H**, will be the schedules attached to the definitive credit agreement and the Collateral Documents,

(e) among the Loan Documents will be (i) an intercreditor agreement in the form of the draft Intercreditor Agreement dated December 14, 2009 attached hereto as **Exhibit B** (the "**Draft Intercreditor Agreement**"), to be entered into by WFF, as collateral agent for WFF and DKAP, and Wells Fargo Bank, N.A. ("**WFB**"), as collateral agent under the Second Lien Term Loan Credit Agreement (as defined in the Draft Credit Agreement), (ii) a security agreement, in the form of the draft Security Agreement dated December 14, 2009 attached hereto as **Exhibit C** (the "**Draft Security Agreement**"), to be executed by Borrower and each Guarantor in favor of WFF, as collateral agent for WFF and DKAP, and (iii) mortgages, deeds of trust and similar instruments to be recorded against the real property assets of the Borrower and Guarantors, each in substantially the form of the draft Mortgage dated December 14, 2009 attached hereto as **Exhibit D** (the "**Draft Form of Mortgage**"), conformed for the specific real property asset and for state specific requirements,

(f) the Plan of Reorganization previously filed by BMHC with the Bankruptcy Court will be amended to provide for the Requested Financing, the ABL Facility and the other documents referred to in this paragraph 1, and

(g) on the Closing Date, Borrower and Guarantors will enter into the Second Lien Term Loan Documents (as such term is defined in the Draft Credit Agreement, and as such documents have been filed in accordance with the Plan of Reorganization, as supplemented to this date (including the documents filed on this date with the Bankruptcy Court), each in the form attached hereto as **Exhibit I**.

2. **Expense Letter; Fee Letter.** (a) Prior to the date hereof, DKAP and BMHC entered into an Expense Deposit letter agreement, a copy of which is attached hereto as **Exhibit E** (the "**Expense Letter**"), which Expense Letter, among other things, (i) governs an expense deposit previously paid to DKAP by BMHC, (ii) sets forth BMHC's agreement to reimburse DKAP for its expenses in connection with the Requested Financing, (iii) sets forth BMHC's indemnification obligations in connection with the Requested Financing and (iv) sets forth BMHC's agreement to work exclusively with DKAP as to the Requested Financing, in each case subject to the terms set forth

therein. The terms of the Expense Letter are incorporated herein as if fully set forth herein and shall remain in effect following execution of this letter and whether or not definitive documentation is executed for the Requested Financing.

(b) Concurrently with its execution and delivery of this letter, BMHC will execute and deliver to DKAP that certain fee letter dated the date hereof (the "**Fee Letter**"). The Fee Letter shall remain in effect following execution of this letter and whether or not definitive documentation is executed for the Requested Financing.

3. **Certain Conditions.** (a) This letter shall not become effective unless, on or prior to December 14, 2009, (i) BMHC shall have executed and delivered a counterpart to this letter, (ii) BMHC shall have executed and delivered a counterpart to the Fee Letter, and (iii) WFF and BMHC shall have executed and delivered the ABL Commitment Letter, which shall be in form attached hereto as **Exhibit F**.

(b) This letter and the commitment of DKAP set forth herein will terminate on December 17, 2009 unless, on or prior to such date, the Bankruptcy Court (defined below) shall have (i) approved BMHC's execution, delivery and performance of the Expense Letter and the Fee Letter and (ii) issued an order confirming the Plan of Reorganization (amended as set forth in paragraph 1(f) above), in each case in form and substance reasonably satisfactory to DKAP.

(c) This letter and the commitment of DKAP set forth herein will terminate on January 4, 2010 unless, on or prior to such date, the funding of the Requested Financing and the initial funding under the ABL Facility shall have occurred and the Plan of Reorganization shall have become effective (the "**Closing Date**").

(d) The commitment of DKAP to provide the Requested Financing is subject to:

(i) the execution and delivery of a credit agreement in the form of the Draft Credit Agreement by Borrower, Guarantors, DKAP and WFF,

(ii) the execution and delivery of the other Loan Documents in forms attached hereto,

(iii) the determination to DKAP's reasonable satisfaction that since the date of this letter, there has not occurred or become known to BMHC or DKAP any material adverse change with respect to the condition (financial or otherwise), business, operations, assets or liabilities of BMHC or its subsidiaries (taken as a whole), other than the filing of the Chapter 11 Cases and the events resulting from the filing of the Chapter 11 Cases (a "**Material Adverse Change**"),

(iv) the ABL Commitment Letter, and the commitment for the ABL Facility provided therein, remains in effect, and

(v) satisfaction of the other conditions set forth in Sections 5.01 and 5.02 of Draft Credit Agreement.

If at any time DKAP shall determine (in its reasonable business judgment) that (i) BMHC will be unable to fulfill any condition set forth in this letter or in the Draft Credit Agreement, or (ii) any Material Adverse Change has occurred, DKAP may terminate its obligations under this letter by giving notice thereof to BMHC (it being understood that BMHC's obligations under the Expense Letter, the Fee Letter and Annex II shall survive the termination of this letter).

(e) "**Collateral**" shall mean (i) the right of Borrower and Guarantors to receive any tax refund (whether local, state, federal, foreign or otherwise), including without limitation, tax refunds anticipated to be received by BMHC as a result of the expanded five year carry-back of net operating losses for the tax years 2008 and 2009 in accordance with the Worker, Homeownership and Business Assistance Act of 2009 (H.R. 3548), and all cash and non-cash proceeds of any such tax refund ("**Tax Refunds**"), and (ii) all other existing and future assets of the Borrower and Guarantors, tangible and intangible, including, but not limited to cash and cash equivalents, accounts receivable, inventories, other current assets, investments (capital stock and loans and accounts receivable), property plant and equipment, vessels, trademarks, tradenames, insurance claims, litigation claims and other assets, subject only to the exceptions set forth in the Draft Security Agreement.

4. **Representation and Warranty.** BMHC, on behalf of itself and its subsidiaries, jointly and severally. represents and warrants that (i) no statement or information (other than projections, pro forma financial information and "forward-looking" statements) contained in this letter or any other document, certificate, written statement or formal presentation furnished to DKAP for use in connection with the transactions contemplated by this letter, when taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading, in any material respect, in light of the circumstances under which such statements were made and (ii) the projections, pro forma financial information and "forward-looking" statements contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of BMHC to be reasonable at the time made, it being recognized by DKAP that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected or anticipated results set forth therein by a material amount. BMHC agrees that if at any time prior to the Closing Date, any of the representations in the preceding sentence would be incorrect in any material respect if the information and projections were being furnished, and such representations were being made, at such time, then the Companies will promptly supplement, or cause to be supplemented, the information and projections so that such representations will be correct in all material respects under those circumstances.

5. **Disclosure.** This letter is delivered to BMHC upon the condition that neither the existence of this letter, nor any of their contents, shall be disclosed by BMHC or any of its affiliates, except as follows: (i) following BMHC's execution of this letter, this letter and its attachments may be disclosed to the Bankruptcy Court, (ii) following prior notice to DKAP, as may be compelled to be disclosed in a judicial or administrative proceeding or as otherwise required by law, (iii) on a confidential and "need to know" basis, solely to the directors, officers, employees, advisors and agents of BMHC and its affiliates, or (iv) this letter and its attachments may be disclosed to WFF. In addition, BMHC agrees that it and its subsidiaries (and any affiliate acting on behalf of BMHC) will (i) consult with DKAP prior to the making of any filing in which reference is made to DKAP, its affiliates or the commitment contained in this letter, and (ii) obtain the prior approval of DKAP before releasing any public announcement (unless involving a filing with the Bankruptcy Court permitted above) in which reference is made to DKAP, its affiliates or to the commitment contained in this letter. Notwithstanding the foregoing, any party hereto may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the financing contemplated by the Requested Financing. BMHC acknowledges that DKAP and its affiliates may now or hereafter provide financing or obtain other interests in other companies in respect of which BMHC or its affiliates may be business competitors, and that DKAP and its affiliates will have no obligation to provide to BMHC or any of its affiliates any confidential information obtained from such other companies. This paragraph shall survive any termination of this letter.

6. **Miscellaneous.** This letter, including the attachments hereto, together with the Expense Letter and the Fee Letter (a) supersedes all prior discussions, agreements, commitments, arrangements, negotiations or understandings, whether oral or written, of the parties with respect thereto and (b) shall be governed by the laws of the State of New York, without giving effect to the conflict of laws provisions thereof; the U.S. Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") shall have jurisdiction over any matter arising out of this letter, provided that on and after the Effective Date, or prior thereto, if the Bankruptcy Court does not have jurisdiction or refuses to exercise such jurisdiction, then BMHC agrees to the jurisdiction and venue of the federal and/or state courts located within the City of New York, (c) shall be binding upon the parties and their respective successors and assigns to the extent set forth in the next succeeding paragraph, (d) may not be relied upon or enforced by any other person or entity, and (e) may be signed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. **If this letter becomes the subject of a dispute, each of the parties hereto hereby waives its right to trial by jury to resolve such dispute.** This letter may be amended, modified or waived only in a writing signed by the parties hereto.

[This space intentionally left blank; signature page follows.]

If the foregoing correctly sets forth your understanding with respect to the subject matter hereof, kindly execute this letter and the Fee Letter where indicated and return both to the undersigned not later than 5:00 p.m. EST on December 14, 2009.

Very truly yours,

DK ACQUISITION PARTNERS, L.P.

By: M.H. Davidson & Co., its general partner

By: _____
Name:
Title:

Agreed and accepted on this
____ day of December, 2009:

BUILDING MATERIALS HOLDING CORPORATION

By: _____
Name:
Title:

Exhibit A

Draft Credit Agreement

Exhibit B

Draft Intercreditor Agreement

Exhibit C

Draft Security Agreement

Exhibit D

Draft Form of Mortgage

Exhibit E

Expense Letter

Exhibit F

ABL Commitment Letter

Exhibit G

Other Loan Documents

Exhibit H

Schedules

Exhibit I

Second Lien Documents

2. Wells Fargo Foothill, LLC

December 14, 2009

Building Materials Holding Corporation
Four Embarcadero Center, Suite 3200
San Francisco, CA 94111
Attn.: Bill Smartt, Senior Vice President and
Chief Financial Officer

Re: Financing Commitment

Ladies and Gentlemen:

In accordance with our recent discussions, you have advised Wells Fargo Foothill, LLC, a Delaware limited liability company ("**WFF**"), that Building Materials Holding Corporation, a Delaware corporation, and its subsidiaries, as debtors-in-possession ("**BMHC**" or the "**Company**"), as such entities are reorganized pursuant to their pending chapter 11 cases (the "**Chapter 11 Cases**") under Chapter 11 of Title 11 of the United States Bankruptcy Code, will require financing in the form of a senior secured revolving credit facility of $50,000,000 (such financing, the "**Requested Financing**"). The Requested Financing would be secured on a perfected first lien, "first out" basis by all Collateral (as defined below) other than Tax Refunds (as defined in the Draft Credit Agreement) and on a perfected first lien, "last out" basis by any Tax Refunds. You have further advised WFF that the proceeds from the Requested Financing will be used by BMHC (together with the proceeds of the Term Loan Facility (as defined below)) to: (i) facilitate consummation of the plan of reorganization of the Company (the "**Plan of Reorganization**"), (ii) refinance amounts outstanding under the Company's debtor-in-possession credit facility (the "**DIP Facility**"), (iii) provide working capital to BMHC, (iv) provide for fees and expenses associated with the transaction, and (v) provide for general corporate purposes.

WFF is pleased to advise you that WFF is willing to provide BMHC with the Requested Financing, on the terms and conditions set forth in the December 14, 2009 draft of the Senior Secured Credit Agreement attached hereto as **Exhibit A** (the "**Draft Credit Agreement**"), to be entered into by Building Materials Holding Corporation, a Delaware corporation, as borrower ("**Borrower**"), the subsidiaries of Borrower named therein as guarantors ('**Guarantors**"), WFF, as agent for the Lenders (in such capacity, the "**Agent**"), and the various lenders from time to time party thereto (including DKAP (as defined below)) (collectively, the "**Lenders**"), provided that, in addition to satisfaction of the conditions precedent set forth in Sections 5.01 and 5.02 of the Draft Credit Agreement, WFF's commitment is subject to satisfaction of the conditions precedent set forth in paragraph 3 of this letter. In connection with WFF's commitment as to the Requested Financing, BMHC agrees with WFF as follows:

1. **Acknowledgment.** Each of BMHC and WFF acknowledges that:

(a) the Requested Financing is to be advanced concurrently with a senior secured term loan in the principal amount of $40,000,000 from DK Acquisition Partners, L.P. ("**DKAP**"), which would be secured on a perfected first lien, "first out" basis by any Tax

Refunds (as defined in the Draft Credit Agreement), and on a perfected first lien, "last out" basis by all other Collateral (as defined below) (the "**Term Loan Facility**"),

(b) the definitive loan documentation for the Requested Financing and the Term Loan Facility will be a credit agreement in the form of the Draft Credit Agreement, together with the other Loan Documents (as such term is defined in the Draft Credit Agreement) listed below, each in the form attached hereto:

(i) the Collateral Documents (as such term is defined in the Draft Credit Agreement), including the Security Agreement and Form of Mortgage referred to below and the Collateral Documents in the form attached as **Exhibit G**;

(ii) the Intercreditor Agreement referred to below; and

(iii) each control agreement executed in respect of the Cash Collateral Account (as such term is defined in the Draft Credit Agreement), the Tax Proceeds Collateral Account (as such term is defined in the Draft Credit Agreement) or any other deposit account, trust account or securities account of the Borrower and the Guarantors,

(c) the Draft Credit Agreement provides, among other things, for the priority of payments as between the Requested Financing, on the one hand, and the Term Loan Facility, on the other-hand; in addition, WFF and DKAP will enter into an agreement among lenders with respect to certain matters, which shall be the form of the draft Agreement Among Lenders dated December 14, 2009,

(d) all schedules to the Draft Credit Agreement and the other Loan Documents, dated as of the date hereof, which have been provided to and received by WFF and DKAP, and are attached as **Exhibit H**, will be the schedules attached to the definitive credit agreement and the Collateral Documents,

(e) among the Loan Documents will be (i) an intercreditor agreement in the form of the draft Intercreditor Agreement dated December 14, 2009 attached hereto as **Exhibit B** (the "**Draft Intercreditor Agreement**"), to be entered into by WFF, as First Lien Agent (as such term is defined in the Draft Intercreditor Agreement), and Wells Fargo Bank, National Association ("**WFB**"), as Second Lien Agent (as such term is defined in the Draft Intercreditor Agreement), (ii) a security agreement, in the form of the draft Security Agreement dated December 14, 2009 attached hereto as **Exhibit C** (the "**Draft Security Agreement**"), to be executed by Borrower and each Guarantor in favor of WFF, as agent for the Secured Parties (as such term is defined in the Draft Security Agreement), and (iii) mortgages, deeds of trust and similar instruments to be recorded against the real property assets of the Borrower and Guarantors, each in the form of the draft Mortgage dated December 14, 2009 attached hereto as **Exhibit D** (the "**Draft Form of Mortgage**"), conformed for the specific real property asset and for state specific requirements, and

(f) the Plan of Reorganization previously filed by BMHC with the Bankruptcy Court (as defined below) will be amended to provide for the Requested Financing, the Term Loan Facility and the other documents referred to in this paragraph 1.

WFF acknowledges that the Second Lien Term Loan Documents (as such term is defined in the Draft Credit Agreement, and as such documents have been filed in accordance with the Plan of Reorganization, as supplemented to this date (including the documents filed on this date with the Bankruptcy Court (as defined below)) are in form and substance satisfactory to WFF.

2. **Expenses and Indemnity; Fee Letter.**

(a) BMHC agrees (i) to pay or reimburse, all reasonable, out-of-pocket fees, costs, and expenses (including, without limitation, reasonable fees and disbursements of counsel, reasonable consultant costs and expenses, filing and recording fees, and reasonable costs and expenses associated with due diligence, travel, appraisals, valuations, audits, and syndication) incurred by or on behalf of WFF (whether before, on, or after the date hereof) in connection with (A) legal and business due diligence, (B) the preparation, negotiation, execution, and delivery of this letter and any and all documentation for the Requested Financing, and (C) the enforcement of any of WFF's rights and remedies under this letter, in each case irrespective of whether the Requested Financing is consummated, and (ii) to indemnify, defend, and hold harmless WFF, each of its affiliates, and each of their officers, directors, employees, agents, advisors, attorneys, and representatives (each, an "**Indemnified Person**") as set forth on **Exhibit E** hereto.

(b) Concurrently with its execution and delivery of this letter, BMHC will execute and deliver to WFF that certain fee letter dated the date hereof (the "**Fee Letter**"). The Fee Letter shall remain in effect following execution of this letter and whether or not definitive documentation is executed for the Requested Financing.

The parties acknowledge that BMHC's obligations under this paragraph 2 are subject to the approval of the Bankruptcy Court. BMHC agrees to use good faith efforts to promptly obtain such approval.

3. **Certain Conditions.**

(a) This letter shall not become effective unless, on or prior to December 14, 2009, (i) BMHC shall have executed and delivered a counterpart to this letter, (ii) BMHC shall have executed and delivered a counterpart to the Fee Letter, and (iii) DKAP and BMHC shall have executed and delivered the Term Loan Commitment Letter, which shall be in form attached hereto as **Exhibit F** (the "**Term Loan Commitment Letter**").

(b) This letter and the commitment of WFF set forth herein will terminate on December 17, 2009 unless, on or prior to such date, the Bankruptcy Court shall have (i) approved BMHC's execution, delivery and performance of this letter and the Fee Letter and (ii) issued an order confirming the Plan of Reorganization (amended as set forth in

paragraph 1(f) above), in each case in form and substance reasonably satisfactory to WFF.

(c) This letter and the commitment of WFF set forth herein will terminate on January 4, 2010 unless, on or prior to such date, the funding of the Requested Financing and the initial funding under the Term Loan Facility shall have occurred and the Plan of Reorganization shall have become effective (the "**Closing Date**").

(d) The commitment of WFF to provide the Requested Financing is subject to:

(i) the execution and delivery of a credit agreement in the form of the Draft Credit Agreement by Borrower, Guarantors, WFF and the lenders signatory thereto (including DKAP),

(ii) the execution and delivery of the other Loan Documents in forms attached hereto,

(iii) the determination to WFF's reasonable satisfaction that since the date of this letter, there has not occurred or become known to BMHC or WFF any material adverse change with respect to the condition (financial or otherwise), business, operations, assets or liabilities of BMHC or its subsidiaries (taken as a whole), other than the filing of the Chapter 11 Cases and the events directly resulting from the filing of the Chapter 11 Cases (a "**Material Adverse Change**"),

(iv) the Term Loan Commitment Letter, and the commitment for the Term Loan Facility provided therein, remains in effect, and

(v) satisfaction of the other conditions set forth in Sections 5.01 and 5.02 of Draft Credit Agreement.

If at any time WFF shall determine (in its reasonable business judgment) that (i) BMHC will be unable to fulfill any condition set forth in this letter or in the Draft Credit Agreement, or (ii) any Material Adverse Change has occurred or could reasonably be expected to occur, WFF may terminate its obligations under this letter by giving notice thereof to BMHC (it being understood that BMHC's obligations under the Expenses and Indemnity section of this letter (including **Exhibit E**), and the Fee Letter shall survive the termination of this letter).

(e) "**Collateral**" shall mean (i) the right of Borrower and Guarantors to receive any tax refund (whether local, state, federal, foreign or otherwise), including without limitation, tax refunds anticipated to be received by BMHC as a result of the expanded five year carry-back of net operating losses for the tax years 2008 and 2009 in accordance with the Worker, Homeownership and Business Assistance Act of 2009 (H.R. 3548), and all cash and non-cash proceeds of any such tax refund, and (ii) all other existing and future assets of the Borrower and Guarantors, tangible and intangible, including, but not limited to cash and cash equivalents, accounts receivable, inventory, other current assets,

investments (capital stock and loans and accounts receivable), machinery, property plant and equipment, real property, vessels, trademarks, tradenames, insurance claims, litigation claims and other assets, subject only to the exceptions set forth in the Draft Credit Agreement or the Draft Security Agreement.

4. **Representations and Warranties.** BMHC, on behalf of itself and its subsidiaries, jointly and severally, represents and warrants that (i) no statement or information (other than projections, pro forma financial information and "forward-looking" statements) contained in this letter or any other document, certificate, written statement or formal presentation furnished to WFF for use in connection with the transactions contemplated by this letter, when taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading, in any material respect, in light of the circumstances under which such statements were made and (ii) the projections, pro forma financial information and "forward-looking" statements contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of BMHC to be reasonable at the time made, it being recognized by WFF that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected or anticipated results set forth therein by a material amount. BMHC agrees that if at any time prior to the Closing Date, any of the representations in the preceding sentence would be incorrect in any material respect if the information and projections were being furnished, and such representations were being made, at such time, then the Companies will promptly supplement, or cause to be supplemented, the information and projections so that such representations will be correct in all material respects under those circumstances.

5. **Disclosure.** This letter is delivered to BMHC upon the condition that neither the existence of this letter, nor any of their contents, shall be disclosed by BMHC or any of its affiliates, except as follows: (i) following BMHC's execution of this letter, this letter and its attachments may be disclosed to the Bankruptcy Court, (ii) following prior notice to WFF, as may be compelled to be disclosed in a judicial or administrative proceeding or as otherwise required by law, (iii) on a confidential and "need to know" basis, solely to the directors, officers, employees, advisors and agents of BMHC and its affiliates, or (iv) this letter and its attachments may be disclosed to DKAP. In addition, BMHC agrees that it and its subsidiaries (and any affiliate acting on behalf of BMHC) will (i) consult with WFF prior to the making of any filing in which reference is made to WFF, its affiliates or the commitment contained in this letter, and (ii) obtain the prior approval of WFF before releasing any public announcement (unless involving a filing with the Bankruptcy Court permitted above) in which reference is made to WFF, its affiliates or to the commitment contained in this letter. Notwithstanding the foregoing, any party hereto may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the financing contemplated by the Requested Financing. BMHC acknowledges that WFF and its affiliates may now or hereafter provide financing or obtain other interests in other companies in respect of which BMHC or its affiliates may be business competitors, and that WFF and its affiliates will have no obligation to provide to BMHC or any of its

affiliates any confidential information obtained from such other companies. This paragraph shall survive any termination of this letter.

6. **Exclusivity.** On or prior to February 28, 2010, BMHC agrees to work exclusively with WFF to consummate the Requested Financing contemplated hereby and agrees that it will not and will not permit any subsidiary or affiliate on behalf of BMHC to (a) engage in any discussions with any other lender or funding source regarding a financing alternative to the Requested Financing (an "**Alternative Financing**"), (b) provide any deposit to any other lender or funding source in connection with an Alternative Financing, (c) solicit or accept a proposal or commitment from another lender or funding source in connection with an Alternative Financing, or (d) otherwise permit or encourage another person to solicit a financing proposal or conduct due diligence in connection with an Alternative Financing, provided that the foregoing shall not restrict concurrent discussions and negotiations as to the terms of the Term Loan Facility, the Second Lien Facility or the Existing Exit Facility. For purposes of this paragraph: (i) the "**Second Lien Facility**" means the second lien term loan credit facility with BMHC's pre-petition lenders; and (ii) "**Existing Exit Facility**" means the exit credit facilities described in the Plan of Reorganization previously filed with the Bankruptcy Court.

7. **Miscellaneous.** This letter, including the attachments hereto, together with the Fee Letter (a) supersedes all prior discussions, agreements, commitments, arrangements, negotiations or understandings, whether oral or written, of the parties with respect thereto and (b) shall be governed by the laws of the State of New York, without giving effect to the conflict of laws provisions thereof; until the Effective Date (as defined in the Draft Credit Agreement), the U.S. Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") shall have jurisdiction over any matter arising out of this letter; from and after the Effective Date or if the Bankruptcy Court does not have jurisdiction or refuses to exercise jurisdiction over matters arising out of this letter, jurisdiction and venue over matters arising out of this letter shall be in the federal and/or state courts located within the City of New York, (c) shall be binding upon the parties and their respective successors and assigns to the extent set forth in the next succeeding paragraph, (d) may not be relied upon or enforced by any other person or entity, and (e) may be signed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. **If this letter becomes the subject of a dispute, each of the parties hereto hereby waives its right to trial by jury to resolve such dispute.** In the event that this letter is terminated or expires, the Expenses and Indemnity provisions, paragraph 5 and this paragraph shall survive such termination or expiration. This letter may be amended, modified or waived only in a writing signed by the parties hereto.

[This space intentionally left blank; signature page follows.]

If the foregoing correctly sets forth your understanding with respect to the subject matter hereof, kindly execute this letter and the Fee Letter where indicated and return both to the undersigned not later than 5:00 p.m. EST on December 14, 2009.

Very truly yours,

WELLS FARGO FOOTHILL, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Agreed and accepted on this
____ day of December, 2009:

BUILDING MATERIALS HOLDING CORPORATION,
a Delaware corporation

By: _____
Name: _____
Title: _____

[SIGNATURE PAGE TO COMMITMENT LETTER]

Exhibit A

Draft Credit Agreement

Exhibit B

Draft Intercreditor Agreement

Exhibit C

Draft Security Agreement

Exhibit D

Draft Form of Mortgage

Exhibit E

Indemnity

Capitalized terms used herein shall have the meanings ascribed to them in the commitment letter, dated December 14, 2009 (the "**Commitment Letter**") addressed to Building Materials Holding Corporation (the "**Indemnifying Party**") from Wells Fargo Foothill, LLC ("***WFF***").

To the fullest extent permitted by applicable law, the Indemnifying Party agrees that it will indemnify, defend, and hold harmless each of the Indemnified Persons from and against (i) any and all losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses and disbursements, (ii) any and all actions, suits, proceedings and investigations in respect thereof, and (iii) any and all legal or other costs, expenses or disbursements in giving testimony or furnishing documents in response to a subpoena or otherwise (including, without limitation, the costs, expenses and disbursements, as and when incurred, of investigating, preparing or defending any such action, proceeding or investigation (whether or not in connection with litigation in which any of the Indemnified Persons is a party) and including, without limitation, any and all losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses and disbursements, resulting from any act or omission of any of the Indemnified Persons), directly or indirectly, caused by, relating to, based upon, arising out of or in connection with (a) the Requested Financing, (b) the Chapter 11 Cases or the Plan of Reorganization, or (c) any untrue statement or alleged untrue statement of a material fact contained in, or omissions or alleged omissions in, information furnished by Indemnifying Party, or any of its subsidiaries or affiliates, or any other person in connection with the Requested Financing, the Commitment Letter or the Chapter 11 Cases; provided, however, such indemnity agreement shall not apply to any portion of any such loss, claim, damage, obligation, penalty, judgment, award, liability, cost, expense or disbursement of an Indemnified Person to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from the gross negligence or willful misconduct of such Indemnified Person.

These Indemnification Provisions shall be in addition to any liability which the Indemnifying Party may have to the Indemnified Persons.

If any action, suit, proceeding or investigation is commenced, as to which any of the Indemnified Persons proposes to demand indemnification, it shall notify the Indemnifying Party with reasonable promptness; provided, however, that any failure by any of the Indemnified Persons to so notify the Indemnifying Party shall not relieve the Indemnifying Party from its obligations hereunder. WFF, on behalf of the Indemnified Persons, shall have the right to retain counsel of its choice to represent the Indemnified Persons, and the Indemnifying Party shall pay the reasonable fees, expenses, and disbursement of such counsel, and such counsel shall, to the extent consistent with its professional responsibilities, cooperate with the Indemnifying Party and any counsel designated by the Indemnifying Party. The Indemnifying Party shall be liable for any settlement of any claim against any of the Indemnified Persons made with its written consent, which consent shall not be unreasonably withheld. Without the prior written consent of WFF, the Indemnifying Party shall not settle or compromise any claim, permit a default or consent to the entry of any judgment in respect thereof.

Neither expiration nor termination of WFF's commitments under the Commitment Letter or funding or repayment of the loans under the Requested Financing shall affect these Indemnification Provisions which shall remain operative and continue in full force and effect.

Exhibit F

Term Loan Commitment Letter

Exhibit G

Other Loan Documents

Exhibit H

Schedules

EXHIBIT N
[Fee Letters]

1. DK Acquisition Partners, L.P.

Building Materials Holding Corporation
Four Embarcadero Center, Suite 3200
San Francisco, CA 94111

December 14, 2009

CONFIDENTIAL

DK Acquisition Partners, L.P.
65 East 55th Street, 19th Floor
New York, New York 10022

Re: FEE LETTER

Ladies and Gentlemen:

Reference hereby is made to (i) that certain commitment letter, dated as of even date herewith (the "**Commitment Letter**"), executed and delivered by DK Acquisition Partners, L.P. ("**DKAP**") to Building Materials Holding Corporation, a debtor-in-possession ("**BMHC**") and being countersigned by BMHC on the date hereof and (ii) the Senior Secured Credit Agreement, substantially in the form of the Draft Credit Agreement attached as Exhibit A to the Commitment Letter, which, subject to terms and conditions described in the Commitment Letter, would be entered into by BMHC as Borrower, its subsidiaries that are Guarantors, Wells Fargo Foothill, LLC ("**WFF**"), as revolving credit lender, DKAP, as term loan lender, and WFF, as administrative agent and collateral agent (the "**First Lien Credit Agreement**"). Capitalized terms used herein and not defined shall have the respective meanings assigned to such terms in the First Lien Credit Agreement.

In connection with the Commitment Letter, BMHC, on behalf of itself and its subsidiaries that are Guarantors, jointly and severally, hereby agrees to pay to DKAP the following fees:

1. Up-Front Fee. A fee equal to 4.00% of the original principal amount of the $40 million term loan (the "**Loan**") to be made by DKAP pursuant to the Requested Financing referred to in the Commitment Letter (the "**Up-Front Fee**"). The Up-Front Fee is earned in full by DKAP and non-refundable upon execution and delivery by BMHC of the Commitment Letter and this Fee Letter. The Up-Front Fee is due and payable on the earlier of (a) the Effective Date and (b) the date on which any Alternative Financing is consummated. An "**Alternative Financing**" shall mean a financing alternative to the Requested Financing as defined in the Commitment Letter consummated on or prior to February 28, 2010 and excluding (x) the ABL Facility, (y) the Second Lien Term Loan Credit Agreement with BMHC's pre-petition lenders and (z) the exit credit facilities described in BMHC's amended plan of reorganization that was filed with the U.S. Bankruptcy Court for the District of Delaware on or about October 21, 2009 and supplemented on or about November 15, 2009. The Up-Front Fee shall constitute a portion of the Obligations and shall be secured by the Collateral.

2. Exit Fee. Upon any payment or prepayment of the Loan, a fee equal to 4.00% of the principal amount of the Loan (inclusive of any capitalized interest) so repaid or prepaid (the "**Exit Fee**"). The Exit Fee shall be earned in full and non-refundable on the Effective Date. On the Term Loan Maturity Date or acceleration of the Loan due to an Event of Default, the entire amount of the Exit Fee, to the extent not previously paid, shall become due and payable. The Exit Fee shall constitute a portion of the Obligations and shall be secured by the Collateral.

The parties acknowledge that BMHC's obligations under paragraphs 1 and 2 above are subject to the approval of the bankruptcy court in which the Chapter 11 Cases are currently pending (the "Bankruptcy Court"). BMHC agrees to use good faith efforts to promptly obtain such approval. BMHC acknowledges that DKAP's obligations under the Commitment Letter will terminate if such approval is not obtained on or prior to December 17, 2009.

BMHC shall pay all amounts due and payable hereunder not later than 2:00 p.m. (New York City time) on the day when due, in lawful money of the United States of America and in immediately available funds, to the account of DKAP set forth in **Exhibit A**. All payments shall be made by BMHC without set-off, counterclaim, deduction or other defense.

BMHC hereby acknowledges and agrees, on behalf of itself and each Guarantor, that (i) each fee payable hereunder is fully earned and non-refundable on the date specified above, (ii) each such fee constitutes a portion of the Obligations and is in addition to any other fees payable by Borrower or Guarantors under the First Lien Credit Agreement or any other Loan Document, and (iii) this letter agreement shall constitute a Loan Document. Except for paragraph 2 above (which shall only be effective if the Loan is made), this letter agreement shall survive any termination of the Commitment Letter and shall remain in effect, whether or not the Effective Date occurs.

This letter agreement is the Fee Letter referred to in the Commitment Letter and the DKAP Fee Letter referred to in the First Lien Credit Agreement, shall be construed under and governed by the laws of the State of New York (without regard to principles of conflicts of laws; prior to the Effective Date, the Bankruptcy Court shall have jurisdiction over any matter arising out of this letter, provided that, on and after the Effective Date, or prior thereto, if the Bankruptcy Court does not have jurisdiction or refuses to exercise such jurisdiction, then BMHC agrees to the jurisdiction and venue of the federal and/or state courts located within the City of New York), and may be executed in any number of counterparts and by different parties on separate counterparts. Each of such counterparts shall be deemed to be an original, and all of such counterparts, taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of this letter by telefacsimile or electronic mail shall be equally effective as delivery of a manually executed counterpart. This letter agreement may not be amended or otherwise modified unless the same shall be in writing and signed by the parties hereto. If this letter agreement becomes the subject of a dispute, each of the parties hereto hereby waives trial by jury.

[signature page follows]

The contents of this letter agreement are confidential. Except as required by law, statute, rule, regulation or valid judicial process, this letter shall not be disclosed or displayed or its contents otherwise disclosed by or on behalf of BMHC to any third party (other than counsel to BMHC and Guarantors) without the prior written consent of DKAP, provided, that this letter may be filed with the Bankruptcy Court.

If the foregoing correctly sets forth our understanding, please indicate BMHC's acceptance of the terms hereof on behalf of itself and each Guarantor by signing the appropriate spaces below and returning to the undersigned the enclosed duplicate originals, whereupon this letter shall become a binding agreement among BMHC, each Guarantor and DKAP.

Very truly yours,

BUILDING MATERIALS HOLDING CORPORATION

By:_____
Name:
Title:

Accepted and agreed to
as of the date first above written:

DK ACQUISITION PARTNERS, L.P.,
By: M.H. Davidson & Co., its general partner

By: _____
Name:
Title:

EXHIBIT A

Wire To:	
ABA#:	
F/C:	
DDA#:	
F/B/O:	
A/C#:	

2. Wells Fargo Foothill, LLC

dated as of December 14, 2009

CONFIDENTIAL

Wells Fargo Foothill, LLC, as Agent
under the below-referenced Credit Agreement
2450 Colorado Avenue, Suite 3000
Santa Monica, California 90404

Re: **FEE LETTER**

Ladies and Gentlemen:

Reference hereby is made to (a) that certain commitment letter dated as of even date herewith (the "Commitment Letter") among Building Materials Holding Corporation, a Delaware corporation ("Holdings"), and Wells Fargo Foothill, LLC, a Delaware limited liability company ("WFF"), and (b) the Senior Secured Credit Agreement, draft dated as of even date herewith (the "Credit Agreement"), among Holdings, certain subsidiaries of Holdings party thereto as "Guarantors", the lenders party thereto from time to time (collectively, the "Lenders"), and WFF , as agent for the Lenders ("Agent"). This is the fee letter referred to in the Commitment Letter and the Credit Agreement. Capitalized terms used herein but not specifically defined herein shall have the meanings ascribed to them in the Credit Agreement.

In connection with the Commitment Letter and the Credit Agreement, Holdings hereby agrees to pay to Agent the following fees, which fees shall be for its sole and separate account and not the account of any Lender:

1. **Closing Fee**. A closing fee of $1,500,000, which fee shall be due and payable in full on the Effective Date.

2. **Servicing Fee**. A monthly servicing fee of $5,000, which fee shall be due and payable, in arrears, on the first day of each month, commencing on the first day of the month immediately following the Effective Date through and including the first day of the month prior to the first date on which all of the Obligations are paid in full and the Commitments of the Lenders are terminated (the "Payoff Date") and on the Payoff Date, provided, however, that (a) the servicing fee that is due, in arrears, on the first day of the month immediately following the Effective Date shall be an amount equal to (i) $5,000 *times* (ii) the result of the total number of days in the prior month that elapsed from and including the Effective Date up to and including the last day of such month *divided by* the total number of days in such month, and (b) the servicing fee that is due, in arrears, on the Payoff Date shall be an amount equal to (i) $5,000 *times* (ii) the result of the total number of days in the month that elapsed to and including the Payoff Date *divided by* the total number of days in the month of termination.

3. **Audit, Appraisal, and Valuation Charges**. Audit, appraisal, and valuation fees and charges as follows (i) a fee of $1,000 per day, per auditor, plus out-of-pocket expenses for each financial audit of Holdings performed by personnel employed by Agent, (ii) if implemented, a fee of $1,000 per day, per applicable individual, plus out of pocket expenses for the establishment of electronic collateral reporting systems, and (iii) the actual charges paid or incurred by Agent if it elects to employ the services of one or more third Persons to perform audits of Holdings or its Subsidiaries, to establish electronic collateral reporting systems, to appraise the Collateral, or any portion thereof, or to assess Holdings's or its Subsidiaries' business valuation; provided, however, that so long as no Event of Default shall have occurred and be continuing, Holdings shall not be obligated to reimburse Agent for more than 4 audits during any calendar year, more than 2 appraisals of the Collateral that is Inventory during any calendar year, more than 1 appraisal of the Collateral that is fixed assets (other than real estate) during any calendar year, more than 1 appraisal of the Collateral that is real estate during any calendar year, or more than 1 business valuation during any calendar year.

4. **Prepayment Premium**.

a. Early Termination. If Holdings has sent a notice of termination of the Revolving Commitments pursuant to the provisions of Section 2.05 of the Credit Agreement, then on the date set forth as the date of termination of the Credit Agreement in such notice, Holdings shall pay to Agent, in cash, the Applicable Prepayment Premium. In the event of a termination of the Revolving Commitments for any other reason, including (i) acceleration of the Obligations as a result of the occurrence of an Event of Default, (ii) foreclosure and sale of, or collection of, the Collateral, (iii) sale of the Collateral in any Insolvency Proceeding, or (iv) the restructure, reorganization, or compromise of the Obligations by the confirmation of a plan of reorganization or any other plan of compromise, restructure, or arrangement in any Insolvency Proceeding, then, in view of the impracticability and extreme difficulty of ascertaining the actual amount of damages to the Lender Group or profits lost by the Lender Group as a result of such Prepayment, and by mutual agreement of the parties as to a reasonable estimation and calculation of the lost profits or damages of the Lender Group, Holdings shall pay to Agent, in cash, the Applicable Prepayment Premium, measured as of the date of such termination of the Revolving Commitments. For purposes of this section, "Applicable Prepayment Premium" means, as of any date of determination, an amount equal to (A) during the period from and after the date of the execution and delivery of the Credit Agreement up to (but not including) the date that is the first anniversary of the Effective Date (the "First Period"), 3.00% times the Aggregate Revolving Commitment on the date immediately prior to the date of determination, (B) during the period from and including the date that is the first anniversary of the Effective Date up to (but not including) the date that is the second anniversary of the Effective Date (the "Second Period"), 2.00% times the Aggregate Revolving Commitment on the date immediately prior to the date of determination, and (C) during the period from and including the date that is the second anniversary of the Effective Date up to (but not including) the date that is the third anniversary of the Effective Date (the "Third Period"), 1.00% times the Aggregate Revolving Commitment on the date immediately prior to the date of determination, and (D) from and after the date that is the third anniversary of the Effective Date, zero percent. Notwithstanding the foregoing, in the event that Holdings repays the Obligations and terminates the Revolving Commitments in connection with a refinancing facility provided by a syndicate of lenders that is agented by WFF or one of its Affiliates, then the Applicable Prepayment Premium that is due and payable shall be reduced by 50%.

b. Partial Reductions. If Holdings has sent a notice of reduction of the Revolving Commitments pursuant to the provisions of Section 2.05 of the Credit Agreement, then on the date set forth as the date of reduction in such notice, Holdings shall pay to Agent, in cash, the Applicable Revolver Reduction Premium determined as of such date. For purposes of this section, "Applicable Revolver Reduction Premium" means, as of any date of determination, an amount equal to (A) during the

First Period, 3.00% times the amount of the reduction of the Revolving Commitments on such date, (B) during the Second Period, 2.00% times the amount of the reduction of the Revolving Commitments on such date, (C) during the Third Period, 1.00% times the amount of the reduction of the Revolving Commitments on such date, and (D) from and after the date that is the third anniversary of the Effective Date, zero percent.

Holdings shall pay all amounts due and payable hereunder to Agent in the manner set forth in the Credit Agreement. Agent hereby is expressly authorized by Holdings to (i) charge such amounts due and owing to the loan account set forth in Section 2.02(a) of the Credit Agreement, and (ii) designate such amounts as Revolving Loans under the Credit Agreement.

Holdings hereby acknowledges and agrees that each fee payable hereunder is fully earned and non-refundable on the date such fee is due and payable as provided above and that each such fee constitutes Obligations and is in addition to any other fees payable by Holdings under the Credit Agreement or any other Loan Document.

This letter is the Fee Letter referred to in the Credit Agreement, shall be construed under and governed by the laws of the State of New York, and may be executed in any number of counterparts and by different parties on separate counterparts. Each of such counterparts shall be deemed to be an original, and all of such counterparts, taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of this letter by telefacsimile or other electronic method of transmission shall be equally effective as delivery of a manually executed counterpart.

[signature page follows]

The contents of this letter are confidential. This letter shall not be disclosed or displayed or its contents otherwise disclosed to any third Person without the prior written consent of Agent, except as required by law; provided that a copy of this Fee Letter may be filed with the Bankruptcy Court.

Very truly yours,

BUILDING MATERIALS HOLDING CORPORATION, a Delaware corporation

By: _____
Name:
Title:

Accepted and agreed to
as of the date first above written:

WELLS FARGO FOOTHILL, LLC,
as Agent

By: _____
Name:
Title:

[SIGNATURE PAGE TO FEE LETTER]